

**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> Englebort, 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).

<sup>21</sup> Leilani, F (2002), 'Is There a Woman in the House? Re/conceiving the Human Right to Housing' Volume 14:1 *Canadian Journal of Women and the Law*

<sup>22</sup> Schuler, M and Thomas, D (1997) *Women's Human Rights Step by Step: A Practical Guide to Using International Human Rights Law and Mechanisms to Defend Women's Human Rights* (Women, Law & Development International, Washington DC).

<sup>23</sup> UN-HABITAT (1996) *Report of the United Nations Conference on Human Settlements (Habitat II)* <http://www.unhabitat.org/unchs/english/hagenda/>

<sup>24</sup> Food and Agriculture Organization of the United Nations, *Gender and Access to Land*, FAO Land Tenure Studies No. 4 (FAO: Rome, 2002)

The alternative term has been gender ‘equity’ where fairness of treatment for women and men is emphasized according to their respective needs. However, the terms equity and equality need not be opposites. Gender equity strategies too are used to eventually attain gender equality. As such, equity as equal treatment and fairness is the means and equality is the result. What is common is that both involve rights in terms of benefits, obligations and opportunities. Despite some apprehension about the import of the term ‘equality’, this compilation serves to demonstrate that recent developments including the *Millennium Development Goals (MDGs)* and the *World Summit Outcome* have firmly reinforced women’s equal property rights and this has now achieved general consensus among States.

#### 1.4 Why this Document

One reason why women’s property rights have not been fully embedded in campaigns, programmes and policies is the limited systematic information and awareness of these rights. This is partly due to the difficulty in pursuing women’s economic rights<sup>25</sup> and the generally limited attention given to land, property and housing rights within the human rights literature (which emphasises civil and political rights over socio-economic rights). It may also be due to the complex nature and scope of the rights which is derived not from one or a handful of international human rights documents, as with most human rights issues, but emerges from a vast array of sources and documents. This overlapping and multi-sourced basis of women’s property rights often makes it difficult and complex for non-specialists. As such, this document is intended as a ready reference of international standards from a wide range of sources on the subject which could be easily accessed by a number of different users.

This document builds on existing compilations of human rights documents, for example the website of Office of United Nations High Commissioner on Human Rights<sup>26</sup>. Also available are research materials on general international human rights law<sup>27</sup>, relevant reports from human rights organisations<sup>28</sup>, UN agencies monitoring women’s rights<sup>29</sup>, UN Special

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<sup>25</sup> Binion, G (1995) ‘Human Rights: A Feminist Perspective’ Volume 17:3 *Human Rights Quarterly* 509-526

<sup>26</sup> See <http://www.ohchr.org/english/law/index.htm>

<sup>27</sup> Such as the American Society of International law <http://www.asil.org/resource/humrts1.htm>. See also University of Minnesota database, <http://www1.umn.edu/humanrts/bibliog/BIBLIO.htm>; University of Toronto’s Diana Human Rights Database [http://www.law-lib.utoronto.ca/Diana/whrr/display\\_documents.cfm?ID=16&sister=utl](http://www.law-lib.utoronto.ca/Diana/whrr/display_documents.cfm?ID=16&sister=utl)

<sup>28</sup> See for example, the Women’s Rights Division of Human Rights Watch <http://www.hrw.org/women>

<sup>29</sup> See the website of the UN Inter Agency Network on Women and Gender Equality <http://www.un.org/womenwatch/>

Rapporteurs<sup>30</sup> and civil society groups dedicated to protection of women's housing, land and property rights<sup>31</sup>. There are also collections of documents relating to specific issues such as housing rights, which also deal with women's rights<sup>32</sup>. While such sources are invaluable and offer extensive information, users often find that locating current materials relating to women's rights to property, land and housing takes time, effort and some prior knowledge. This document is intended as an easily accessible and updated collection of materials dedicated to women's security of tenure.

## 1.5 Who can use this Document

This document is envisioned for all those who are working in the field of women's land, property and housing rights. It would also be of assistance to many stakeholders particularly policy makers in the field of land, property, housing and women's rights from within and outside governmental agencies who directly or indirectly contribute to the formulation and implementation of land policies. This includes UN officials and those from other inter-governmental and regional organizations, land professionals, civil society including women's groups, community based organizations, human rights and development advocacy groups, gender specialists and trainers, policy analysts and academics. It is aimed at supporting stakeholder efforts and particularly women's agency in empowering themselves through women's equal rights.

A number of national, regional and global initiatives are dedicated to empowering women through their equal land rights<sup>33</sup>. UN-HABITAT, whose gender policy is based on the gender commitments from the *Habitat Agenda 1996* and has evolved since then, recognizes the importance of a human rights and development based approach. In particular, a recent initiative the Global Land Tool Network (GLTN)<sup>34</sup> brings together a number of partners with human rights experience who are dedicated to the development of innovative, affordable, scalable and gendered land tools.

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<sup>30</sup> See for example Kothari, M, *Women and Adequate Housing : Study by the Special Rapporteur on Adequate Housing*, United Nations Commission on Human Rights E/CN.4/2005/43 (2005) <http://www.ohchr.org/english/issues/housing/index.htm>

<sup>31</sup> See for example the Centre on Housing Rights and Evictions (COHRE) *Manual on Women and Housing Rights*, <http://www.cohre.org/downloads/SOU5.pdf> or Habitat International Coalition (HIC) – Human Rights Land Network (HRLN) <http://www.hic-mena.org>

<sup>32</sup> UN- HABITAT *Compilation of United Nations Resolutions on Housing Rights* (Nairobi: UN-HABITAT, 2ed 2005)

<sup>33</sup> For example, the Women's Legal Aid Centre (Tanzania), the Legal Assistance Centre (Namibia), Uganda Land Alliance (ULA) multiple national chapters of FIDA, Women and Law in Southern Africa (WLSA), and Women and Law in Development in Africa (WILDAF) to name some of those who use human rights approaches. At the international level, Centre on Housing Rights and Evictions (COHRE), Human Rights Watch, Amnesty International, Slum Dwellers International, Huairou Commission and Habitat International Coalition are among those who adopt a human rights approach.

<sup>34</sup> See [www.gltn.net](http://www.gltn.net)

## 1.6 How to use this Document

This document is presented in order for the various forms of international standards to be easily appreciated. Section 2 provides an explanation of different types of international instruments under international law and the differences between them. Section 3 provides an overview of the relevant international instruments, alongside references of regional human rights instruments adopted by intergovernmental bodies in Africa, Europe and the Americas. Section 4 outlines the major resolutions adopted by UN bodies in relation to women's equal rights. Section 5 thematically reviews the platforms of actions and outcomes of major international summits and conferences while Section 6 offers a summary and conclusions.

This document provides an overview of relevant international human rights instruments and documents as a tool for protecting women's equal rights, raising awareness, in advocacy and lobbying for domestic (national) law and policy reform, and to challenge existing opinions and beliefs that deny women their human rights. If the aim is to quickly get an idea of where to find the standards recognise women's equal rights to housing, land and property, one is advised to turn to the various conventions and their interpretative texts. If the goal is to obtain a comprehensive overview of all relevant standards, the recommendation is to read them all. For the purposes of visiting the full text, links are provided.

Human rights formulations in themselves as in this document, however, do not discuss the opportunities for civil society to influence development of international norms. Also necessary, but not discussed in this compilation, is information on how to access the relevant international human rights mechanisms<sup>35</sup>. Thus this document only offers some of the basis for socio-political, human rights and legal advocacy and action. Other relevant information is available in recent literature and research carried out by those working on land, property and housing rights. Three recent UN-HABITAT publications further discuss the contexts and challenges facing the domestic implementation of international standards<sup>36</sup>. Therefore a fuller context, analysis and bibliography may be available through these and other papers.

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<sup>35</sup> The details on the UN Human Rights Complaints Mechanisms can be found at <http://www.ohchr.org/english/bodies/petitions/index.htm>

<sup>36</sup> UN-HABITAT's *Policy Makers Guide to Women's Land, Property and Housing Rights Across the World* (2006) explores the domestic practice. A survey of domestic constitutional principles is mapped in the *Progress Report on Removing Discrimination against Women in Respect of Property & Inheritance Rights* (2006). Another related document is the Global Land Tool Network's *Mechanism for Gendering Land Tools: Framework for Securing Women's Land, Property and Housing Rights* (2006) engages with the process of developing tools for women's land, property and housing rights.

## 2. SOURCES OF INTERNATIONAL HUMAN RIGHTS STANDARDS

Human Rights are generated through different processes and from various international bodies which determine their validity as well as the extent to which they bind States<sup>37</sup>. Familiarity with the different types of international standards can be helpful in ascertaining their appropriateness for use in a particular context. One must keep in mind that there is a hierarchy of international human rights standards, that is, some human rights formulations are considered stronger than the others.

### 2.1 Conventions, Covenants and Treaties

From a legal point of view, conventions or treaties are considered the strongest international instruments, as they are directly legally binding<sup>38</sup>. Conventions, covenants and treaties are international legal instruments, which are adopted upon negotiation (usually by two thirds majority) and legally bind the countries that have signed and ratified them. After country representatives have signed a treaty, their head of state or government has to approve it. Upon such approval, the signed treaty is ratified. By ratifying a treaty/ convention, a state becomes party to it, and is then called a 'State Party' in relation to that treaty or convention. If a State has not signed and ratified a treaty, it can still accede to the treaty at a later date. Upon accession, the State Party is bound by the same obligations as when it had ratified the convention.

The state party accepts a solemn responsibility to apply all obligations embodied in the treaty and thus becomes accountable to the international community, to other States Parties, and to the residents in its territories. If a State only signs, but does not ratify a (multilateral) treaty, it is nevertheless bound to do nothing in contravention of the terms of the treaty. Covenants, conventions and treaties can be bilateral (between two countries) or multilateral (between more than two countries) – though human rights treaties are multilateral. If concluded under the auspices of the United Nations, they are first adopted, by resolution, by the General Assembly and then opened for both signature and ratification. All treaties entered into by Member States to the UN are registered with the UN Secretariat and published by it.

In some countries, a ratified treaty becomes immediately applicable at national level (for example Argentina, Bosnia and Herzegovina, France, Namibia, The Netherlands and South Africa). In most countries the treaty obligations must be transformed into national

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<sup>37</sup> An overview of all international human rights instruments can be found on the web site of the UN High Commissioner for Human Rights (UNHCHR): [www.unhchr.org](http://www.unhchr.org) . An overview of all international human rights instruments related to security of tenure can be found on: [http://hq.unhabitat.org/campaigns/tenure/legal\\_sources.asp](http://hq.unhabitat.org/campaigns/tenure/legal_sources.asp)

<sup>38</sup> Hiller, T (1999) *Principles of Public International Law*, (London: Oxford) pp. 48 - 58.

legislation. In other words, the national laws must be made compatible with the treaty obligations of the state party. Failure to domesticate the treaty obligations into national legislation constitutes a violation of international law.

There are many terms or human rights concepts used by treaties that are not defined in that instrument. However, many treaties provide for ‘committees’ which both supervise the implementation of the treaty (by reviewing State reports) but also publish their interpretation of the content of human rights provisions. These are known as ‘general comments’ or thematic issues or methods of work. General Comments are instructive to advocates and policymakers because the comments guide countries in their protection of certain human rights. General Comments are issued by the United Nations treaty bodies that review countries' human rights compliance with the treaty in question<sup>39</sup>. When a country reports on its implementation of a human rights treaty, the country's progress is evaluated according to the standards specified in the General Comments.

Some human rights treaties are followed by Protocols, also called, ‘Optional Protocols’. These protocols may provide either for procedures with regard to the treaty, or address a substantive area related to the treaty. Optional protocols to human rights treaties are treaties in their own right and are open to signature, accession or ratification by States Parties to the main treaty. Therefore, Optional protocols are operational only with respect to countries that have signed them.

States Parties can make reservations to obligations in multilateral treaties (and protocols), as long as the reservation is compatible with the object and purpose of the treaty.<sup>40</sup> For example, the object and purpose of the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* is to eliminate discrimination against women. A reservation to this Convention cannot therefore state that discrimination against women is allowed in the country making the reservation. However, many of the reservations entered into by States are controversial and do limit the application of treaty to that State.

## 2.2 United Nations Resolutions and Declarations

Resolutions are often seen as documents without legally binding force (except for the resolutions of the UN Security Council). However, in certain situations UN resolutions can be used to establish binding rules of international law. UN resolutions can carry considerable weight and often are much more detailed on one particular subject than other international instruments. Resolutions of regional organisations (such as the African Union, the European Union, and the Organisation of American States) can demonstrate what these organisations consider to be the law.

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<sup>39</sup> An interesting overview of concluding observations from the Committee on Economic, Social and Cultural Rights related to the reports submitted to it by different countries can be found on: <http://www.unhcr.ch/housing/cescr.htm>

<sup>40</sup> This rule was laid down in the *Vienna Convention on the Law of Treaties (VCT)* of 1969 (Article 2), and now represents customary international law.

Generally, declarations and recommendations are documents of intent, which in most cases do not create legally binding obligations on the countries that have signed them. A declaration and/or recommendation may gain the force of binding law if its contents are widely accepted by the international community. It then achieves the status of 'customary international law'. The *Universal Declaration on Human Rights* of 1948 is a unique example of a Declaration, of which a large part has gained the force of binding (customary) international law. Since it has achieved the status of international customary law (through practice), the *Universal Declaration on Human Rights* is often grouped together with the two major human rights conventions<sup>41</sup>.

### 2.3 Agendas and Platforms for Action

In recent decades, an increasing phenomenon has been that of Platforms/Programmes for Action or Agenda as attached to a Declaration. A Platform for Action or an Agenda emerges from a political process and is agreed to by a large majority of States; it therefore carries political and moral persuasion. The status of such documents in international law is similar to the Declarations to which they are attached: they are considered to constitute 'soft' law, generally laying down commitments and intentions that have a political rather than legally binding status<sup>42</sup>.

Agendas and Platforms of Action are sometimes cited as bottom up generation of human rights where mobilisation by civil society is key, even though States have to sign up to them. Therefore, even where States avoid formal treaties, they do acknowledge their obligations at international fora. These are significant as they confirm and further elaborate on existing human rights and contribute to the development of other rights. Furthermore, they are indicators of what is seen as a priority at different times. If these standards come to be regarded as widely accepted by the international community, they could also achieve the status of international customary law.

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<sup>41</sup> International Covenant on Political and Civil Rights of 1966 and International Covenant on Economic, Social and Cultural Rights of 1966, which both will be described in more detail below.

<sup>42</sup> Centre on Housing Rights and Evictions (COHRE) (2000) *Sources 5: Women and Housing Rights*, (Geneva: COHRE), p. 60.

### 3. RELEVANT INTERNATIONAL AND REGIONAL INSTRUMENTS

In this Section, the significant international human rights instruments containing provisions related to women's equal rights to adequate housing, land and property are examined. The discussions include not only what the relevant provisions state but, where applicable, how the relevant committee has interpreted those rights with respect to women's equal rights to adequate housing, land and property rights.

#### 3.1 International Covenant on Civil and Political Rights (ICCPR) adopted in 1966<sup>43</sup>:

Stipulates that the rights recognised in this Covenant are to be respected and ensured without discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2(1));

Requires States Parties to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant (Article 3);

Confirms that all persons shall be equal before the courts and tribunals (Article 14);

Confirms the right of everyone to be recognised everywhere as a person before the law (Article 16);

Prohibits arbitrary or unlawful interference with a person's privacy, family and home and recognises the right of every person to protection of the law against such interference or attacks (Article 17);

Requires States Parties to take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution (Article 23(4));

Confirms that everyone is entitled to the equal protection of the law, without discrimination on any ground, including sex (Article 26).

A *Human Rights Committee* was established under Part IV of the Covenant. This Committee monitors the implementation of the Covenant by the States Parties, who are obliged to

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<sup>43</sup> International Covenant on Civil and Political Rights, adopted on 16/12/1966 by General Assembly Resolution 2200 (XXI), Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171. The ICCPR entered into force on 23/3/1976. As of November 2004, 154 States had ratified the ICCPR, while 67 had signed it.

submit periodic reports to it. Through its own reports and through general comments, the Committee also helps interpret the different provisions in the Covenant.

One such General Comment, *General Comment 28 on the equality of rights between men and women*, specifically interprets Article 3 of this Covenant<sup>44</sup>. The Human Rights Committee states:

Article 3 implies that all human beings should enjoy the rights provided for in the Covenant, on an equal basis and in their totality. 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.

State Parties are required to take steps to remove obstacles to the equal enjoyment of such rights, to educate the population and State officials, and to adjust domestic legislation. Protective measures alone are not enough: State Parties need to adopt positive measures "so as to achieve the effective and equal empowerment of women." The Committee notes that inequality in the enjoyment of rights by women is often deeply embedded in tradition, culture and religion. It emphasises 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.

The right of everyone to be recognised everywhere as a person before the law implies that

The capacity of women to own property, to enter into a contract or to exercise other civil rights 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.

On the requirement to treat men and women equally in regard to marriage, the Committee states that polygamy is an inadmissible discrimination against women, as it is incompatible with the principle of equality of treatment.

States must ensure that the matrimonial regime contains equal rights and obligations for both spouses, among others with regard to the ownership or administration of property, 'whether common property or property in the sole ownership of either spouse'. Upon the dissolution of marriage, the decisions with regard to property distribution should be the same for men and for women, and 'women should also have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses.'

The *Optional Protocol to the ICCPR* enables the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the

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<sup>44</sup> ICCPR General Comment 28 on "Equality of Rights between Men and Women" (Article 3), adopted on 29 March 2000, CCPR/C/21/Rev.1/Add.10. This is an update of General Comment 4, adopted in 1981.

rights enshrined in the Covenant<sup>45</sup>. This means that any individual can file a complaint with the Committee, but only if his/her state has ratified the Optional Protocol.

### 3.2 The International Covenant on Economic, Social and Cultural Rights<sup>46</sup> (ICESCR) adopted in 1966:

Requires States Parties to take steps - to the maximum of their available resources - to achieve progressively the full realisation of the rights recognised in this Covenant (Article 2(1));

Prohibits discrimination of any kind as to race, colour, sex, religion, political or other opinion, national or social origin, property, birth or other status (Article 2(2));

Obliges the States Parties to "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" (Article 3);

Recognises the right to adequate housing (Article 11(1) which states: "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 ..."

The *Committee on Economic, Social and Cultural Rights* is the body that monitors implementation of this Covenant, and through its reports and general comments helps interpret its provisions<sup>47</sup>. In 1991, the Committee on Economic, Social and Cultural Rights issued its *General Comment No. 4 on the Right to Adequate Housing*, in which it explained that one of the main elements of the human right to an adequate standard of living is the right to adequate housing<sup>48</sup>. In the same General Comment, the Committee emphasises that the right to

<sup>45</sup> The Protocol entered into force on 23/3/1976 and as of October 2004, 153 States had ratified it. To check which countries are State party, go to: <http://www.ohchr.org/english/law/ccpr.htm> and then click on "Status of Ratification", where you will find a list of countries. If you click on "Reservations and declarations", you can check which countries have made any reservations.

<sup>46</sup> International Covenant on Economic, Social and Cultural Rights, adopted on 16/12/1966. General Assembly Resolution 2200 (XXI), 21<sup>st</sup> Session, Supp. No. 16, U.N. Doc. A/6316 (1966), 993, U.N.T.S. 3, entered into force on 3/1/1976. As of November 2004, 151 States had become party, while 66 States had signed but not (yet) ratified.

<sup>47</sup> The Committee on Economic, Social and Cultural Rights (CESCR) was established under ECOSOC Resolution 1985/17 of 28 May 1985, to carry out the monitoring functions assigned to ECOSOC in Part IV of the Covenant.

<sup>48</sup> See UN Doc. EC/12/1991/41 (1991). For full text see: <http://www.unhcr.ch/tbs/doc.nsf/MasterFrameView/469f4d91a9378221c12563ed0053547e?Opendocument>

adequate housing should be interpreted as the right to live somewhere in security, peace and dignity. The right to adequate housing is seen as consisting of the following elements:

- (a) Legal security of tenure;<sup>49</sup>
- (b) Availability of services, materials, facilities and infrastructure;
- (c) Affordability;
- (d) Habitability;
- (e) Accessibility;<sup>50</sup>
- (f) Location;
- (g) Cultural adequacy.<sup>51</sup>

In *General Comment 7 on forced evictions*, adopted in 1997, the Committee on Economic, Social and Cultural Rights defines ‘forced eviction’ 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.”<sup>52</sup> While forced eviction of women by their husband or in-laws is not explicitly included in this definition, the General Comment does refer to forced evictions by third parties, while it stresses that the State Party must ensure that the law is enforced against such third parties.<sup>53</sup> It could therefore be argued that husbands and in-laws forcibly evicting divorcees and widows are ‘third parties’ in accordance with this General Comment and that the State must ensure that such perpetrators are prosecuted. *General Comment 14 on the Right to the Highest Attainable Standard of Health* explicitly links the right to adequate housing to the right to health. *General Comment 15 on the Right to Water* does the same with regard to the right to water, which includes access to safe drinking water and sanitation.<sup>54</sup>

Unlike the *Human Rights Committee*, which was established under the International Covenant on Civil and Political Rights (ICCPR), the *Committee on Economic, Social and Cultural Rights* cannot receive and consider communications from individuals claiming to be victims of

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<sup>49</sup> The Committee emphasises that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats, no matter what type of tenure they enjoy.

<sup>50</sup> The Committee makes clear that increasing access to land by landless or impoverished segments of society should constitute a central policy goal. Access to land is described as an entitlement.

<sup>51</sup> General Comment No. 4 of 1991, Paragraph 8.

<sup>52</sup> General Comment No. 7 issued on 20 May 1997, Paragraph 7. For full text see: <http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/959f71e476284596802564c3005d8d50?OpenDocument>

<sup>53</sup> General Comment No. 7, Paragraph 8.

<sup>54</sup> For full text of General Comment No. 14, issued on 11 August 2000, see: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/40d009901358b0e2c1256915005090be?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/40d009901358b0e2c1256915005090be?OpenDocument) For full text of General Comment No. 15, issued on 20 January 2003, see [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/a5458d1d1bbd713fc1256cc400389e94?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/a5458d1d1bbd713fc1256cc400389e94?OpenDocument)

violations of any of the rights enshrined in the Covenant. A Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR) - that enables the Committee to receive and consider individual complaints - has been ready since 1998, but has not yet been adopted.<sup>55</sup> However, NGOs can submit 'shadow reports' to the Committee (parallel to submission of State reports).

### 3.3 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>56</sup> adopted in 1979:

Defines discrimination against women as "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" (Article 1);

Obliges States Parties to "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women" (Article 2 (f));

Emphasises that prejudices and customary and all other practices based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women must be eliminated. Stipulates that States Parties take all appropriate measures to modify the social and cultural patterns of conduct of men and women (Article 5(a)).

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<sup>55</sup> After two expert seminars held on the optional protocol in 2003, an open-ended working group on the optional protocol was held in February and March 2004, during which the opinions of government representatives, relevant Special Rapporteurs and Committee members were expressed. Consensus was not reached and an extension of the mandate of the working group was recommended.

<sup>56</sup> Convention on the Elimination of All Forms of Discrimination Against Women, adopted on 18/12/1979, General Assembly Resolution 34/180, U.N. G.A.O.R., 34<sup>th</sup> Session, Supp. No. 46, U.N. Doc. A/34/36 (1980), entered into force 3/9/1981. As of October 2004, 179 States had become party. <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

Articles 13 - 15 in this Convention specifically cover women's access to economic resources. States are required to

Take all appropriate measures to eliminate discrimination against women in areas of economic and social life to ensure women's equal right to bank loans, mortgages and other forms of financial credit (Article 13);

Undertake to ensure rural women's right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications (Article 14(2)(h));

Accord women equality with men before the law, and women's equal rights to conclude contracts and administer property as well as equal treatment at court procedures, and that all contracts directed at restricting the legal capacity of women shall be deemed null and void (Article 15).

Provisions in this Convention that deal specifically with matters relating to marriage and family relations require States Parties to:

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: The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free or charge or for a valuable consideration." (Article 16 (1) (h)).

CEDAW's monitoring body, the *Committee on the Elimination of Discrimination Against Women*, issued *General Recommendation No. 21 on Equality in Marriage and Family Relations* in 1994.<sup>57</sup> On women's equal right to conclude contracts, the Committee states:

When a woman cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband's or a male relative's concurrence or guarantee, she is denied legal autonomy. Any such restriction prevents her from holding property as the sole owner."... Such restrictions seriously limit the woman's ability to provide for herself and her dependants.

<sup>58</sup>

The Committee confirms that the right to own, manage, enjoy and dispose of property is essential to women's right to enjoy financial independence, and in many countries is critical to women's ability to earn a livelihood and provide adequate housing and nutrition for

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<sup>57</sup> General Recommendation No. 21, 13<sup>th</sup> Session, 1994, available at: <http://www.un.org/womenwatch/daw/cedaw/recomm.htm>

<sup>58</sup> General Recommendation No 21, Paragraph 7.

themselves and their families.<sup>59</sup> On the distribution of property upon the dissolution of a marriage or the death of a family relative, the Committee states:

any law or custom that grants men a right to a greater share of property at the end of a marriage or de facto relationship, or on the death of a relative, is discriminatory and will have a serious impact on a woman's practical ability to divorce her husband, to support herself or her family and to live in dignity as an independent person.<sup>60</sup>

On October 6, 2000 an *Optional Protocol to CEDAW* was adopted. By ratifying the Optional Protocol, a State Party recognises the competence of the Committee on the Elimination of Discrimination Against Women to receive and consider complaints from individuals or groups within its jurisdiction.<sup>61</sup> If the Committee receives reliable information indicating that the rights laid down in CEDAW are being systematically violated, it may also conduct an inquiry. However, such inquiries can only take place when the country has accepted the Committee's competence to do so and can only go ahead with the consent of the State Party concerned.<sup>62</sup>

As with the other committees, States that are party to CEDAW also have to report to the Committee on the implementation of CEDAW in their country.<sup>63</sup> Likewise, NGOs can submit shadow reports to the Committee.<sup>64</sup>

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<sup>59</sup> General Recommendation No 21, Paragraph 21.

<sup>60</sup> General Recommendation No 21, Paragraph 27.

<sup>61</sup> Optional Protocol to CEDAW adopted by General Assembly Resolution 54/4 on 6 October 2000 and entered into force on 22 December 2000. Available in electronic form on: <http://www.un.org/womenwatch/daw/cedaw/protocol/index.html>. Over 70 States have ratified the Protocol, while 76 States have signed it

<sup>62</sup> Paragraph 8 of Optional Protocol. For more information on the inquiry procedure, see <http://www.ohchr.org/english/bodies/petitions/index.htm> (scroll down to bottom of text) and <http://www.un.org/womenwatch/daw/cedaw/protocol/whatis.htm>

<sup>63</sup> On <http://www.unhchr.ch/housing/cedaw.htm> there is a list of countries that have reported to the Committee, and some of the issues raised by the Committee.

<sup>64</sup> Another avenue by which women can draw international attention to cases of gender-based discrimination is to send individual or group communications to the UN Commission on the Status of Women. The focus of this Commission is on emerging trends and patterns of discrimination against women and to develop policy recommendations against gender-based discrimination. Therefore, it cannot take action on individual complaints. The address of UN Commission on the Status of Women is: c/o Division for the Advancement of Women, Room DC2-1220, P.O. Box 20, United Nations, New York, N.Y. 10017, U.S.A.

### 3.4 *Convention on the Rights of the Child (CRC)*<sup>65</sup> adopted in 1989:

Defines a child as "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier." (Article 1);

Prohibits arbitrary or unlawful interference with a child's privacy, family or home and unlawful attacks on his or her honour and reputation (Article 16(1));

Recognises the rights of mentally or physically disabled children to "...a full and decent life in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community" (Article 23)

Recognises the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (Article 27).

Observes that education should include preparation "...for responsible life in a free society" and "...the development of respect for the natural environment". (Article 29)

Addresses the child's right to "rest and leisure", to "play and recreational activities" and "...to participate freely in cultural life and the arts. (Article 31)

The *Committee on the Rights of the Child* examines the progress made by State Parties in achieving the realisation of children's rights as laid down in this Convention. To this end, States Parties are required to send reports on the measures undertaken for the implementation of these rights.<sup>66</sup> *Guidelines for the implementation of the Convention* explicitly advise that these rights apply to the quality of the child's physical environment<sup>67</sup>. Among the core principles of the CRC are the participatory rights of children<sup>68</sup>.

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<sup>65</sup> Convention on the Rights of the Child, adopted on 20/11/1989 by General Assembly Resolution 44/25, U.N. Doc. A/44/25, entered into force on 2/9/1990. All states except U.S.A. and Somalia have become parties.

<sup>66</sup> Article 44 CRC.

<sup>67</sup> Hodgkin, R and P Newell (1998), *Implementation Handbook on the Convention on the Rights of the Child*, UNICEF, New York. See also Bartlett, Sheridan (2002), *Children's Rights and the Physical Environment*, Save the Children Sweden, Stockholm

<sup>68</sup> Article 12 CRC

### 3.5 *Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries* (adopted in 1989, entry into force 1991)<sup>69</sup>

Lays down the right to non-discrimination for all (Article 3);

Requires special measures to safeguard property (Article 4);

Recognises the right of indigenous and tribal peoples to their own decisions regarding the land they occupy or otherwise use (Article 7);

Recognises the right to retain indigenous customs and institutions, where these are not incompatible with international human rights (Article 8(2));

Recognises and protects the right to ownership and possession over the lands which indigenous and tribal peoples traditionally occupy, and the right of use for subsistence and traditional activities (Article 14);

Requires free and informed consent in cases of relocation from land, and recognises the right to return or equal land and compensation (Article 16);

Requires respect for indigenous procedures for transmission of land rights (Article 17).

The work of the Committee on Elimination of Racial Discrimination can serve to address the discrimination against indigenous peoples<sup>70</sup>.

### 3.6 Relevant Regional Instruments

The *African Charter on Human & People's Rights (ACHPR)*<sup>71</sup> adopted in 1981:

<sup>69</sup> <http://www.ohchr.org/english/law/indigenous.htm>

<sup>70</sup> UN-HABITAT (2005) *Indigenous Peoples' Right to Housing: A Global Overview* (Nairobi: UN-HABITAT)

<sup>71</sup> African Charter on Human and People's Rights, adopted on 17/6/1981 by the Eighteenth Assembly of the Heads of State and Government of the Organisation of African Unity, entry into force on 21/10/1986, ratified by thirty-five states. See <http://www1.umn.edu/humanrts/instree/z1afchar.htm>

Stipulates that every individual is entitled to the enjoyment of the rights and freedoms laid down in the Charter, without distinction of any kind, such as a person's sex (Article 2);

Instructs States Parties to undertake to adopt legislative or other measures to give effect to these rights and freedoms (Article 1);

Recognises equality before the law and equal protection of the law for every individual (Article 3);

At the same time, it gives every individual the duty to treat others without discrimination (Article 28);

Another duty for every individual is to preserve the 'positive' African cultural values in the spirit of tolerance, dialogue and consultation (Article 29(5));

Recognises the family as the natural unit and basis of society, the "custodian of morals and traditional values" that needs to be protected (Article 18(1));

At the same time, it requires States Parties to ensure that "every" discrimination against women is eliminated and that the rights of women and children are protected (Article 18 (2) and (3));

On the one hand, Article 18(1) requires protection by the State of the family as the natural unit and basis of society and the "custodian of morals and traditional values". On the other hand, Article 18, paragraphs (2) and (3) make clear that States Parties have to ensure that "every" discrimination against women is eliminated and that the rights of women and children, as stipulated in international instruments, are protected.<sup>72</sup> Thus, the possibility of referring to "traditional values" as a basis for an unequal relationship between men and women is firmly ruled out since "every" discrimination of women is to be eliminated.

Article 29(7) emphasises the duty to preserve "positive" African cultural values in the spirit of tolerance, dialogue and consultation. This text seems to indicate that that some cultural values that are not seen as "positive" may change over time. The African Commission on Human and Peoples' Rights (African Commission), in a landmark decision on forced evictions in Nigeria in October 2001, found that the African Charter on Human and Peoples' Rights guaranteed the right to adequate housing, including the prohibition on forced eviction<sup>73</sup>. The recent establishment of a new court under the ACHPR is expected to further strengthen land rights.

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<sup>72</sup> Article 18 (3): Interesting here is the word "every" before "discrimination"; this creates obligations upon States Parties to eliminate all discrimination against women and not merely discrimination based on sex. As no exceptions from this requirement are included, this creates a rather absolute obligation.

<sup>73</sup> See SERAC and CESR v. Nigeria, ACHRP 2002)

Various human rights organisations have criticised the lack of specific provisions regarding women's equal rights in the African Charter, and have lobbied for an additional protocol to the Charter on women's rights. A *Draft Protocol on Women's Rights* was adopted by the African Commission on Human and People's Rights in November 2000, and was subsequently submitted to the Organisation of African Unity (OAU) General Secretariat. During two African Union (AU) meetings, in January and March 2003, the draft was amended and adopted, and subsequently recommended for adoption by the Executive Council and Assembly of the AU. The *African Union Protocol on the Rights of Women in Africa* was adopted on 11 July 2003 in Maputo, Mozambique.<sup>74</sup> This Women's Rights Protocol:

Defines "discrimination against women" as any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, of human rights and fundamental freedoms in all spheres of life, regardless of their marital status (Article 1(f));

Binds State Parties to combat all forms of discrimination against women. State parties are to take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist (Article 2(1));

Recognises women's equal right to an equitable sharing of the joint property deriving from the property of separation, divorce or annulment of marriage (Article 7(d));

Commits State Parties to take all appropriate measures to ensure

- Effective access by women to judicial and legal services, including legal aid;
- Support initiatives directed at providing women access to legal services;
- Sensitisation of everyone to the rights of women;
- Equipping law enforcement organs at all levels to effectively interpret and enforce gender equality rights;
- Equal representation of women in judiciary and law enforcement organs;
- Reform of existing discriminatory laws and practice. (Article 8);

Binds State Parties to ensure increased and effective representation and participation of women at all levels of decision-making (Article 9(2));

The Protocol contains a number of innovative provisions related to women's rights. However, it must be noted that particularly when it comes to marital property and inheritance rights, the wording used is 'equitable' instead of 'equal', and that in relation to land and housing, the wording 'access' is used instead of 'right'. This may have been a result of the many amendment rounds that the draft Protocol has gone through. However, women's equal rights to land, housing and property as explicit in the African context and recognised in the international instruments described above.

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<sup>74</sup> Assembly/AU/Dec. 19 (II).

The *European Convention on Human Rights and Fundamental Freedoms (ECHR)*<sup>75</sup> adopted in 1950, lays down the right to non-discrimination in Article 14, while Article 8(1) recognizes the right to a home. Article 1 of the first Protocol to this Convention refers to the right to peaceful enjoyment of property. Rights to land, adequate housing and to property are not explicitly laid down in this Convention.

The *European Social Charter*<sup>76</sup> adopted in 1961, revised in 1996:

Specifically recognises the right of disabled persons to access to housing (Article 15(3)) and the right of elderly persons to provision of housing adapted to their needs and state of health (Article 23 (2)(b));

Promotes economic, legal and social protection of family life, including housing (Article 16). Single-parent families are equally protected by this provision (Appendix on Article 16);

Recognises the right of migrant workers and their families to accommodation (Article 19(4)(c));

Lays down the right to protection against poverty and social exclusion, including effective access to housing (Article 30(a));

Recognises the right to housing (Article 31);

Prohibits discrimination (Part V, Article E).

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<sup>75</sup> The European Convention on Human Rights and Fundamental Freedoms adopted on November 4, 1950. <http://conventions.coe.int/treaty/en/Treaties/Word/005.doc>

<sup>76</sup> The European Social Charter adopted in 1961, *ETS-Social Charter, 18.X.1961*. [http://www.euromarches.org/deutsch/04/europ-sozialcharta\\_1961.doc](http://www.euromarches.org/deutsch/04/europ-sozialcharta_1961.doc)

The *European Union Charter of Fundamental Rights*<sup>77</sup> (adopted in 2000, declaratory status only):

Recognises the right to property (Article 17);

Prohibits discrimination on basis of a person's sex;

Recognises equality between men and women (Article 23);

Refers to rights of the elderly (Article 25);

Integration of persons with disabilities (Article 26);

Lays down the right to social and housing assistance (Article 34(3)).

The *American Convention on Human Rights*<sup>78</sup> (adopted in 1969, entry into force 1978):

Lays down the right to non-discrimination;

Recognises equal rights as to, during and upon dissolution of marriage (Article 17).

The *Additional Protocol on Economic, Social and Cultural Rights*<sup>79</sup> to the *American Convention on Human Rights* (adopted in 1988):

Prohibits discrimination (Article 3)

Recognises the right to a healthy environment (Article 11).

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<sup>77</sup> The European Union Charter of Fundamental Rights, adopted in 2000,  
[http://www.europarl.eu.int/charter/default\\_en.htm](http://www.europarl.eu.int/charter/default_en.htm)

<sup>78</sup> The American Convention on Human Rights, adopted on the 22 November 1969,  
<http://www.oas.org/juridico/english/Treaties/b-32.htm>

<sup>79</sup> The Additional Protocol on Economic, Social and Cultural Rights to the American Convention on Human Rights, adopted on 17 November 1988.  
<http://www.worldpolicy.org/globalrights/treaties/achr-esc.html>

#### 4. DECLARATIONS AND RESOLUTIONS

Since 1996, five different UN bodies have adopted various resolutions, which explicitly recognise women's equal rights to land, housing and property. They are the UN General Assembly, ECOSOC, Governing Council of the United Nations Human Settlements Programme (formerly Commission on Human Settlements), Commission on Human Rights (now the Human Rights Council), Sub-Commission on the Promotion and Protection of Human Rights (formerly Sub-Commission on Prevention of Discrimination and Protection of Minorities); and the Commission on the Status of Women. Declarations are documents of intent, which may gain the force of binding law if its contents are widely accepted by the international community.

**4.1** *The Universal Declaration on Human Rights (UDHR)*<sup>80</sup> adopted in 1948, is a unique example of a declaration considered to have gained the force of binding law. The UDHR:

Stipulates that everyone is entitled to the rights and freedoms laid down in the Declaration, without discrimination on the ground of sex (Article 2);

Entitles women and men to equal rights before and during marriage and at its dissolution (Article 16);

Recognises every person's right to own property alone as well as in association with others and stipulates that "[n]o one shall be arbitrarily deprived of his property" (Article 17);

Confirms the right to an adequate standard of living, including housing (Article 25).

The UDHR is the foundation upon which the current international system for the protection and promotion of human rights has been built.<sup>81</sup> Commitment to the provisions of the UDHR and other instruments relating to human rights was reaffirmed in the Vienna Declaration and Programme of Action of 1993.<sup>82</sup> In addition, many of the provisions of the

<sup>80</sup> Universal Declaration of Human Rights, adopted on 10/12/1948 by General Assembly Resolution 217 A (III), UN GAOR, 3<sup>rd</sup> Session. The gender-biased language of the older international human rights instruments is being interpreted as automatically including women.

<sup>81</sup> The UDHR forms the "International Bill of Rights" together with the International Covenant on Political and Civil Rights and the International Covenant on Economic, Social and Cultural Rights, both of which were adopted in 1966 and are describe in more detail below. P. Alston (ed), *The United Nations and Human Rights: A Critical Appraisal*, 1992, p. 454.

<sup>82</sup> Vienna Declaration and Programme of Action, Report of the World Conference on Human Rights, Vienna, 14-25 June 1993, A/CONF.157/23, Preamble, paragraph 3.

UDHR have come to be regarded as expressing customary international law and having some binding force.<sup>83</sup> Other relevant UN Resolutions include

**4.2 Resolution 50/165, Improvement of the Situation of Women in Rural Areas** adopted by the General Assembly (16 Feb. 1996)<sup>84</sup>

**4.3 Resolution 1997/19, Women and the right to adequate housing and to land, housing and property**, adopted by the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities<sup>85</sup> (9 June 1997)

**4.4 Resolution 1998/15, Women and the right to land, housing and property and adequate housing**, adopted by the same Sub-Commission<sup>86</sup> (21 August 1998)

**4.5 Resolution 52/93, Improvement of the Situation of Women in Rural Areas**, adopted by the General Assembly<sup>87</sup> (4 February 1998)

**4.6 Resolution 42/1, Human rights and land rights discrimination**, adopted by the Commission on the Status of Women (13 March 1998)

**4.7 Resolution 1999/15, Women and the right to development**, adopted by the Sub-Commission on the Promotion and Protection of Human Rights<sup>88</sup> (25 August 1999)

**4.8 Resolution 2000/13, Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing**, adopted by the Commission on Human Rights<sup>89</sup> (17 April 2000)

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<sup>83</sup> Hiller, T (1999) *Principles of Public International Law*, (London: Oxford) pp. 291 and 295.

<sup>84</sup> General Assembly, Resolution 50/165, A/RES/50/165 (1996). Full text available on: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/A.RES.50.165.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/A.RES.50.165.En?Opendocument)

<sup>85</sup> Sub-Commission on the Prevention of Discrimination and Protection of Minorities, Resolution 1997/19, E/CN.4/RES/1997/19 (1997). This Sub-Commission was established by the Commission on Human Rights to undertake studies and to make recommendations to the Commission concerning the prevention of discrimination of any kind relating to human rights and freedoms and to the protection of racial, national, religious and linguistic minorities, and to carry out any other functions entrusted to it by ECOSOC or the Commission on Human Rights (E/1371 of 1949). In July 1999, ECOSOC renamed this Sub-Commission into the Sub-Commission on the Promotion and Protection of Human Rights.

<sup>86</sup> Sub-Commission on the Prevention of Discrimination and Protection of Minorities, Resolution 1998/15, E/CN.4/Sub.2/RES/1998/15 (1998).

<sup>87</sup> General Assembly, Resolution 52/93, A/RES/52/93 (1998). Full text available on: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/A.RES.52.93.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/A.RES.52.93.En?Opendocument)

<sup>88</sup> Sub-Commission on the Promotion and Protection of Human Rights, Resolution 1999/15, E/CN.4/Sub.2/RES/1999/15 (1999).

**4.9** *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*, adopted by the Commission on Human Rights<sup>90</sup> (20 April 2001)

**4.10** *Resolution 2002/49, Women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing*, adopted by the Commission on Human Rights<sup>91</sup> (23 April 2002)

**4.11** *Resolution 2003/22, Women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing*, adopted by the Commission on Human Rights<sup>92</sup> (14 April 2003)

**4.12** *Resolution 19/16, Women's Role and Rights in Human Settlements Development and Slum Upgrading*, adopted by UN-HABITAT Governing Council<sup>93</sup> (9 May 2003)

**4.13** *Resolution 2005/25, Women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing*, adopted by the Commission on Human Rights<sup>94</sup> (15 April 2005)

**4.14** *Resolution 20/7, Gender equality in human settlement development*, adopted by the UN-HABITAT Governing Council<sup>95</sup> (8 April 2005)

Each Resolution above expresses concern over discrimination faced by women with respect to acquiring and securing land, housing and property, whether this discrimination originates from gender-biased laws, policies and/or traditions and customary laws. The equal rights of women and men are reaffirmed. It is recognised that adequate remedies to deal with discrimination against women may require different treatment of women, based on a

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<sup>89</sup> Commission on Human Rights, Resolution 2000/13, UN Doc. E/CN.4/2000/13, 17 April 2000. Full text on: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/b1c8b0bbeaba1557802568ce00570b81?OpenDocument>

<sup>90</sup> Commission on Human Rights, Resolution 2001/34, UN Doc. E/CN.4/2001/34, 20 April 2001. <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/4f2f6a5eb0f4d58cc1256a3b004463af?OpenDocument>

<sup>91</sup> Commission on Human Rights, Resolution 2002/49, E/CN.4/2002/49, 23 April 2002. [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.RES.2002.49.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.RES.2002.49.En?OpenDocument)

<sup>92</sup> Commission on Human Rights, Resolution 2003/22, E/CN.4/2003/22, 14 April 2003. [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.RES.2003.22.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.RES.2003.22.En?OpenDocument)

<sup>93</sup> UN-HABITAT Governing Council, 19<sup>th</sup> Session, Resolution 19/16, HSP/GC/19/16, 6 May 2003,

<sup>94</sup> Commission on Human Rights, Resolution 2005/25, E/CN.4/2005/L.10/Add.10, 15 April 2005.

<sup>95</sup> UN-HABITAT Governing Council, Resolution 20/7, HSP/GC/RES/20/7, 8 April 2005.

consideration of women's specific socio-economic context. Governments are urged to comply fully with all their international and regional obligations and commitments concerning women's equal rights to land, property, inheritance and adequate housing, including security of tenure, and an adequate standard of living. They are also requested to ensure that women acquire training, education and information in all matters related to these rights.

Moreover, Governments are urged to amend and/or repeal laws and policies which inhibit women's equal rights to land, property and housing, and which deny women security of tenure and equal access to loans. They are also requested to encourage the transformation of customs and traditions, which deny women these rights.

Various UN bodies and organisations are requested to fully incorporate women's land, property and housing rights in their work. The World Bank, International Monetary Fund, World Trade Organisation and Organisation for Economic Co-operation and Development (OECD) are called upon to take the human rights implications for women fully into account in their policies. Each Resolution reaffirms the substance and validity of, and often further strengthens, the previous Resolutions.

Furthermore, **Resolution 2003/22** of the Commission on Human Rights Resolution

Mentions eviction by spouses and in-laws as an area of concern;  
 Urges member states to address the issue of forced relocation and forced eviction from home and land, and to eliminate its disproportionate impact on women;  
 Requests international financial institutions and regional, national and local housing and other credit facilities to remove discriminatory policies and practices, and also requests these institutions to evaluate and measure progress in this respect.

The UN-HABITAT Governing Council **Resolution 19/16** specifically focuses on women's role and rights in human settlements (especially in low-income areas) in regard to slum upgrading. It recognises that women form a large proportion of the urban poor, especially of the urban poor living in slums. It urges Governments to ensure 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.

Various other resolutions contain issues related to women's land, housing and property rights, even if they do not explicitly refer to these rights. On 13 April 2000, the Commission on Human Rights adopted **Resolution 2000/5 on the right to development**.<sup>96</sup> In this Resolution, the Commission affirms the need to apply a gender perspective in the implementation of the right to development, and emphasises that the empowerment of women and their full participation on a basis of equality in all spheres of society is fundamental to development.

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<sup>96</sup> Commission on Human Rights, Resolution 2000/5, adopted on 13 April 2000, E/CN.4/RES/2000/5.

A *Resolution on Integrating the Human Rights of Women throughout the United Nations System* was adopted in the same year by the Commission on Human Rights.<sup>97</sup> This Resolution calls upon all relevant organs, bodies and agencies of the United Nations system, to give full, equal and sustained attention to the human rights of women in the exercise of their respective mandates.

It also acknowledges the need for a comprehensive and integrated approach to the promotion and protection of the human rights of women, including the integration of the human rights of women into the mainstream of UN activities system-wide. The same Resolution reaffirms the important role that women's groups and non-governmental organisations play in promoting and protecting the human rights of women.

In *Resolution 2001/28 on Adequate housing as a component of the right to an adequate standard of living*<sup>98</sup> the Commission on Human Rights expresses concern about how the deterioration in the general housing situation disproportionately affects the poor, women and children and members of groups requiring special protection. It also requests the Special Rapporteur to further review how the right to adequate housing is interrelated with other human rights. It calls upon States to give full effect to housing rights, giving particular attention to individuals, most often women and children, and communities living in extreme poverty, to counter social exclusion and marginalisation of people who suffer from discrimination.

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<sup>97</sup> Commission on Human Rights, Resolution 2000/46, adopted on 20 April 2000, E/CN.4/2000/46.

<sup>98</sup> Commission on Human Rights, Resolution 2001/28, adopted on 20 April 2001, E/CN.4/RES/2001/28

## 5. PLATFORMS/PROGRAMMES/ AGENDAS

Similar to Resolutions and Special Rapporteur reports, documents which emerge from World Conferences are not in themselves legally binding on States. They do, however, carry political and moral persuasion because they emerge from a political process and have been agreed to by the overwhelming majority of States. Thus, Declarations are documents of intent, which may gain the force of binding law if its contents are widely accepted by the international community. Plans of Action, Programmes of Action and Agendas are usually attached to a Political Declaration or Declaration. Listed below are the Declarations and their Plans of Action/ Agendas concerning 'Women's Equal Rights to Housing, Land and Property.' In this section, the declarations and plans of actions are listed thematically under Human Settlements, Environmental and Sustainable Development, Population and Development, Women and the Millennium Development Goals, referring to key documents.

### 5.1 Human Settlements (Istanbul and Istanbul + 10)

The *Istanbul Declaration*,<sup>99</sup> adopted at the Habitat II Conference in 1996, states that Governments should ensure and enhance:

Gender equality in policies and programmes related to shelter and sustainable human settlements development (Paragraph 7);

Protection from discrimination and equal access to affordable housing for all (Paragraph 8);

Access to land and credit (Paragraph 9).

Among the Goals and Principles of the *Habitat Agenda* are listed:

(a) Adequate shelter for all; and (b) Sustainable human settlements development in an urbanising world (Paragraph 25);

The full realisation of human rights, particularly the human right to adequate housing (Paragraph 26);

Equitable human settlements are realised when:

All people, without discrimination of any kind, have equal access to housing and equal access to economic resources (including the right to inheritance, the ownership of land and other property) (Paragraph 27);

They provide equal opportunity for participation in public decision-making and equal access to mechanisms that ensure that rights are not violated (Paragraph 27);

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<sup>99</sup> Report of the United Nations Conference on Human Settlements (Habitat II), Istanbul 3-14 June 1996, 7 August 1996, Habitat Agenda, UN Doc. A/CONF.165/14. The *Habitat Agenda* is discussed under Section 1.3.4 on Plans of Action and Agendas. See [http://www.unhabitat.org/downloads/docs/1176\\_6455\\_The\\_Habitat\\_Agenda.pdf](http://www.unhabitat.org/downloads/docs/1176_6455_The_Habitat_Agenda.pdf)

Women's empowerment is fundamental to sustainable human settlements development (Paragraph 27).

Furthermore, Adequate Shelter for All and Gender Equality are two of the seven commitments laid down in the Agenda. Commitment A (Adequate Shelter For All), Paragraph 40(b) specifically commits governments to provide legal security of tenure and equal access to land to all people, including women and those living in poverty. Governments are also to undertake 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, credit, natural resources and appropriate technology.

Commitment D (Gender Equality), Paragraph 46 commits States to ensure gender equality in all aspects of human settlements, such as the integration of gender perspectives in human settlements related legislation, policies, programmes and projects.

In total, 37 paragraphs in the Habitat Agenda mention the constraints faced by women in obtaining access to secure and adequate shelter and ways to remove these constraints.<sup>100</sup> However, as can also be observed in the Beijing Platform of Action, the Habitat Agenda only rarely recognises and calls upon Governments to ensure women's *equal rights* to land and housing.

Five years after the Habitat II Conference, on 9 June 2001, the ***Declaration on Cities and Other Human Settlements in the New Millennium*** was adopted at the General Assembly's 25<sup>th</sup> Special Session for an Overall Review and Appraisal of the Implementation of the Habitat Agenda.<sup>101</sup>

The commitments made at the UN Conference on Human Settlements (Habitat II) in 1996 are reconfirmed in this Declaration, and progress in the implementation of the Habitat Agenda is welcomed. Paragraph 9 of the Declaration notes the growing awareness of the need to address in an integrated manner: poverty, homelessness, unemployment, lack of basic services, exclusion of women, children and of marginalised groups, including indigenous communities, and social fragmentation.

Under *Further Actions*, various commitments are made. The most relevant to the current overview are:

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<sup>100</sup> Paragraphs 15, 27, 28, 31, 37, 38, 40, 42, 43, 46, 48, 61(b), 63, 72, 75, 76(m), 78, 79, 81(j), 82(c), 83, 86(g), 93, 98, 115, 116, 117, 118, 119, 122, 123, 124, 141, 162, 182, 186 and 201.

<sup>101</sup> Declaration on Cities and Other Human Settlements in the new Millennium, adopted on 9 June 2001 during the twenty-fifth special session of the General Assembly for an overall review and appraisal of the implementation of the outcome of the United Nations Conference on Human Settlements (Habitat II). See Report of the Secretary-General, 16 October 2001, A/56/477. See <http://www.unhabitat.org/content.asp?cid=2071&catid=1&typeid=25&subMenuId=0>

Reaffirm the goal of gender equality in human settlements development, and to promote gender equality and the empowerment of women as effective ways to combat poverty (Paragraph 44);

Promote changes in attitudes, structures, policies, laws and practices that form obstacles to gender equality (Paragraph 32);

Promote full and equal participation of women and men in policy formulation and implementation (Paragraphs 32 and 44);

Promote greater security of tenure for the poor and vulnerable and to enable better access to information and good practices, including awareness of legal rights and remedies in case of violation (Paragraphs 37 and 49);

Empower local authorities, NGOs and other Habitat Agenda partners to play a more effective role in shelter provision, in particular through ensuring the effective role of women in decision-making (Paragraph 38);

Acknowledge, value and support the volunteer work and the work of community-based organizations and to intensify efforts to enhance the role of youth and civil society (Paragraphs 42 and 53);

Continue legislative and administrative and social reforms to give women full and equal access to economic resources, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technologies, as well as the right to security of tenure and to enter into contractual agreements (Paragraphs 45 and 49);

Promote an increased and equal access for all people to housing finance, and to support the savings mechanisms in the informal sector (Paragraph 45);

Intensify efforts at all levels against HIV/AIDS, particularly to formulate and implement appropriate policies and actions to address its impact on human settlements (Paragraph 52);

Strengthen institutional frameworks in order to extend micro- credit to those living in poverty, particularly the women, without collateral or security (Paragraph 64).

## 5.2 Environment and Sustainable Development (Rio and Rio + 10)

While the *Rio Declaration on Environment and Development* of 1992 mentioned women's vital role in environmental management and development and stated that women's full participation is therefore essential to achieve sustainable development, there was no specific mention of women's rights in the Declaration.<sup>102</sup>

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<sup>102</sup> Rio Declaration on Environment and Development, Report of the UN Conference on Environment and Development, 3 – 14 June 1992, A/CONF.151/26 (Vol.1), <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>, Paragraph 20.

**Agenda 21**<sup>103</sup> also adopted at the UN Conference on Environment and Development in Rio de Janeiro in 1992, is not focused on women's land rights either, but it does include women's secure tenure. One gender related objective of Agenda 21 is:

To provide for the land requirements of human settlement development through environmentally sound physical planning and land use so as to ensure access to land to all households and, where appropriate, the encouragement of communally and collectively owned and managed land. Particular attention should be paid to the needs of women and indigenous people for economic and cultural reasons (Chapter 7, paragraph 28).

Among activities to fulfil this objective of Agenda 21 are:

Developing national land-resource management plans to guide land-resource development and utilisation and, to that end, to:

Establish appropriate forms of land tenure that provide security of tenure for all land-users, especially indigenous people, women, local communities, the low-income urban dwellers and the rural poor (Chapter 7, paragraph 30 (f)).

Another objective of Agenda 21 is to:

Formulate and implement clear governmental policies and national guidelines, strategies and plans for the achievement of equality in all aspects of society, including the promotion of women's literacy, education, training, nutrition and health and their participation in key decision-making positions and in management of the environment, particularly as it pertains to their access to resources, by facilitating better access to all forms of credit, particularly in the informal sector, taking measures towards ensuring women's access to property rights as well as agricultural inputs and implements (Chapter 24.2 (f)).

By the **Johannesburg Declaration on Sustainable Development** of 2002, Member States

Resolve to, through decisions on targets, timetables and partnerships to speedily increase access to basic requirements such as clean water, sanitation, adequate shelter, energy, health care, food security and the protection of bio-diversity (Paragraph 18).

Are committed to ensure that women's empowerment and emancipation, and gender equality are integrated in all activities encompassed within Agenda 21, the Millennium Development Goals and the Johannesburg Plan of Implementation (Paragraph 20).

The **Johannesburg Plan of Implementation**<sup>104</sup> adopted at the **World Summit on Sustainable Development** (WSSD or Rio + 10) in 2002, includes actions to:

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<sup>103</sup> <http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21toc.htm> and <http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=52>

Develop national programmes for sustainable development and local community development, reflecting the priorities of people living in poverty and enabling them to increase access to productive resources, public services and institutions, in particular land, water, employment opportunities, credit, education and health (Paragraph 7(c));

Promote women's equal access to, and full participation in, on the basis with equality with men, decision-making at all levels, mainstreaming gender perspectives in all policies and strategies, eliminating all forms of violence and discrimination against women and improving the status, health and economic welfare of women and girls through full and equal access to economic opportunity, land, credit, education and health-care services (Paragraph 7(d));

Provide access to agricultural resources for people living in poverty, especially women and indigenous communities, and promote, as appropriate, land tenure arrangements that recognise and protect indigenous and common property resource management systems (Paragraph 7(h));

To halve, by the year 2015, the proportion of people who are unable to reach or afford safe drinking water (Paragraph 8) and the proportion of people without access to basic sanitation, which would include actions at all levels to:

- (a) Mobilise international and domestic financial resources at all levels, transfer technology, promote best practice and support capacity-building for water and sanitation infrastructure and services development, ensuring that such infrastructure and services meet the needs of the poor and are gender sensitive; and
- (b) Facilitate access to public information and participation, including by women, at all levels in support of policy and decision-making related to water resources management and project implementation (Paragraph 25(a) and (b)).

At the time of adoption of this Plan of Implementation, the Committee on Economic, Social and Cultural Rights had not yet issued General Comment No. 15 on the Right to Water (2003).

The last relevant Action in the Johannesburg Plan of Implementation is:

By 2020, achieve a significant improvement in the lives of at least 100 million slum dwellers, which would include actions at all levels to: improve access to land and property, to adequate shelter and to basic services for the urban and rural poor, with special attention to female heads of household (Paragraph 11(a));

Enhance the participation of women in all aspects and at all levels related to sustainable agriculture and food security (Paragraph 40(f));

Adopt policies and implement laws that guarantee well defined and enforceable land and water use rights and promote legal security of tenure, recognising the existence of different national

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<sup>104</sup> Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August – 4 September 2002, A/CONF.199/20. See <http://www.un.org/jsummit/html/documents/documents.html>

laws and/or systems of land access and tenure, and provide technical and financial assistance to developing countries as well as countries in transition that are undertaking land tenure reform in order to enhance sustainable livelihoods (Paragraph 40 (i)).

While women's participation in decision-making processes and women's access to productive resources is stressed, the Johannesburg Plan of Implementation is not particularly strong on women's equal rights.

### 5.3 Human Rights (Vienna)

*Vienna Declaration and Programme of Action* adopted at the World Conference on Human Rights of 1993<sup>105</sup>:

Reaffirms the universal, indivisible, interdependent and interrelated nature of human rights and emphasises a holistic vision, integrating economic, social and cultural rights with civil and political rights (Paragraphs 1 and 5);

Emphasises the responsibilities of States to develop and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion (Preamble, paragraph 5);

Recalls the Preamble of the UN Charter, in particular the equal rights of men and women (Preamble, paragraph 6);

Expresses deep concern about various forms of discrimination and violence, to which women continue to be exposed all over the world (Preamble, paragraph 10);

Recognises that the significance of various historical, cultural and religious backgrounds must be borne in mind, but requires States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems (Paragraph 5);

Explicitly recognises the human rights of women and of the girl-child as an inalienable, integral and indivisible part of human rights (Paragraph 18);

Urges Governments and the United Nations to prioritise the full and equal enjoyment by women of all human rights and the eradication of all forms of discrimination on grounds of sex (Paragraphs 18, 36 and 39);

Underlines the importance of the integration and full participation of women as both agents and beneficiaries in the development process (Paragraph 36);

Stresses the importance of working towards elimination of violence against women in public and private life, the elimination of gender bias in the administration of justice and eradication of conflicts arising between women's rights and harmful effects of certain customary practices, cultural prejudices and religious extremism (Paragraph 38).

<sup>105</sup> [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument)

## 5.4 Population and Development (Cairo)

*Cairo Declaration at the International Conference of Parliamentarians on Population and Development*<sup>106</sup> adopted on September 4, 1994, declares that:

Attaching great importance to a successful outcome of the International Conference on Population and Development, which comes at a pivotal time in the development of partnerships for global strategies identified in the series of the United Nations Conferences on environment, human rights, social development, and *the role of women*.

The empowerment of women and the improvement of their political social, economic and health status are highly important ends in themselves.

We further believe that human development cannot be sustained unless women are guaranteed equal rights and equal status with men.

We believe that education is the single most important element on the road to equality and empowerment of women.

Women should be seen not merely as the beneficiaries of change but as the agents of change as well.

The *Cairo Programme of Action*<sup>107</sup> reaffirms all human rights and freedoms without distinction of any kind, such as on the basis of sex (Principle 1). The right to adequate housing is reaffirmed in Principle 2. Advancing gender equality and the empowerment of women as well as the eradication of all forms of discrimination on grounds of sex are reaffirmed in Principle 4 and Objective 3.16.

This *Programme of Action*, inter alia specifically states that:

Existing inequities and barriers to women should be eliminated and women's participation in all policy-making and implementation, as well as their access to productive resources, and ownership of land, and their right to inherit property should be promoted and strengthened (Paragraph 3.18);

Governments at all levels should ensure that women can buy, hold and sell property and land equally with men, obtain credit and negotiate contracts in their own name and on their own behalf and exercise their legal rights to inheritance (Paragraph 4.6)

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<sup>106</sup> The Cairo Declaration on Population and Development at the International Conference of Parliamentarians on Population and Development, September 1994.

<sup>107</sup> UN International Conference on Population and Development, Cairo Programme of Action, 1994, <http://www.iisd.ca/Cairo.html>

Special education and public information efforts are needed to promote equal treatment of girls and boys with respect to nutrition, health care, education and social, economic and political activity, as well as equitable inheritance rights (Paragraph 4.17)

Since women form the majority of the poor, both in rural and urban areas, the Action described in Paragraph 9.8 is also relevant:

Governments should strengthen their capacities to respond to the pressures caused by rapid urbanization by revising and reorienting the agencies and mechanisms for urban management as necessary and ensuring the wide participation of all population groups in planning and decision- making on local development. Particular attention should be paid to land management in order to ... facilitate the access of the poor to land in both urban and rural areas.

## 5.5 Social Development (Copenhagen and Copenhagen + 5)

The *Copenhagen Declaration on Social Development* of 1995 contains ten commitments, of which the following are most relevant.

Commitment 2(b) includes a focus on provision of adequate shelter with special priority given to the needs and rights of women and children, “who often bear the greatest burden of poverty”;

Commitment 2(c) seeks to ensure that people living in poverty have access to productive resources, including credit and land and public services;

Commitment 4(b) focuses on policies and strategies geared to the elimination of discrimination in all its forms and the achievement of social integration based on equality and respect for human dignity;

Commitment 5(e) seeks to remove the remaining restrictions on women's rights to own land, inherit property or borrow money.

The *Copenhagen Programme of Action* of the World Summit for Social Development, 1995, states that gender equality and equity and the full participation of women in all economic, social and political activities are essential (Paragraph 7).<sup>108</sup>

Among the Actions mentioned in the Copenhagen Programme of Action are:

Eliminating all forms of discrimination (including domestic discrimination and violence), while developing and encouraging educational programmes and media campaigns to that end (Paragraph 14(c) and Paragraph 15(k));

<sup>108</sup> World Summit for Social Development, Copenhagen Programme of Action, 1995, <http://www.visionoffice.com/socdev/wssdpa-2.htm>

Reviewing legislation, public codes and practices that perpetuate discriminatory practices (Par. 73 (e));

Promoting equality and social justice by ensuring that all people are equal before the law (par. 74(a));

Removing all legal impediments to the ownership of all means of production and property by men and women (Paragraph 14(c)(j));

Promoting and protecting the human rights of women and girls and removing all obstacles to full equality and equity between women and men in political, civil, economic, social and cultural life (Paragraph 15 (f) and (g));

Providing all people with access to an independent, fair and effective system of justice, and ensuring access by all to competent sources of advice about legal rights and obligations (Paragraph 15(h));

Raising public awareness and promoting gender-sensitive education to eliminate all obstacles to full gender equality and equity (Paragraph 16(b)).

Establishing policies, objectives and measurable targets to enhance and broaden women's economic opportunities and their access to productive resources (Paragraph 26(e));

Eliminating the injustice and obstacles that women are faced with, and encouraging and strengthening the participation of women in taking decisions and in implementing them, as well as their access to productive resources and land ownership and their right to inherit goods (Paragraph 26(g));

Developing, updating and disseminating specific and agreed gender- disaggregated indicators of poverty and vulnerability, including income ... homelessness, landlessness and other factors, for this purpose, gathering comprehensive and comparable data, disaggregated by ... gender, family status, regions and economic and social sectors (Paragraph 29 (a)).

Among the Programme's Actions to address rural poverty are:

Expanding and improving land ownership through such measures as land reform and improving the security of land tenure, and ensuring the equal rights of women and men in this respect, developing new agricultural land, promoting fair land rents, making land transfers more efficient and fair, and adjudicating land disputes (Paragraph 32(a));

Urban poverty identified by the Programme of Action should be addressed by:

Ensuring that strategies for shelter give special attention to women and children, bearing in mind the perspectives of women in the development of such strategies (Paragraph 34 (d));

Ensuring that special measures are taken to protect the displaced, the homeless, street children, unaccompanied minors and children in special and difficult circumstances, orphans,

adolescents and single mothers, people with disabilities, and older persons, and to ensure that they are integrated into their communities (Paragraph 34 (h));

Furthermore, the Copenhagen Programme of Action notes with concern the increasing number of low-income urban female-maintained households (Paragraph 21) and the feminisation of poverty (Paragraph 22).

The *Copenhagen + 5 Political Declaration* of 2000 concluded that:

Gender equality is one of the essential elements for the realisation of social and people-centred sustainable development (Paragraph 5);

Unequal access to productive resources and capital is a factor that hinders women's economic empowerment and exacerbates the feminisation of poverty. Moreover, socio-cultural factors continue to preserve the existing discrimination against women (Paragraph 11);

While equality between women and men is widely accepted as essential for social development, its implementation has lagged behind (Paragraph 11);

Equitable access to land, credit and infrastructure are vital to social development in Africa and the least developed countries (Paragraph 31);

The role of women in micro-credit and other financial instruments is important, and women are creditworthy (Paragraph 40).

Also in 2000 the *Copenhagen + 5 Further Actions and Initiatives*<sup>109</sup> to implement the commitments made at the Copenhagen Summit on Social Development include:

Integrate policies at all levels ... by ensuring a gender equality perspective at all levels, and taking measures to counteract the feminisation of poverty, keeping in mind the potential role of women and girls in poverty eradication (Paragraph 27bis (n));

The elimination of discrimination against women ... at all levels should be priority objectives at the national as well as the international level, and an intrinsic part of social development. Equitable social development requires full respect for human dignity, equality and equity between women and men, the mainstreaming of gender considerations in all levels of policy-making and in the planning of programmes and projects. Despite some progress, gender mainstreaming is not yet universal, and gender-based inequality continues in many areas of most societies (Paragraph 70).

Take fully into account and implement the outcome of the 23rd special session of the General Assembly entitled "Women 2000: gender equality, development and peace for the twenty-first century" (Paragraph 71).

<sup>109</sup> <http://www.earthsummit2002.org/>

## 5.6 Women (Beijing, Beijing + 5 and Beijing + 10)

At the Fourth World Conference on Women in Beijing in 1995, the *Beijing Declaration* and the *Platform for Action (PFA)* were adopted.<sup>110</sup>

In the *Beijing Declaration* of 1995, the participating Governments:

Reaffirm their commitment to the equal rights and inherent human dignity of women and men (Paragraphs 8 and 36);

Ensure the full implementation of women's and girl's human rights as an inalienable, integral and indivisible part of all human rights and fundamental freedoms (Paragraph 9);

Are convinced that Poverty eradication requires full and equal involvement and participation of women and men as agents and beneficiaries of people-centred sustainable development, and requires equal opportunities for women (Paragraph 16)

The participation and contribution of women's groups, networks and other NGOs and CBOs and other actors of civil society, in cooperation with Governments, while fully respecting their autonomy, is important to the effective implementation and follow-up of the Platform for Action (Paragraph 20);

Are determined to: Take all necessary measures to eliminate all forms of discrimination against women and the girl child and remove all obstacles to gender equality and the advancement and empowerment of women (Paragraph 24);

Promote women's economic independence, including ensuring equal access for all women to productive resources (Paragraphs 26 and 35).

Governments and the international community thus agreed to a common development agenda with gender equality and women's empowerment as underlying principles.<sup>111</sup>

The *Beijing Platform for Action* aims at accelerating the implementation of the 1985 Nairobi Forward-looking Strategies for the Advancement of Women<sup>112</sup> and at removing all

<sup>110</sup> Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (United Nations publication, Sales No. E.96.IV.13), resolution 1, Annex II. The *Beijing Platform for Action* is discussed in Section 1.3.4 on Plans of Action and Agendas. See <http://www.un.org/womenwatch/daw/beijing/platform/>

<sup>111</sup> Report of the Ad Hoc Committee of the Whole of the twenty-third special session of the General Assembly, Supplement No. 3(A/S-23/10/Rev. 1), paragraph 53.

the obstacles to women's active participation in all spheres of public and private life through a full and equal share in economic, social, cultural and political decision-making.<sup>113</sup> It also identifies 12 special areas of concern - areas of particular urgency that stand out as priorities for action. Attached to these critical areas are strategic objectives, and actions to be taken by governments, regional and international organisations, the private sector, NGOs and other actors of civil society. Some of the specific statements and actions of the Beijing Platform for Action are that it

Reaffirms that all human rights are universal, interdependent and interrelated and that women's human rights are an inalienable, integral and indivisible part of universal human rights (Paragraph 213);

States that the full and equal enjoyment of all human rights by women and girls is a priority for Governments and the UN and is essential for the advancement of women. Governments must work actively to promote and protect these rights (Paragraphs 213 and 215);

Calls upon Governments to remove all obstacles for women in obtaining affordable housing and access to land (Paragraph 58m);

Requests Governments to undertake legislative and administrative reforms to give women equal access to economic resources, and accord them the right to inherit and own land and other property (Paragraphs 61(b) and 165(e));

Instructs Governments to enact and enforce legislation guaranteeing equal inheritance rights to girls (Paragraph 274(d));

Requires Governments to facilitate rural women's equal access to, rights in and control over productive resources, including land, credit, capital and property (Paragraph 166(c));

Governments should set specific targets to reach gender balance in all public administration positions (Paragraph 190(a)).

In June 2000, at the **Beijing + 5 Conference**, a political declaration and *Further Actions and Initiatives to implement the Beijing Declaration and Platform for Action* were adopted.<sup>114</sup>

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<sup>112</sup> Adopted at the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi, 15-26 July 1985. United Nations publication, Sales No. E.85.IV.10, chap. I, sect. A.

<sup>113</sup> Paragraph 1, Platform for Action.

<sup>114</sup> Twenty-third special session of the General Assembly, Supplement No. 3 (A/S-23/10/Rev. 1). The Further Actions and Initiatives are described in Section 1.3.4. See <http://www.un.org/womenwatch/daw/followup/beijing+5.htm>

The *Beijing + 5 Political Declaration* contains the following relevant provisions:

The commitments to the goals and objectives in the Beijing Declaration and Platform for Action are reaffirmed;

The role and contribution of civil society, in particular NGOs and women's organizations, in the implementation of the Beijing Declaration and Platform for Action, is recognised, and their further participation encouraged;

The need for men to take joint responsibility with women for the promotion of gender equality is emphasized;

Governments pledge to ensure the realization of societies in which both women and men work together towards a world where every individual can enjoy equality, development and peace in the 21st century.

Of the various *gaps and obstacles* that are recognised in this Declaration, the following are relevant for the current overview:

The majority of people living in poverty still lack legal security of tenure for their dwellings (Paragraph 17);

Political will, public information and awareness raising are insufficient (Paragraph 18);

Many women still do not participate fully on the basis of equality in all spheres of society, while at the same time they suffer to a greater extent the effects of poverty (Paragraph 20).

In June 2000, at the Beijing + 5 Conference, a Political Declaration and *Further Actions and Initiatives to implement the Beijing Declaration and Platform for Action* were adopted.<sup>115</sup> The *Further Actions and Initiatives* of the Beijing +5 outcome documents, lists some of the current challenges that affect the full implementation of the Beijing Declaration and Platform for Action as:

The impact of globalisation and structural adjustment programmes;

The high costs of external debt servicing;

Declining international trade in several developing countries. These have worsened the existing obstacles to development, thereby aggravating the feminisation of poverty.

The *Further Actions and Initiatives* are categorised in actions and initiatives on national and international level, and responsible actors (Governments, the private sector, civil society, and regional and international organisations).

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<sup>115</sup> Twenty-third special session of the General Assembly, Supplement No. 3 (A/S-23/10/Rev. 1).

Actions and initiatives to be taken by *Governments* include:

Draft, adopt and implement policies that promote and protect women's enjoyment of all human rights and create an environment that does not tolerate violations of the rights of women and girls (Paragraph 68 (a));

Review legislation and remove discriminatory provisions as soon as possible, preferably by 2005 (Paragraph 68(b));

Develop, review and implement laws and procedures to prohibit and eliminate all forms of discrimination against women and girls (Paragraph 68(f));

Ensure that national legislative and administrative reform processes, including those linked to land reform, decentralisation and reorientation of the economy, promote women's rights, particularly those of women living in poverty. Take measures to promote and implement those rights through women's equal access to and control over economic resources, including land, property rights, right to inheritance, credit and traditional saving schemes, such as women's banks and co-operatives (Paragraph 68(h)).

Further actions to be taken by governments, the private sector, NGOs and other actors of civil society include:

Encourage the creation of training and legal literacy programmes which build and support the capacities of women's organisations to advocate for women's and girls' human rights (Paragraph 78(a));

Encourage collaboration among Governments, non-governmental organisations, grass-roots organisations and traditional and community leaders for the promotion and protection of all human rights and fundamental freedoms of women and girls, the dignity and worth of the human person and equal rights for women and men (Paragraph 78(b)).

Further actions to be taken at the national and international levels, by Governments, regional and international organisations, including the UN system, and international financial institutions and other actors, include:

Take steps to avoid and refrain from measures creating obstacles to the full enjoyment of women's and children's human rights (Paragraph 90);

Adopt measures to ensure that the work of rural women is recognised and valued (Paragraph 94(e));

Improve knowledge and awareness of the remedies available for violations of women's human rights (Paragraph 98(a));

Implement poverty eradication programmes and evaluate, with the participation of women, their impact on the empowerment of women living in poverty, in terms of access to inheritance, and access to, and control over land, housing, income, micro-credit and other

financial instruments and services. Introduce improvements to such programmes in the light of the above assessment (Paragraph 101(d)).

The Goals, Principles and Commitments are complemented by strategies for implementation. States are called upon to:

Promote awareness campaigns and education regarding women's legal rights to land ownership and inheritance (Paragraph 78 (b));

Review legal and regulatory frameworks to ensure that women's equal rights are clearly specified and enforced (Paragraph 78 (c));

Support community projects, policies and programs that aim to remove all barriers to women's access to affordable housing and property ownership, economic resources, infrastructure and social services and ensure full participation of women in all decision-making processes; (Paragraph 78);

Promote mechanisms for the protection of women who risk losing their homes and properties when their husbands die (Paragraph 78(g)).

At the 10<sup>th</sup> anniversary of the Beijing Conference, the Commission on the Status of Women convened to review the outcomes.<sup>116</sup> ***The “Beijing + 10” Declaration:***

Emphasises that full and effective implementation of the Beijing Declaration and Platform for Action is essential to achieving the internationally agreed development goals, including those contained in the Millennium Declaration (Paragraph 3);

Calls upon all stakeholders to intensify their contributions to the implementation of the Beijing Declaration and the Platform for Action (Paragraph 5).

Outcome and the ***Way Forward of Beijing +10 in Africa***<sup>117</sup>: Under the Human Rights of Women on Seventh African Regional Conference on Women (Beijing + 10), it states:

The domestication of international instruments on women's and girls' rights and the enforcement of existing legislation remain low. Some cultural and traditional practices continue to inhibit progress in promoting women and girls' human rights. In some countries, women are denied equal rights to inherit property. Furthermore, public awareness of women's and girls' human rights and the obligation to ensure the enjoyment of their rights remains low. In some

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<sup>116</sup> Commission on the Status of Women, forty-ninth session, 28 February – 11 March 2005, Follow up to the Fourth World Conference on Women and to the 23<sup>rd</sup> Special Session of the General Assembly entitled “Women 2000: Gender Equality, Development and Peace for the Twenty-First Century”: implementation of strategic objectives and action in the critical areas of concern and further actions and initiatives, 3 March 2005, E/CN.6/2005/L.1

<sup>117</sup> 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 October 2004). <http://www.uneca.org/beijingplus10/>

countries, several sources of (modern, religious, traditional) laws continue to govern the lives of women and restrict the enjoyment of their rights.

## 5.7 Millennium Development Goals (MDGs)

On September 13, 2000 the *UN Millennium Declaration* was adopted.<sup>118</sup> One of the fundamental values considered essential to international relations is gender equality: "The equal rights and opportunities of women and men must be assured."<sup>119</sup> While resolving to fully respect and uphold the Universal Declaration on Human Rights, several additional objectives were added.

By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers as proposed in the "Cities Without Slums" initiative (Paragraph 19, last bullet point);

Promote gender equality and the empowerment of women as effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable (Paragraph 20, first bullet point);

The *Millennium Declaration* was adopted by Member States of the United Nations in September 2000. It contains eight Millennium Development Goals (MDGs), ranging from eradicating extreme poverty to combating HIV/AIDS, malaria and other diseases. The MDGs detail out 18 specific development targets, each of which has a target figure, a time frame, and indicators designed to monitor the targets<sup>120</sup>.

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<sup>118</sup> United Nations Millennium Declaration, adopted as General Assembly Resolution A/55/L.2 on 8 September 2000.

<sup>119</sup> Paragraph 6 of the Millennium Declaration.

<sup>120</sup> Sachs, J and McArthur, J (2005) 'The Millennium Project: a plan for meeting the Millennium Development Goals' Volume 365, Issue 9456, *The Lancet* Pages 347-353

## *The United Nations Millennium Development Goals<sup>121</sup> (MDG)*

### ***Goal 1: Eradicate extreme poverty and hunger***

Target 1: Reduce by half the proportion of people whose income is less than a dollar a day.

Target 2: Reduce by half the proportion of people who suffer from hunger.

### ***Goal 2: Achieve universal and primary education***

Target 3: Ensure that children everywhere - boys and girls alike – will be able to complete a full course of primary schooling.

### ***Goal 3: Promote gender equality and empower women***

Target 4: Eliminate gender disparity in primary and secondary education, preferably by 2005, and at all levels of education no later than 2015.

### ***Goal 4: Reduce child mortality***

Target 5: Reduce by two thirds the mortality rate among children under five.

### ***Goal 5: Improve maternal health***

Target 6: Reduce by three quarters in the maternal mortality ratio.

### ***Goal 6: Combat HIV/AIDS, malaria and other diseases***

Target 7: Halt and begin to reverse the spread of HIV/AIDS.

Target 8: Halt and begin to reverse the incidence of malaria and other major diseases.

### ***Goal 7: Ensure environmental sustainability***

Target 9: Integrate the principles of sustainable development into country policies and programmes, and reverse the loss of environmental resources.

Target 10: Reduce by half the proportion of people without sustainable access to safe drinking water

Target 11: Achieve significant improvement in the lives of at least 100 million slum dwellers by 2020.

### ***Goal 8: Develop a global partnership for development***

Target 12:

Develop further an open trading and financial system that is rule-based, predictable and non-discriminatory. Includes a commitment to good governance, development and poverty reduction—nationally and internationally.

Target 13:

Address the least developed countries' special needs. This includes tariff- and quota-free access for their exports; enhanced debt relief for heavily indebted poor countries; cancellation of official bilateral debt; and more generous official development assistance for countries committed to poverty reduction

Target 14:

Address the special needs of landlocked and small island developing States.

<sup>121</sup> UN Millennium Development Goals, adopted by UN Member States on September 2000.  
<http://www.unhabitat.org/mdg/>

***Goal 8: Develop a global partnership for development (continued)******Target 15:***

Deal comprehensively with developing countries' debt problems through national and international measures to make debt sustainable in the long term.

***Target 16:***

In cooperation with the developing countries, develop decent and productive work for youth.

***Target 17:***

In cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries.

***Target 18:***

In cooperation with the private sector, make available the benefits of new technologies—especially information and communications technologies

With Respect to MDG 3, gender equality and women's empowerment has been broadened beyond the limited focus on primary education (although it should be noted here that the 2005 target for universal primary education has already been missed). The ***UN Task force on Gender Equality*** identified equal property rights as a component of Gender equality<sup>122</sup> noting that

It is now widely recognized that ownership and control over assets such as land and housing provide economic security, incentives for taking economic risks that lead to growth, and important economic returns including income<sup>123</sup>.

The ***World Summit Outcome 2005*** document commits to five of seven priorities identified by the Millennium Project Taskforce on Education and Gender Equality. The Summit Outcome document is of special significance to women's rights advocates because it includes, for the first time in a UN agreement at the level of Heads of State, particularly detailed language on gender equality, in paragraph 58 as follows:

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<sup>122</sup> See Levine, R et al (2003) *Background Paper of the Task Force on Education and Gender Equality, Achieving Universal Primary Education by 2015* (New York: UN)

<sup>123</sup> [http://www.unmillenniumproject.org/reports/tf\\_gender.htm](http://www.unmillenniumproject.org/reports/tf_gender.htm)

We remain convinced that progress for women is progress for all. We reaffirm that the full and effective implementation of the goals and objectives of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly is an essential contribution to achieving the internationally agreed development goals, including those contained in the Millennium Declaration, and we resolve to promote gender equality and eliminate pervasive gender discrimination by:

- (a) Eliminating gender inequalities in primary and secondary education by the earliest possible date and at all educational levels by 2015;
- (b) Guaranteeing the free and equal right of women to own and inherit property and ensuring secure tenure of property and housing by women;
- (c) Ensuring equal access to reproductive health;
- (d) Promoting women's equal access to labour markets, sustainable employment and adequate labour protection;
- (e) Ensuring equal access of women to productive assets and resources, including land, credit and technology;
- (f) Eliminating all forms of discrimination and violence against women and the girl child, including by ending impunity and by ensuring the protection of civilians, in particular women and the girl child, during and after armed conflicts in accordance with the obligations of States under international humanitarian law and international human rights law

World leaders reaffirmed at the World Summit the goals and objectives of the Beijing Platform for Action as essential in achieving the Millennium Development Goals. The World Summit Outcome document commits to five of seven priorities identified by the Millennium Project Taskforce on Education and Gender Equality—the right to own and inherit property (b); equal access to productive assets and resources including land, credit and technology (e); “eliminating all forms of discrimination and violence against women and the girl child, including by ending impunity...”(f); increased representation of women in government decision-making bodies (g); and universal access to reproductive health, which is endorsed in paragraph 57(g).

There are also developments at regional levels. The *African Union (AU) Solemn Declaration on Gender Equality in Africa*<sup>124</sup> (July 6 2004)<sup>125</sup>:

<sup>124</sup> The African Union Solemn Declaration on Gender Equality in Africa, adopted on 27 May 2005. <http://www.africa-union.org/Gender/SOLEMN/Presentation.doc>

The African Heads of State and Government reaffirmed their commitment to the principle of gender equality as enshrined in Article 4 (1) of the Constitutive Act of the African Union and to accelerate efforts to promote gender equality at all levels;

The Heads of State and Government also committed themselves to actively promoting the implementation of legislation to guarantee women's land, property and inheritance rights including their rights to housing.

*The Southern African Development Community Declaration on Gender and Development*<sup>126</sup> (adopted on 8 September 1997):

Convinced that gender equality is a fundamental human right;

Heads of States committing themselves and their respective countries, inter alia, promoting women's full access to, and control over productive resources such as *land*, livestock, markets, credit, modern technology, formal employment, and a good quality of life in order to reduce level of poverty among women.

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<sup>125</sup> See [http://www.wildaf-ao.org/eng/article.php3?id\\_article=576](http://www.wildaf-ao.org/eng/article.php3?id_article=576)

<sup>126</sup> The Southern African Development Community Declaration on Gender and Development, adopted on 8 September 1997. [http://www.sardc.net/widsaa/wid\\_genderdec.htm](http://www.sardc.net/widsaa/wid_genderdec.htm) The 12 Heads of State of the SADC include: Republic of Angola, Republic of Botswana, Kingdom of Lesotho, Republic of Malawi, Republic of Mauritius, Republic of Mozambique, Republic of Namibia, Republic of South Africa, Kingdom of Swaziland, United Republic of Tanzania, Republic of Zambia, and Republic of Zimbabwe.

## 6. SUMMARY AND CONCLUSIONS

As this document shows, Women's equal rights to housing, land and property are laid down in various international human rights instruments, which range from legally binding conventions to political declarations and programmes of action. While the individual right to land is not explicitly laid down in international instruments, access to land is an entitlement inextricably connected to the right to adequate housing (as indicated by the Committee on Economic, Social and Cultural Rights in its General Comment No. 4 on the Right to Adequate Housing). Moreover, the human right to property includes immovable property such as land.

The right to equality and non-discrimination clause laid down in all major international human rights conventions requires that human rights be equally applicable to women and men. In addition, specific provisions confirming women's equal right to own, access, control, and inherit land, housing and (marital) property can be found in some instruments, such as the many resolutions adopted on this subject. The existing conventions and their official interpretations have firmly anchored women's equal rights to land, housing and property, including through distribution of marital property and inheritance. In addition, regional conventions and protocols, such as the African Charter on Human and Peoples' Rights and its Women's Rights Protocol, further strengthen the efforts of women and men wishing to raise awareness on, or lobby and advocate for, women's equal rights. A large number of States are party to the conventions listed in this overview. However, not all states have transformed these international human rights obligations into their national legislation yet.

In the past decade, international human rights standards with respect to women's equal land, property and housing rights instruments have expanded. Some of these contain innovative language on women's equal human rights: the resolutions on women's equal land, housing and property rights, the Beijing Declaration and Platform for Action and the Habitat Agenda are examples of innovative and inclusive approaches. Into the new millennium, the Millennium Development Goals (MDGs) and the World Summit Outcome have categorically established women's equal rights in this area as a priority. Reiteration of a number of principles has occurred, particularly in follow up declarations and plans/programmes of action adopted in recent years.

The promise of human rights articulation has not been matched with commensurate institutional responses leaving open the gap between principles and practice and between rights and remedies<sup>127</sup>. A major concern remains lack of progress in the implementation of women's equal rights to land, housing and property on the ground, as also noted in various declarations and plans/programmes of action. One step towards such implementation is the domestication of the international human rights instruments at the national level. However, it is not the mere existence of norms but the political will to implement them that will be crucial. Civil society has a significant role to play in creating awareness of these rights, in

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<sup>127</sup> Higgins, Roslyn (1994) *Problems and Process: International Law and How We Use It* (Oxford: Clarendon)

lobbying for reform and bringing about changes in patriarchal attitudes and limiting any negative cultural aspects. The interplay between legislators, judges, civil society, academics and others within the sphere of women's land rights will determine the durability of rights protection also in the domestic arena.

Yet the experience of those working in the field is that innovative human rights approaches can also yield positive results<sup>128</sup>. As the Special Rapporteur notes in his report on women and housing, innovative and flexible modes of delivery of rights are necessary<sup>129</sup>. In order for human rights to work in traditional societies, a re-engagement with certain cultural practices may be beneficial<sup>130</sup>. Over reliance on formal laws may be counter-productive since most women affected have little access to the courts, and alternative routes to securing their rights need emphasis. Awareness of human rights provides women with the knowledge, skills, self-confidence and self-esteem to enforce their rights to land, housing and property. There is also a critical need to strengthen network, exchange expertise, develop human resources, and create tools to implement women's equal rights to adequate housing, land and property. This document attempts to be a step in that direction.

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<sup>128</sup> Llana-Lewis, L (1998) *Bringing Equality Home: Implementing the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* (New York: UNIFEM)

<sup>129</sup> Kothari, M (2005) *Women and Adequate Housing: Study by the Special Rapporteur on Adequate Housing* United Nations Commission on Human Rights E/CN.4/2005/43 (2005)

<sup>130</sup> Nyamu-Musembi, C (2002) 'Are Local Norms and Practices Fences or Pathways? The Example of Women's Property Rights' in A An-Na'im (ed) *Cultural Transformation and Human Rights in Africa* (New York: Zed Books Ltd)

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