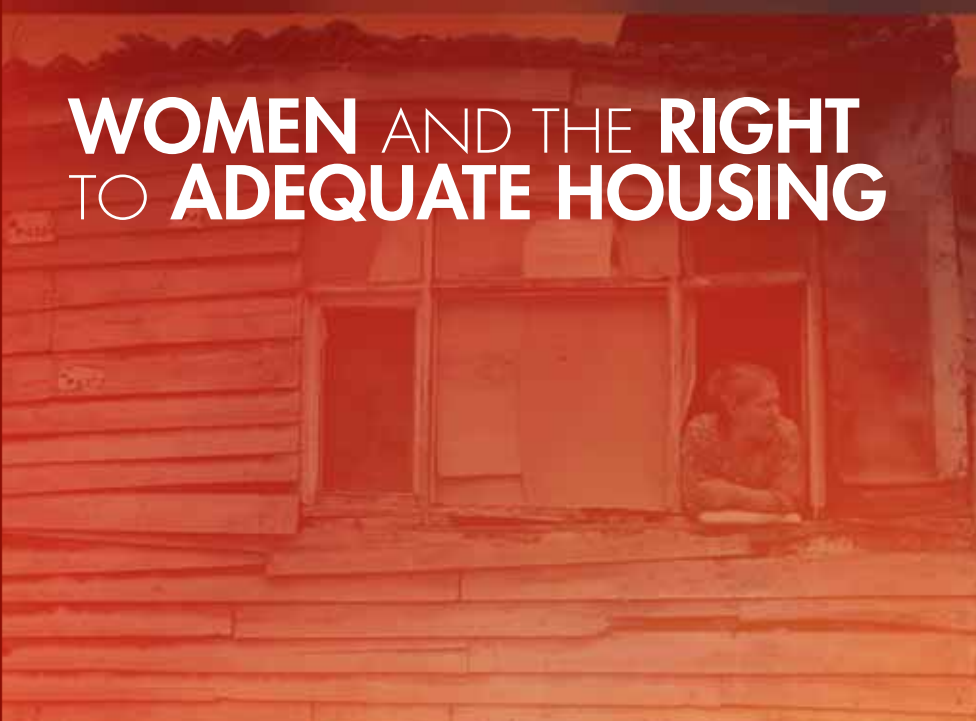


# WOMEN AND THE RIGHT TO ADEQUATE HOUSING



UNITED NATIONS  
HUMAN RIGHTS  
OFFICE OF THE HIGH COMMISSIONER

# WOMEN AND THE RIGHT TO ADEQUATE HOUSING



UNITED NATIONS



UNITED NATIONS  
**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER

New York and Geneva, 2012

**NOTE**

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a figure indicates a reference to a United Nations document.

# CONTENTS

<b>INTRODUCTION</b> .....	<b>5</b>
<b>I. POLICY AND LEGAL FRAMEWORK FOR WOMEN'S RIGHT TO ADEQUATE HOUSING</b> .....	<b>10</b>
A. International normative framework .....	11
B. The right to adequate housing and non-discrimination as seen by human rights treaty bodies.....	24
C. Global conferences .....	29
D. Regional instruments and developments .....	31
<b>II. DISCRIMINATION AGAINST WOMEN IN THE AREAS OF HOUSING, LAND AND PROPERTY</b> .....	<b>34</b>
A. Discriminatory laws .....	39
B. Statutory laws and policies failing to take into account women's specific circumstances .....	42
C. Discriminatory customary laws and practices.....	44
D. Biased attitudes .....	49
E. Lack of access to remedies and awareness of rights.....	50
F. Lack of participation in decision-making.....	52
<b>III. SELECTED ISSUES</b> .....	<b>54</b>
A. Inheritance .....	55
B. Forced evictions .....	63
C. Inadequate housing conditions .....	70
D. The links between domestic violence and women's right to adequate housing .....	74
E. HIV/AIDS .....	81
F. Natural disasters and climate change.....	83
G. Financial crisis.....	86
<b>CONCLUSION AND RECOMMENDATIONS</b> .....	<b>89</b>

## ACKNOWLEDGEMENTS

OHCHR wishes to thank the individuals that provided comments, suggestions and support for the preparation of this publication or participated in the consultations conducted by the Special Rapporteurs. In particular, it would like to acknowledge the contributions from Alison Aggarwal, Rebecca Brown, Christian Courtis, Graciela Dede, Leilani Farha, Amanda Flores, Bahram Ghazi, Mayra Gomez, Denise Hauser, Cecilia Möller, Lucinda O’Hanlon and Beatrice Quadranti.

---

## EXECUTIVE SUMMARY

The right to adequate housing is clearly recognized in international human rights law, including in the International Covenant on Economic, Social and Cultural Rights, which provides for “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” (art. 11.1).

Yet, well over one billion people live in precarious conditions in slums and informal settlements threatening their health and even their survival. In addition, some 100 million are homeless on any given day. Further millions are forcibly evicted or displaced from their homes every year. A gender analysis indicates that women are particularly affected and the present publication aims at shedding some light on the main underlying reasons for this situation.

This publication provides an overview of the meaning, intent and implications of the human right to adequate housing, and illustrates *de jure* and *de facto* obstacles to women worldwide enjoying this right effectively.

Numerous human rights mechanisms have over the years drawn attention to the effects of gender inequality and discrimination on women’s enjoyment of the right to adequate housing. In 2002, the United Nations Commission on Human Rights, in its resolution 2002/49, tasked the first Special Rapporteur on adequate housing, Mr. Miloon Kothari (India), with reporting on women and adequate housing, and decided to keep the issue of women’s equal ownership of, access to and control over land and the equal rights to own property and to adequate housing on its agenda. This publication distils his findings on women’s rights, based on regional consultations with civil society between 2002 and 2006, country missions, testimonies and information from local grass-roots groups.<sup>1</sup> It also draws on the work done by the second Special Rapporteur on adequate housing, Ms. Raquel Rolnik (Brazil), appointed in 2008. In

---

<sup>1</sup> See also E/CN.4/2003/55, E/CN.4/2005/43 and E/CN.4/2006/118.

2011, she initiated a web-based worldwide consultation on women and the right to adequate housing and in 2012 she presented the results in her 2012 report to the Human Rights Council. Her work on the impact of the financial crisis on the right to adequate housing and on climate change is also pertinent to an analysis of women and the right to adequate housing.

The work of other United Nations human rights mechanisms, such as the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women, is also covered in this publication. For additional in-depth analysis of specific themes, the publication also draws from specially commissioned papers. The publication points out the conceptual links, the positive practices and the policy implications for States, United Nations agencies and bodies, and civil society.

It is divided into four substantive sections. Following the introduction, chapter I describes the international legal and policy frameworks for the implementation of women's right to adequate housing, including human rights treaties, the principles of non-discrimination and equality and the progressive realization of economic, social and cultural rights. Chapter II outlines the main underlying causes, ranging from discriminatory statutory laws to customary laws and practices and lack of access to legal and other remedies. Finally, chapter III elaborates on a number of selected issues such as forced evictions, degraded living conditions, and cultural and religious recognition of women's rights, underlining regional similarities and differences.

In addition to highlighting national discriminatory laws, this publication illustrates how the gap between the *de jure* and the *de facto* protection of women's right to adequate housing is the current critical obstacle to the realization of their right to adequate housing worldwide. It emphasizes that in many countries women's rights are protected by law, but in practice women are socially and economically disadvantaged, and face *de facto* discrimination in housing, land and inheritance rights. One of the significant ways in which this obstacle manifests itself is in seemingly

gender-neutral laws that are interpreted and implemented in ways that disadvantage and discriminate against women.

The specific vulnerabilities to violations of different groups of women, such as victims of domestic violence; widowed, divorced or separated women; female heads of households; victims of forced evictions; indigenous and tribal women; women with disabilities; women in conflict or post-conflict situations; migrant workers; women from descent- and work-based communities; domestic workers; women in prison; sex workers; and lesbian and transgender women, are another major obstacle to the realization of their right to adequate housing. Owing to a combination of factors, these women face different housing conditions and are more likely to become homeless or to live in inadequate housing.

Highlighting the violations related to housing that these different groups of vulnerable women face brings to the forefront the impact of multiple discrimination on them, as a result of their gender, race, caste, ethnicity, age and other factors, but in many cases, also as a result of their relative impoverishment and lack of access to social and economic resources.

There are examples of initiatives by women and women's groups around the world to address these general and specific issues, illustrating the strength and creativity of individual women and communities that have responded to violations of women's rights to adequate housing, land and inheritance. There are also many examples of projects undertaken by communities, sometimes in conjunction with States, to positively address the needs and violations of women's rights. Some are highlighted in this publication. Its aim is therefore twofold: to shed light on the main obstacles to women's full enjoyment of the right to adequate housing; and offer guidance about measures to prevent and eradicate discrimination, including violence, against women in housing rights.





---

## INTRODUCTION

*The human right to adequate housing is the right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity.*

Miloon Kothari, former United Nations Special Rapporteur on adequate housing

In addition to the Universal Declaration of Human Rights (art. 25), the most authoritative international recognition of the right to adequate housing as a component of the right to an adequate standard of living is contained in the International Covenant on Economic, Social and Cultural Rights, which states that States parties “[...] recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing” (art. 11.1).

The 1970s and 1980s saw the emergence in many countries of national campaigns, movements and struggles to identify housing as a human right. In India in the late 1980s and early 1990s, for example, hundreds of interviews and meetings were conducted in vernacular languages to collate information on what housing meant to people. What the campaign found was that for people a house is a place to belong, a secure place to live—it is much more than just four walls and a roof. Similar campaigns took place in Brazil, in several African countries and in the United Kingdom. The collective experiences were discussed in the context of the two United Nations Conferences on Human Settlements (1976 and 1996) and the Global Strategy for Shelter (1988-2000).

The right to adequate housing continues to be unmet in all regions of the world, particularly for vulnerable groups of women but also for certain groups of men, such as men from minority communities. In recent decades, the attention of international forums has been drawn to links between violence against women, including domestic violence, and the

lack of enjoyment of the right to adequate housing. In her 2000 report on economic and social policy and its impact on violence against women,<sup>2</sup> the United Nations Special Rapporteur on violence against women, its causes and consequences underlined that women's poverty, together with a lack of other housing options, made it difficult for women to leave violent family situations, and reaffirmed that forced relocation and forced eviction from home and land had a disproportionate impact on women, especially when these violations were committed by spouses or in-laws. In 2009, the Special Rapporteur on violence against women, its causes and consequences said that "the impact of these forced evictions, often by militia or armed forces, is profoundly devastating for women and is correlated with heightened rates of physical, psychological and economic violence against women before, during and after the evictions. This is true both in terms of violence against women at the hands of State authorities, non-State actors, community members, as well as violence against women by their partners or relatives within the home."<sup>3</sup>

In 2000, the United Nations Commission on Human Rights appointed its first Special Rapporteur on adequate housing with a mandate to focus on adequate housing as a component of the right to an adequate standard of living in the context of non-discrimination.<sup>4</sup> The Special Rapporteur was requested to report on the status of the realization of the relevant rights and on developments relating to them, including on laws, policies and good practices most beneficial to their enjoyment and difficulties and obstacles encountered domestically and internationally, and to develop a regular dialogue with States and promote cooperation among and assistance to them in their efforts to secure these rights. The Special Rapporteur was specifically requested to apply a gender perspective in all his activities.

---

<sup>2</sup> E/CN.4/2000/68/Add.5.

<sup>3</sup> A/HRC/11/6/Add.6, para. 85.

<sup>4</sup> Resolution 2000/9.

*In pursuing my mandate, I have followed a holistic approach, based on the reality that all human rights are interrelated and indivisible. The right to adequate housing cannot be fully realized if separated from other rights such as the rights to food, water, sanitation, electricity, health, work, property, security of the person, security of home, and protection against inhuman and degrading treatment. This approach has required me to examine a range of issues related to adequate housing, including land, forced eviction, access to water and sanitation, health, poverty and impact of globalization. Within this broad framework, my particular focus has been to develop a strong gender perspective, consistent with the right to non-discrimination and on the rights of particular groups, such as children, indigenous people and minorities.*

Source: Statement by Mr. Miloon Kothari, Special Rapporteur on adequate housing, to the Commission on Human Rights, 4 April 2003.

At the same time, the Commission on Human Rights, in its resolutions on women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing, consistently affirmed that discrimination in law against women with respect to having access to, acquiring and securing land, property and housing, as well as financing for land, property and housing, constituted a violation of women's human right to protection against discrimination.<sup>5</sup> It further reaffirmed the obligation of States to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise, in particular by financial lending institutions. It recommended that housing financing institutions and credit facilities should address the discrimination and encouraged specialized national and United Nations bodies to provide resources, information and human rights education concerning women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing. It requested the Special Rapporteur to study and report on women and adequate housing and more specifically on women's equal ownership of,

<sup>5</sup> Resolutions 2000/13, 2001/34, 2002/49, 2003/22, 2004/21 and 2005/25.

access to and control over land and the equal rights to own property and to adequate housing.

The methodology used to fulfil this task included regional consultations with grass-roots women's organizations. Since 2002, regional consultations have been held in North and East Africa, Asia, Central and South America, the Middle East, the Pacific region, North America, Central Asia, Eastern Europe and the Mediterranean.<sup>6</sup> Reflecting local contexts, each consultation highlighted specific themes in relation to adequate housing, such as violence against women or land and inheritance. The testimonies shared by individuals and grass-roots and civil society groups illustrated the range of violations experienced by women in relation to adequate housing, as well as the strategies employed to realize adequate housing. The testimonies further detailed the reasons for the gap between laws and policies and their implementation, and also confirmed that an indivisible approach is required to effectively address the complex contexts within which women experience discrimination and other human rights violations.<sup>7</sup>

The regional consultations have also enabled civil society groups to engage with United Nations processes, some for the first time, and have been a vehicle for improving networking and cross-fertilization of work on women's right to adequate housing between women's groups and housing groups. Importantly, civil society groups have followed up since the consultations. For example, groups in Mongolia were able to successfully

---

<sup>6</sup> Regional consultations: African regional civil society consultation on women and adequate housing (Nairobi, October 2002); Asia regional consultation on the interlinkages between violence against women and women's right to adequate housing (Delhi, October 2003); Latin America and Caribbean regional consultation on women and adequate housing (Mexico City, December 2003); the Middle East and North Africa regional consultation on women's right to adequate housing and land (Alexandria, Egypt, July 2004); Pacific regional consultation on women's rights to adequate housing and land (Nadi, Fiji, October 2004); North American regional consultation on women's right to adequate housing (Washington, D.C., October 2005); Central Asia / Eastern Europe regional consultation on women's right to adequate housing (Budapest, November 2005); and Mediterranean regional consultation on women's right to adequate housing (Barcelona, Spain, March 2006). Reports of these consultations are available from [www.ohchr.org/EN/Issues/Housing/Pages/WomenAndHousing.aspx](http://www.ohchr.org/EN/Issues/Housing/Pages/WomenAndHousing.aspx) (accessed 13 March 2012).

<sup>7</sup> E/CN.4/2005/43, para 17.

advocate the inclusion of provisions protecting women's right to adequate housing in the country's new anti-domestic violence legislation; national follow-up consultations were held in various Latin American countries and in Australia; and a conference was held to consolidate the learning from regional consultations thus far (at the 2005 World Social Forum in Brazil), with the participation of some of the women who had testified at these consultations.

This publication distils the findings of the first Special Rapporteur's work on women and adequate housing. It draws on the research of the Special Rapporteur since 2002, including the responses received from Governments and non-governmental organizations to questionnaires, information collated from fact-finding country missions, and the testimonies and reports from regional consultations with grass-roots and civil society groups. The publication also draws on the work done by the second Special Rapporteur on adequate housing, Ms. Raquel Rolnik (Brazil), appointed in 2008, including her worldwide consultation on women and the right to adequate housing in 2011, the results of which she presented in her report to the Human Rights Council in 2012. It further builds on her work analysing the impact of the financial and climate change crises on the enjoyment of the right to adequate housing, with special attention to the gender impact. The publication also refers to the work of other human rights mechanisms, such as the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women. For a more in-depth analysis of specific issues, the study also draws on findings by other United Nations bodies and specially commissioned papers.

- **POLICY AND LEGAL  
FRAMEWORK FOR WOMEN'S  
RIGHT TO ADEQUATE  
HOUSING**

To fully understand the implications of discrimination and inequality for women's right to housing, it is important to clarify what the human right to adequate housing entails. A variety of sources provide guidance on the meaning of "the right to adequate housing". In addition to relevant articles in fundamental human rights treaties, the human rights treaty bodies, which review the implementation of human rights treaties and assist States parties in fulfilling their legal obligations, have contributed with authoritative interpretations as to the criteria of the right to adequate housing. Similarly, regional and global political commitments also shed light on the policy and legal framework.

## A. INTERNATIONAL NORMATIVE FRAMEWORK

The right to adequate housing is widely recognized in international, regional and national human rights laws.<sup>8</sup> One of the first international references to this right is in the 1948 Universal Declaration of Human Rights (art. 25.1). It was later codified in the 1966 International Covenant on Economic, Social and Cultural Rights (art. 11.1), which is regarded as the most important international legal source of the right to adequate housing. The right to adequate housing is most commonly recognized as a component of the right to an adequate standard of living, although it is normally understood as a free-standing human right.

According to the Covenant:

*The States Parties to the present Covenant recognize 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 States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent (art. 11.1).*

<sup>8</sup> For a comprehensive listing of relevant international standards, see [www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx](http://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx) (accessed 13 March 2012).



This article is significant in several ways. First, it guarantees this right to “everyone”, without distinction. Second, it is not static in nature, but also ensures the right to the “continuous improvement of living conditions”. Third, it requires States to take “appropriate steps” to ensure the realization of the right to adequate housing.

Most international human rights treaties also enshrine the prohibition of discrimination based on sex, providing that the rights contained in them should be enjoyed without distinction based on sex among other grounds.

International, legally binding provisions directly or indirectly recognizing the right to adequate housing and to women’s equal rights can also be found in:

- The Convention on the Elimination of All Forms of Discrimination against Women:

*States Parties shall undertake all appropriate measures to eliminate discrimination against women in rural areas [...] and, in particular, shall ensure to such women the right [...] (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications (art. 14.2);*

*States Parties shall undertake all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular ensure, on a basis of equality of men and women [...] (h) the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration (art. 16.1).*

- The Convention on the Rights of the Child:

*No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation (art. 16.1);*

*States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and*

*social development. [...] States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing. [...] (art. 27).*

- The International Convention on the Elimination of All Forms of Racial Discrimination:

*States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction (art. 3);*

*States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of [...] (iii) the right to housing (art. 5 (e)).*

- The International Covenant on Civil and Political Rights:

*The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant (art. 3);*

*Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law (art. 9.1);*

*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks (art. 17).*

- The Convention on the Rights of Persons with Disabilities:

*States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take*

*measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms (art. 6.1);*

*States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention (art. 6.2);*

*To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia: (a) buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces (art. 9.1);*

*States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that: (a) persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement; (b) persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community (art. 19);*

*States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability (art. 28.1);*

*States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures: [...] (d) to ensure access by persons with disabilities to public housing programmes (art. 28.2).*

- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families:

*Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to [...] (d) access to housing, including social housing schemes, and protection against exploitation in respect of rents (art. 43.1).*

The norms and principles of gender equality and non-discrimination are enshrined in all fundamental human rights treaties. The rights to equality and to be free from discrimination are not subject to progressive realization (see below) but entail obligations of immediate application.<sup>9</sup> The immediacy principle is based on the understanding that it is contrary to human rights law and the principle of dignity to allow discrimination to continue unaddressed for any period of time and that effective remedies must be available immediately. States have an immediate obligation of not engaging in discriminatory practices and of repealing discriminatory legislation. Moreover, they have the immediate obligation to adopt measures to eradicate discriminatory practices both in the public and in the private spheres. Such measures may include temporary special measures,

<sup>9</sup> Committee on Economic, Social and Cultural Rights, general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, para. 40.

but should also include permanent measures sensitive to the specific needs and obstacles experienced by women with respect to each human right.

The notion of progressive realization acknowledges that the full realization of some human rights—such as economic, social and cultural rights—may require time, and grants some leeway to States in order to choose the appropriate means to realize them.

However, States cannot resort to discriminatory measures to realize these rights: the principles of equality and non-discrimination, including based on sex, are of immediate application, and narrow down the discretion of States when it comes to choosing how to fully realize these rights. Thus, it would be unacceptable to favour men over women with the excuse of taking gradual steps to fully realize the right to housing.

Under international human rights law, States have the obligation to take appropriate measures towards the full realization of economic, social and cultural rights to the maximum of their available resources, recognizing that this takes time and that a lack of financial and other resources can be an obstacle. However, even if a right like the right to adequate housing may not be fully realizable immediately, for instance because resources are scarce, immediate steps must still be taken towards this end.

Of particular importance is that States should, irrespective of the resources available to them and as a matter of priority, seek to ensure that everyone enjoys at least minimum levels of these rights and target programmes to the poor, the marginalized and the disadvantaged—categories to which women often belong. In this perspective, States need to demonstrate that a substantive equality approach is taken when it comes to the use of these resources. It should also be recalled that, while the full realization of economic, social and cultural rights may be achieved progressively, States shall not adopt deliberately retrogressive measures.

The above highlights the different types of State obligations with respect to economic, social and cultural rights, including the right to adequate

housing, namely the obligations to respect, protect and fulfil. In summary: the obligation to *respect* requires a State to refrain from interfering with the freedom of the individual; the obligation to *protect* requires a State to prevent other individuals and groups (third parties) from interfering with a right of the individual; and the obligation to *fulfil* requires a State to take positive measures to ensure the satisfaction of a right.

Given that discrimination against women takes place not only in the public sphere but to a large extent also in the private domain, including within the community, the family and the home, the State's obligation to ensure effective protection against human rights violations perpetrated by private actors is particularly important.

Since it is in the private sphere that some women may be most vulnerable and unprotected with respect to economic, social and cultural rights, the State is obliged to act with due diligence by providing adequate, effective and prompt responses to violations.<sup>10</sup> This duty involves prevention, investigation, mediation, punishment and redress for human rights violations, and the obligation to prevent impunity. While due diligence with respect to women has traditionally referred to obligations to eliminate violence against them in their private life or by a private actor,<sup>11</sup> the scope of the concept has evolved.<sup>12</sup>

Finally, according to the Convention on the Elimination of All Forms of Discrimination against Women, the adoption of special temporary measures aimed at accelerating de facto equality between men and women should not be regarded as discrimination (art. 4.1). On the contrary, such measures may be necessary and appropriate to correct past and current forms and effects of discrimination against women,<sup>13</sup> including in the sphere of housing.

<sup>10</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 19 (1992) on violence against women, para. 9.

<sup>11</sup> General Assembly resolution 48/104.

<sup>12</sup> See E/CN.4/2006/61.

<sup>13</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 25 (2004) on temporary special measures, para. 18.

## Examples of substantive equality in housing

Elements	Definition <sup>a</sup>	Women's conditions	Substantive equality perspective
Security of tenure	<p>Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure that guarantees legal protection against forced eviction, harassment and other threats. States parties should confer legal security of tenure on those persons and households currently lacking such protection in genuine consultation with affected persons and groups.</p>	<ul style="list-style-type: none"> <li>• Compared to men, women disproportionately lack security of tenure. This is linked to, for example, women's poverty, vulnerability to violence, and discriminatory laws, policies and programmes, which contribute to women's overall inequality.</li> <li>• Women are evicted from their homes because of household / domestic violence, discriminatory inheritance laws, customs, traditions and insufficient financial means caused by economic policies adopted by States parties that disadvantage women.</li> </ul>	<ul style="list-style-type: none"> <li>• Those for whom security of tenure is most at risk (including minority and indigenous women, female heads of households) must be accorded legal security of tenure immediately.</li> <li>• All women should possess a legal degree of security of tenure that guarantees protection against forced eviction caused by any number of reasons, including domestic or household violence.</li> <li>• Discriminatory inheritance laws and practices affecting women's security of tenure should be revised and slum clearance and other development-based projects that threaten women's security of tenure should not be implemented.</li> </ul>

Elements	Definition <sup>a</sup>	Women's conditions	Substantive equality perspective
Security of tenure			<ul style="list-style-type: none"> <li>• In conferring such legal security of tenure, States parties should consult all affected persons and groups, including women. If necessary, special measures should be established to ensure women's full participation.</li> </ul>
Affordability	<p>Personal or household costs associated with housing should not compromise the attainment and satisfaction of other basic needs. States parties should take steps to ensure that housing-related costs are commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing. Tenants should be protected from unreasonable rent levels or rent increases.</p>	<ul style="list-style-type: none"> <li>• Women living in poverty and in precarious conditions are particularly at risk of arrears and evictions.</li> <li>• "Household income" does not necessarily take account of the fact that women may not have control over household spending.</li> <li>• Women may not have equal access to housing subsidies.</li> <li>• Male landlords often exploit women by demanding sexual "favours" to avoid rent increases or eviction.</li> </ul>	<ul style="list-style-type: none"> <li>• Personal or household financial costs associated with housing should not compromise the attainment and satisfaction of other basic needs, such as food, water, medicine, and hygiene, including menstrual hygiene needs, by all members of the household, including women.</li> <li>• In ensuring housing affordability, States parties must develop strategies that take into account women's economic conditions and status, including as a result of gender wage gaps.</li> </ul>



Elements	Definition <sup>a</sup>	Women's conditions	Substantive equality perspective
Affordability			<ul style="list-style-type: none"> <li>• States parties must recognize that women who take care of their children often do not have an income and, in this context, housing affordability would entail specific considerations.</li> <li>• States parties should establish housing subsidies for those unable to obtain affordable housing. In so doing, they must ensure that subsidies are allocated in a non-discriminatory manner and that priority is given to women in need.</li> <li>• Tenants should be protected against unreasonable rent levels and increases in rent by appropriate means. To this end, States parties must ensure that landlords who solicit sexual "favours" from female tenants are subject to criminal sanctions and that there is a safe means for the women to report and deal with such incidents.</li> </ul>

Elements	Definition <sup>a</sup>	Women's conditions	Substantive equality perspective
Affordability			<ul style="list-style-type: none"> <li>• States parties must also ensure that women are guaranteed equal access to the credit and loans necessary to meet their housing needs.</li> </ul>
Accessibility	<p>Adequate housing must be accessible. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, persons with physical disabilities, persons with serious illnesses, HIV-positive individuals, persons with persistent medical problems, persons with psycho-social or developmental disabilities, victims of natural disasters, people living in disaster-prone areas and others should be ensured some degree of priority in housing. Both housing law and policy should take fully into account their special housing needs. Within many States parties increasing access to land by</p>	<ul style="list-style-type: none"> <li>• Generally speaking, women disproportionately experience barriers when accessing housing.</li> <li>• Women who have suffered household or domestic violence are among the most disadvantaged when it comes to access to housing.</li> <li>• Women make up most of the landless population.</li> <li>• There is an important link between women's landless status and discriminatory laws with respect to inheritance rights and social pressures which keep women from claiming their rights to inheritance.</li> </ul>	<ul style="list-style-type: none"> <li>• Adequate housing must be accessible to all women, men and children. States parties must adopt the necessary measures to deconstruct the barriers women experience in accessing adequate housing.</li> <li>• For example, States parties must ensure that women are not discriminated against—by landlords, male relatives, lending agents or State officials—in accessing accommodation or loans required to access accommodation. In particular, women must be protected against discrimination based on marital and household status or level or source of income. Cultural norms which negatively affect women's independent access to housing, such as women wanting to live alone out of choice or to escape violent relationships, must also be changed.</li> </ul>

Elements	Definition <sup>a</sup>	Women's conditions	Substantive equality perspective
Accessibility	landless or impoverished segments of society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement.		<ul style="list-style-type: none"> <li>• Priority in housing should be accorded to all disadvantaged groups, including women — particularly, single mothers, elderly women, women victims of violence, refugee and displaced women — children, the elderly, persons with physical disabilities, persons with serious illnesses, HIV-positive individuals, persons with persistent medical problems, persons with psycho-social or developmental disabilities, victims of natural disasters, people living in disaster-prone areas and others.</li> <li>• Within many States parties, access to adequate housing is intimately connected with access to land. States parties need to develop land reform policies that ensure access to land as an entitlement. States parties need to pay particular heed to the situation of women in this regard and should amend or repeal laws and support</li> </ul>

Elements	Definition <sup>a</sup>	Women's conditions	Substantive equality perspective
Accessibility			the transformation of customs and traditions that discriminate against women and deny them equal rights in, access to and control over land, property and housing and to ensure their right to equal treatment in land and agrarian reform as well as in land resettlement schemes.

<sup>a</sup> These definitions are in line with general comment No. 4 (1991) of the Committee on Economic, Social and Cultural Rights. References to States parties are to States parties to the Covenant. Similar obligations arise under the Convention on the Elimination of All Forms of Discrimination against Women.

*Source:* Adapted from the work by Leilani Farha, Centre for Equality Rights in Accommodation.

## **B. THE RIGHT TO ADEQUATE HOUSING AND NON-DISCRIMINATION AS SEEN BY HUMAN RIGHTS TREATY BODIES**

The Committee on Economic, Social and Cultural Rights has elaborated on the normative content of the right to adequate housing in its general comments No. 4 (1991) on the right to adequate housing and No. 7 (1997) on the right to adequate housing: forced evictions.

General comment No. 4 (1991) recognizes that the right to adequate housing goes beyond having a roof over one's head. Rather, the Committee links it to the fundamental principle of the inherent dignity of the human person, upon which the Covenant is based, defining the right to adequate housing as the right to live somewhere in security, peace and dignity. The seven elements defining "adequacy"—i.e., legal security of tenure; availability of services, materials, facilities and infrastructure; location; habitability; affordability; accessibility; and cultural adequacy—outline the criteria necessary for housing to be judged in compliance with the Covenant. However, as illustrated in this publication, many of these elements are particularly important or have a particular impact on women. For instance, women will bear a disproportionate burden if there are no adequate water services in or near the home and legal security of tenure may be a concern for women whose names are not put on leases or other property documents. To ensure legal security of tenure for women, legal and policy measures may therefore be required with respect to domestic violence or to inheritance rights so that women are not evicted from their homes upon the death of their husbands.

General comment No. 7 (1997) on forced evictions details various obligations which States parties must heed in the context of forced evictions, such as consultation with affected persons, availability of remedies and compensation, and a series of procedural requirements. Importantly, the Committee devotes specific attention to the disproportionate impact on women, noting that "women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including homeownership) or rights of access to property or

accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless” (para. 10).

The Committee’s general comment No. 16 (2005) is particularly important since violations of women’s right to housing are often a result of discriminatory laws, policies, customs and traditions in other areas which lead to deeply rooted inequalities between women and men in housing. Articles 2.2 and 3 of the Covenant require all its rights to be realized equally and without discrimination on the ground inter alia of sex. This includes article 11, which recognizes the right to adequate housing as a component of the right to an adequate standard of living. Critically, general comment No. 16 (2005) clarifies that the Covenant requires a substantive approach to equality:

*The enjoyment of human rights on the basis of equality between men and women must be understood comprehensively. Guarantees of non-discrimination and equality in international human rights treaties mandate both de facto and de jure equality (para. 7).*

It goes on to identify States’ specific obligations to respect, protect and fulfil women’s equal rights under the Covenant. For instance, it outlines that it is incumbent upon States parties to take into account any discriminatory effects of apparently sex-neutral laws, policies and programmes, develop monitoring systems, and design and implement programmes that give long-term effect to women’s economic, social and cultural rights. In relation to adequate housing, it specifically notes:

*Implementing article 3 in relation to article 11, paragraph 1, requires that women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so (para. 28).*

It also notes in relation to article 10 of the Covenant, which addresses family-related rights, that States parties are required to “provide victims of domestic violence, who are primarily female, with access to safe housing,

remedies and redress for physical, mental and emotional damage” (para. 27).

In its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, the Committee reiterates the concepts articulated in general comment No. 16 (2005) and affirms that both direct and indirect forms of differential treatment can amount to discrimination under the Covenant. It also underlines that the nature of discrimination varies according to context and evolves over time, and that discrimination on the basis of “other status”, prohibited under the Covenant, includes that based on marital and family status. Discrimination can occur, for example, when a woman’s ability to exercise a right under the Covenant is dependent on her husband’s consent.

While not all fundamental human rights treaties specifically articulate the right to adequate housing in the context of women’s rights, they do all recognize that the overarching principles of gender equality and non-discrimination<sup>14</sup> apply to all the rights contained in them. This is illustrated by general comments and recommendations relevant to women’s right to adequate housing by other treaty bodies.

The Committee on the Elimination of Discrimination against Women’s general recommendation No. 21 (1994) on equality in marriage and family relations states that “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” (para. 7).

---

<sup>14</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment does not include an equality article, but refers to the principle of equality in its preamble. The Convention on the Elimination of All Forms of Racial Discrimination also refers to equality only in its preamble and its definition of racial discrimination does not include the ground of sex. However, in its general recommendation XXV (2000) on the gender-related dimensions of racial discrimination, the Committee recognizes the specific experiences and effects of racial discrimination on women.

"The right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family" (para. 26).

On the distribution of property upon the dissolution of a marriage or the death of a relative, the Committee states that "[...] 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" (para. 28).

The Committee on the Elimination of Discrimination against Women also highlights obligations of States to ensure adequate living and housing conditions in connection with the protection of women's right to health.<sup>15</sup>

According to the Human Rights Committee's general comment No. 28 (2000) on the equality of rights between men and women, "article 3 [of the International Covenant on Civil and Political Rights] 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" (para. 2). This means, according to the Committee, that States 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. In addition to protective measures, States parties need to adopt positive measures "so as to achieve the effective and equal empowerment of women" (para. 3). The Committee notes that inequality in the enjoyment of rights by women is often deeply embedded in tradition, culture and religion. It emphasizes that "States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of

<sup>15</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 24 (1999), para 28.



women's rights to equality before the law and to equal enjoyment of all Covenant rights" (para. 5).

The Committee notes that the right of everyone to be recognized 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" (para. 19).

The Committee also emphasizes that States must ensure that the matrimonial regime contains equal rights and obligations for both spouses, for instance 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 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 Committee considers polygamy an inadmissible discrimination against women, as it is incompatible with the principle of equality of treatment (paras. 24–26).

There are specific international individual complaint mechanisms to guarantee the rights of women, such as the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the first Optional Protocol to the International Covenant on Civil and Political Rights, and article 22 of the Convention against Torture. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights also has the potential to serve as an important avenue of redress where domestic mechanisms fail when it enters into force. The issue of women and housing, specifically the availability of shelters for victims of domestic violence, was referred to under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in the case of *Ms. A. T. v. Hungary*.<sup>16</sup> Under the complaint mechanism of the Convention against Torture, the Committee against

---

<sup>16</sup> *Ms. A. T. v. Hungary*, communication No. 2/2003, views adopted on 26 January 2005.

Torture has concluded that expulsion and the destruction of homes and property can in certain circumstances constitute a breach of the Convention and be labelled as cruel, inhuman or degrading treatment.<sup>17</sup>

### C. GLOBAL CONFERENCES

The right to adequate housing has also been recognized internationally in many of the recent United Nations world conferences, such as the Vienna World Conference on Human Rights, the Fourth World Conference on Women, the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the World Summit on Sustainable Development, and most importantly the Second United Nations Conference on Human Settlements (HABITAT II).

The Beijing Platform for Action<sup>18</sup> commits States to removing all obstacles for women in obtaining affordable housing and access to land (para. 58 (m)), and undertaking law and administrative reforms to give women equal access to economic resources and accord them the right to own and inherit property (para. 61 (b)).

The Istanbul Declaration on Human Settlements and the Habitat Agenda<sup>19</sup> reaffirmed States' commitment to the right to adequate housing, outlined State actions for the realization of the right to adequate housing and recognized the role of civil society:

*We recognize an obligation by Governments to enable people to obtain shelter and to protect and improve dwellings and neighbourhoods. [...] We shall implement and promote this objective in a manner fully consistent with human rights standards (Habitat Agenda, para. 39).*

<sup>17</sup> *Hajrizi Dzemailj et al. v. Yugoslavia*, communication No. 161/2000, decision adopted on 21 November 2002.

<sup>18</sup> *Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995* (United Nations publication, Sales No. 96.IV.13).

<sup>19</sup> *Report of the United Nations Conference on Human Settlements (Habitat II), Istanbul, 3-14 June 1996* (United Nations publication, Sales No. E.97.IV.6), chap. I, resolution 1, annexes I and II.

The Habitat Agenda also commits States to providing legal security of tenure and equal access to land to all people, including women and those living in poverty, and undertaking 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 technologies (para. 40 (b)). States are also called upon to support community projects, policies and programmes that aim to remove all barriers to women's access to affordable housing, land and property ownership, economic resources, infrastructure and social services, and ensure the full participation of women in all decision-making (para. 78 (e)). Furthermore, States are requested to promote mechanisms for the protection of women who risk losing their homes when their husbands die (para. 78 (g)).

The Declaration on Cities and Other Human Settlements in the New Millennium (2001)<sup>20</sup> reaffirms the goal of gender equality in human settlements development, calls for the promotion of gender equality as an effective way to combat poverty (para. 44), as well as the promotion of changes in attitudes, structures, policies, laws and practices that form obstacles to gender equality (para. 32), and the promotion of greater security of tenure for the poor and vulnerable and of continued legislative, administrative and social reforms to give women "full and equal access to economic resources" and "their right to security of tenure and their right to enter into contractual agreements" (paras. 45 and 49).

The United Nations Millennium Declaration (2000)<sup>21</sup> lists gender equality as one of the fundamental values essential to international relations (para. 6). One of the Millennium Development Goals (MDGs) concerns the promotion of gender equality and the empowerment of women, although its associated targets relating to gender equality in education are narrow. Commentators have noted the importance of mainstreaming gender

---

<sup>20</sup> General Assembly resolution S-25/2, annex.

<sup>21</sup> General Assembly resolution 55/2.

concerns throughout all MDGs,<sup>22</sup> including Goal 7 related to improving access to water and sanitation, as well as improving the lives of slum-dwellers. At their 2010 summit, States committed themselves to ensuring gender equality through a broad range of actions, including “promoting and protecting women’s equal access to adequate housing, property and land, including rights to inheritance, and enabling them to secure access to credit through appropriate constitutional, legislative and administrative measures.”<sup>23</sup>

The Plan of Implementation of the World Summit on Sustainable Development<sup>24</sup> recognized the importance of women’s right to land, including the right to inheritance, and participation in decision-making in order to achieve the sustainable development of Africa and the realization of relevant MDGs (para. 67 (b)).

#### D. REGIONAL INSTRUMENTS AND DEVELOPMENTS

Provisions relevant to the right to adequate housing are also found in the following regional instruments: the African Charter on Human and Peoples’ Rights (arts. 2 and 18, paras. 2 and 3); the European Convention for the Protection of Human Rights and Fundamental Freedoms (arts. 5, 8 and 14); the Revised European Social Charter (art. 31); the American Declaration of the Rights and Duties of Man (arts. 1, 2 and 23); the American Convention on Human Rights (arts. 1, 17, 21 and 24) and its Additional Protocol (art. 3).

The African Charter on Human and Peoples’ Rights provides that “the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as

<sup>22</sup> See *Claiming the Millennium Development Goals: A human rights approach* (United Nations publication, Sales No. E.08.XIV.6).

<sup>23</sup> General assembly resolution 65/1, para. 72 (k).

<sup>24</sup> *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August - 4 September 2002* (United Nations publication, Sales No. E.03.II.A.1), para. 61 (b).

stipulated in international declarations and conventions” (art. 18.3). In 1999, the African Commission also established the office of the Special Rapporteur on the Rights of Women in Africa to study the enjoyment of women’s rights throughout Africa and make recommendations to assist States in ensuring the human rights of women. More recently, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa recognized women’s equal rights to access housing and to acceptable living conditions in a healthy environment (art. 16), as well as women’s equal right to inheritance (art. 21). This Protocol has served as a model for promoting and respecting women’s human rights in other regions.

Furthermore, although the African Charter on Human and Peoples’ Rights does not contain an explicit provision on the right to adequate housing, the African Commission has understood the Charter to protect housing rights through other rights, including the right to property, the right to health and the right to protection of the family. The recently adopted Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights specifically address the right to housing and include references to women concerning titles to housing and land, as well as equal rights to compensation when the right to adequate housing has been violated (para. 79 (xvii) – (xviii)).

In 2011, the Council of Europe adopted the Convention on preventing and combating violence against women and domestic violence. This treaty contains important provisions pertaining to the obligations of States parties to ensure that victims of violence have access to services, including housing, that shelters are easily accessible and available to victims, and that the authorities have the power to remove a perpetrator from the residence in situations of immediate danger.

### ***Developments in Europe***

The Charter of Fundamental Rights of the European Union protects the right to property (art. 17) and also provides for a “right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources” (art. 34). The “Race Directive” (Council Directive 2000/43/EC) and the “Gender Directive” (Council Directive 2004/113/EC) implement the principle of equal treatment irrespective of race, ethnic origin or sex in relation to access to public goods and services, including housing. The Commissioner for Human Rights of the Council of Europe has observed that “any understanding of adequate housing in relation to women must take into account the context and housing and living conditions of the community and the family in which they live.”<sup>a</sup>

The European Union has also amended the regulation of its second-largest financial instrument, the European Regional Development Fund, to make housing for marginalized communities eligible for financial support. Article 7.2 was included in the Fund’s regulations in 2006, since it was considered necessary, within the framework of an integrated urban operation, to support limited actions to renovate housing in areas experiencing or risking physical deterioration and social exclusion in States that acceded to the European Union on or after 1 May 2004. While the amendment does not contain specific provisions for women, it is relevant because in several member States housing constitutes a decisive factor for integration, in particular also for women from minority ethnic or other marginalized groups.

<sup>a</sup> “Housing rights: The duty to ensure housing for all”, available from <https://wcd.coe.int/ViewDoc.jsp?id=1292391&Site=CM> (accessed 14 March 2012).

- 
- **DISCRIMINATION AGAINST WOMEN IN THE AREAS OF HOUSING, LAND AND PROPERTY**

Women are disproportionately represented among people living in poverty, with some estimates indicating that as many as 70 per cent of the world's poor are women. In rural areas, women are often responsible for food production—women produce 60 to 80 per cent of the food in developing countries—yet, they rarely have rights regarding the land they cultivate.<sup>25</sup> Indeed, for every 100 landowners worldwide, only 20 are women.<sup>26</sup>

Regardless of the legal, social or cultural environment, discrimination is the main factor preventing women from fully enjoying their right to adequate housing in various parts of the world—both in cities and in rural areas.

### ***Discrimination against women***

Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women defines discrimination 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.*

The Committee on Economic, Social and Cultural Rights further specified in its general comment No. 16 (2005) that:

*Discrimination on the basis of sex may be based on the differential treatment of women because of their biology, such as refusal to hire women because they could become pregnant; or stereotypical assumptions, such as tracking women into low-level jobs on the assumption that they are unwilling to commit as much time to their work as men (para. 11).*

<sup>25</sup> Millennium Project Task Force on Education and Gender Equality, *Taking action: Achieving gender equality and empowering women* (London, Earthscan, 2005), p. 77.

<sup>26</sup> [www.fao.org/docrep/012/al059e/al059e00.pdf](http://www.fao.org/docrep/012/al059e/al059e00.pdf) (accessed 15 March 2012).



The concept of equality, according to which all human beings are entitled to all human rights on an equal basis with one another, is closely related to the principle of non-discrimination. In relation to gender, equality means that men and women should enjoy all human rights equally. Equality has two different sides: equality in fact and equality in law. Many constitutions recognize equality between men and women in law. But in practice, it is a very different story, as women and men rarely experience such equality. This is particularly apparent in housing.

In many parts of the world, and especially in rural areas, women's enjoyment of the right to adequate housing continues to be dependent on their access to and control over land and property.

*The sense of home in the Pacific is so strongly related to our sense of land, so to focus on housing we have to focus on land.*

Source: Testimony collected during the Pacific regional consultation.

Women face discrimination in many aspects of housing, land and property on the basis of their gender, which is often compounded by other factors such as poverty, age, class, sexual orientation or ethnicity. Numerous testimonies from the regional consultations highlight that intersectional discrimination represents a key obstacle to the realization of the right to adequate housing, as it often leads women to live in inadequate housing or in segregated communities without basic services such as safe drinking water, sanitation or electricity. Women living in extreme poverty or under occupation, indigenous and tribal women, widows, divorced or separated women, women heads of households, girls, elderly women, women with disabilities, migrant women, domestic workers, and lesbian, bisexual and transsexual women are particularly vulnerable.<sup>27</sup>

<sup>27</sup> Several mission reports of the Special Rapporteur on adequate housing consider intersectional discrimination, including those on Mexico (E/CN.4/2003/5/Add.3), the Islamic Republic of Iran (E/CN.4/2006/41/Add.2) and Australia (A/HRC/4/18/Add.2).

***Intersectional discrimination***

The Committee on Economic, Social and Cultural Rights noted the importance of addressing intersectional discrimination in its general comment No. 16 (2005):

*Many women experience distinct forms of discrimination, due to the intersection of sex with such factors as race, colour, language, religion, political and other opinion, national or social origin, property, birth, or other status, such as age, ethnicity, disability, marital, refugee or migrant status, resulting in compounded disadvantage (para. 5).*

Discrimination can take the form of exclusionary policy development, lack of control over household resources, lack of tenure security, or limited participation in decision-making over housing or community organization.

***Security of tenure and discrimination against women***

Women face severe discrimination regarding security of tenure. Tenure, the cornerstone of the right to adequate housing, can take a variety of forms and involve rental accommodation (public and private), cooperative housing, lease, owner-occupation, emergency housing and informal settlements. Whether tenure is formal or informal, it is often understood, recorded or registered in the name of men, leaving women dependent on their relations with male relatives for tenure security. While collective forms of tenure can include women, the decision-making processes are often dominated by men.

Research shows that each channel of tenure (inheritance, co-ownership, purchase or transfer from the State through land reform programmes, rent, lease, resettlement plans or anti-poverty programmes) has a gender bias: male preference in inheritance, male privilege in marriage, gender inequality in land and housing markets, and male bias in State programmes of land distribution.

Lack of secure tenure can have serious implications for women. Without control over or ownership of housing, land or property, women enjoy

little personal or economic autonomy and are therefore more vulnerable to abuse and violence within the family, community and society at large. When women's access to housing, land or property depends on a third person—their husbands, brothers, fathers or other male relatives—they become vulnerable to homelessness, poverty and destitution if this relationship comes to an end.

In many societies, the husband is automatically given the status of head of household, with implications for women's control over the marital property during the marriage or upon separation or divorce. In the absence of joint title or secure tenure, many women are expelled from their home or land upon separation or divorce.

When a widow or a separated or divorced woman loses a house or land, the consequences reverberate throughout her life and that of her children. She may end up in substandard housing without basic services such as safe drinking water and sanitation. A homeless woman who is living on the streets or in a shelter is also much more vulnerable to violence, abuse and harassment, while her ability to care for her children, ensure their education, health and physical and psychological well-being may be seriously impaired. For many women, losing their homes can also mean the end of their economic and food security. It also implies the termination of the social status and social networks they rely on for their daily survival.

Rural women in Africa, Asia or Latin America who have lost their homes following a breakdown in their relationship with their male relatives—for instance divorce, repudiation or death—often move to cities to find work and a home, and join the increasing number of female-headed households in slum areas. Figures for urban poverty in Africa show that, more than any other group, women and children bear the brunt of deprivation.

*Sources:* Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991); United Nations Human Settlements Programme (UN-Habitat), *Shared Tenure Options for Women: A Global Overview* (Nairobi, July 2005), p. v; and Millennium Project Task Force on Education and Gender Equality, *Taking Action*, p. 79.

Discrimination against women can be caused by discriminatory statutory laws, gender-neutral laws and policies that fail to take into account women's specific circumstances, the predominance of customary laws and practices, bias in the judiciary and public administration, lack of access to remedies, information and decision-making processes, and lack of awareness of rights. This discrimination is underpinned by structural and historical factors. Not only is this impermissible discrimination in violation of human rights standards, but as a result of it, women experience disproportionate violations of their right to adequate housing, as well as other fundamental human rights.

## A. DISCRIMINATORY LAWS

The comparatively disadvantaged position of women in relation to their right to adequate housing can be caused by statutory laws that directly discriminate against them.

### 1. Discriminatory constitutional provisions

Although an increasing number of constitutions recognize women's equal rights and the principle of non-discrimination, some still fail to guarantee this most basic tenet of human rights law. Moreover, while the right to adequate housing might be recognized in the constitution, a lack of or limits to non-discrimination and equality principles may often prevent women from enjoying their right to adequate housing on an equal basis with men.

#### ***Constitution of Ethiopia: Women's equal rights***

Article 35 of the Constitution of Ethiopia guarantees women's equal rights with men. Going further, it provides that:

*Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property.*

Several constitutions stipulate that their non-discrimination and equality clauses are subject to customary laws and practices, which often discriminate against women, notably regarding housing, land and property. Uganda is, in this respect, one of the few countries in Africa whose constitution specifically prohibits discrimination under customary law.

Other constitutions exclude matters related to the private and personal sphere, including marriage, divorce or devolution of property upon death from the protection afforded by their non-discrimination and equality clauses. Such exceptions often undermine women's interest and control over housing, land and property.

## **2. Discriminatory provisions in specific legislations**

National laws (e.g., family codes, civil codes, penal codes, land laws, deeds or property acts, acquisition laws, title registration laws or succession laws) may also entail discrimination against women.

Although equality and non-discrimination may be guaranteed in the constitution, specific legislations may enshrine discriminatory provisions, thereby limiting the protection afforded by the constitution. Laws dealing with marital property, title registration, ownership, slum clearance, inheritance, violence against women or rental housing are particularly important for women and can have a severe impact on their right to adequate housing. In several countries, women's access to and control over housing, land and property are restricted by laws prohibiting the registration of land titles in their name if they married in community of property or by laws regarding married women as legal minors.

Family and marriage laws often grant official marital powers or head-of-household status, and thus control over the marital property, to the male. Marriage laws can also have a severe impact on women's ability to achieve their right to adequate housing, notably in the context of separation, divorce and inheritance. When marriage laws fail to recognize certain forms of customary or religious marriages, women who got married under these regimes will not be able to benefit from the protection that can be afforded by statutory laws. Women in polygamous marriages can also suffer the effects of non-recognition: in most situations, second and third

wives are excluded from marriage laws and, as a result, are not entitled to their husband's home, land or property.

### ***Laws protecting women's equal rights to housing, land and property***

The 1996 Married Persons Equality Act of Namibia states that husbands and wives married in community of property have equal capacity to dispose of the assets and administer a joint estate. Overall, the Act provides for equality between spouses in financial transactions and marital property.

The 1999 Land Act of the United Republic of Tanzania provides for joint ownership and land occupied by both spouses is presumed to be co-registered unless otherwise indicated by the spouses.

Under the new Turkish Civil Code, the spouses are equal partners, jointly running the matrimonial union with equal decision-making powers, equal rights over the family residence and property acquired during the marriage.

The 1989 Law on Marriage and Family of Cambodia provides for equal ownership rights of spouses. Property acquired during the marriage belongs to both husband and wife, and should be divided if they divorce.

The 2007 Marriage Law of Sierra Leone (the Registration of Customary Marriage and Divorce Act, 2007) requires customary marriages and divorces to be registered. The Act also entitles a wife in a customary marriage to acquire and dispose of property.

### ***Tackling discriminatory laws in Nepal***

In 1993, women activists filed a petition before the Supreme Court, challenging a law providing that a daughter had to be unmarried and above 35 years old to receive her share of the parental property. In its decision, the Supreme Court declared the law discriminatory and asked parliament to introduce an appropriate bill to repeal it. In 2002, parliament repealed this provision by adopting the eleventh amendment to the 1963 Country Code. The amendment recognizes equal inheritance rights for daughters (from birth) and widows.

### ***Anti-discrimination law specifically addressing discrimination in housing***

The Human Rights Code of the Canadian Province of Ontario contains one of the most comprehensive laws protecting dwellers from discriminatory practices. This law not only protects persons from discrimination expressly prohibited by the International Covenant on Economic, Social and Cultural Rights, such as on account of race, sex or religion, but also specifically prohibits discrimination based on sexual orientation, marital status or family status.

*Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability or the receipt of public assistance (sect. 2 (1)).*

*Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, marital status, family status, disability or the receipt of public assistance (sect. 2 (2)).*

## **B. STATUTORY LAWS AND POLICIES FAILING TO TAKE INTO ACCOUNT WOMEN'S SPECIFIC CIRCUMSTANCES**

While discrimination may be the result of the failure to enact laws and policies, laws and policies giving equal rights to women in housing, land and property can also end up discriminating against them if they fail to recognize women's specific circumstances or address women's disadvantages. In most countries, laws and policies regulating housing, land and property are apparently gender-neutral and therefore fail to address the de facto discrimination women face in these areas.

For instance, while the laws in many countries provide for the co-ownership of housing, land and property, spouses have to mutually agree to this

and take active steps to register as co-owners. In practice, only a small proportion of usually well-educated, urban and wealthy people do so. Most of the time, women rarely acquire title. Even when joint titles are given to women, they might find it difficult to gain control over the asset, or to bequeath the land or house as they wish, or claim their share in case of marital conflict. Very often, laws requiring that the home be registered exclusively in the name of the “head of the household” tend to exclude women, as this term is typically defined—explicitly or implicitly—as applying to men. In its 2011 concluding observations on Sri Lanka, the Committee on the Elimination of Discrimination against Women noted “discriminatory practices prevent women from acquiring ownership of land since only the ‘head of household’ is authorized to sign official documentation such as landownership certificates and to receive pieces of land from Government” and recommended that the State party should “abolish the concept of ‘head of household’ in administrative practice and recognize joint or co-ownership of land.”<sup>28</sup>

Single mothers may also face a situation in which their family is not recognized as such by the State, resulting in single women and single mothers being excluded from housing programmes.

Policies made for the supposed benefit of women, such as allocating land to them, tend to fail if they expect women to provide collateral or large sums of money up front. Similarly, blanket provisions reserving, for instance, a certain percentage of the housing stock for women cannot be implemented if no provision is made for them to access credit facilities.

Gender discrimination, in conjunction with low incomes and unemployment, can make it difficult for women to access credit independently, particularly when they are staying at home to look after their children. For many women, access to credit is conditional upon their husband’s consent. With unequal access to property ownership, women often lack collateral to secure credit. In several countries, access to financing may be constrained for a person on a low income, without formal employment or with a previous negative

<sup>28</sup> CEDAW/C/LKA/CO/7, paras. 38–39.



credit rating. These factors may restrict access to mortgages for women, since they are more likely to have a low income or to stay at home to raise their children.

Insufficient government regulation over access, use and affordability of housing also tends to have a particular impact on vulnerable women (e.g., women with disabilities, single mothers living in poverty or widows) who do not have equal access to employment, information and other resources. Persons receiving welfare benefits can also be discriminated against in the private rental market with their “source of income” being cited as a reason for rejecting their applications. As women tend to rely more on the welfare system than men—in particular widows, and divorced and single women—they are more likely to be rejected, given the stigma associated with welfare beneficiaries.

### **C. DISCRIMINATORY CUSTOMARY LAWS AND PRACTICES<sup>29</sup>**

Even where statutory laws or policies do not discriminate against women, customary laws or practices may. In his work on women and the right to adequate housing, the first Special Rapporteur highlighted the prevalence of customary laws and practices that deny women’s right to adequate housing. These particularly affect women’s tenure, inheritance, control over household expenses and access to finance to acquire housing, as well as access to remedies.

While certain customary laws and practices were centred on collective ownership of property—ensuring women’s right to common resources, including land—colonial influences, the individualization of land tenure systems and land market pressures have eroded and transformed these and the forms of solidarity they entailed.

Customary laws and practices are mostly unwritten and in constant flux. They exist in parallel with statutory laws and derive their legitimacy from tradition, culture, customs or religion. Customary laws and practices,

---

<sup>29</sup> The terminology used throughout this section refers to customary laws and practices; the term includes religious laws and practices, as well as cultural and traditional practices affecting women.

which are particularly prevalent in rural areas, shape or influence family and personal matters and often determine the social position of women. While they are rarely codified, they nevertheless govern housing and landownership and transfers. In different ways, most make women's access to housing, land and property dependent on their relationship to a man—usually their father, brother or husband. This often compels women to maintain subservient relationships with male relatives, regardless of the physical, emotional or psychological impact. Generally, women already have such a low status in many countries where these customary laws and practices apply that losing their housing and socio-economic stability can devastate them.

***South Africa: constitutional deference to custom subject to the principles of equality and non-discrimination***

Even if the South African Constitution requires that the African customary legal heritage be deferred to, it also stipulates that this deference is secondary to the right to equal treatment (arts. 7, 9, 31, 36 and 211).

When customary laws and practices have a religious basis, issues of women's personal status, including matters related to marriage, divorce or inheritance, are very sensitive and even taboo subjects. Testimonies from women in several regions where customary laws and practices are prevalent highlighted the impact of the "culture of silence" that exists in relation to women's housing, land and property issues.

***Culture and tradition versus women's rights***

There is a tendency to accommodate customary laws and practices that discriminate against women as cultural, and argue that they fall under the protection of the right to manifest one's culture, belief or religion.

International human rights law offers guidance on how a potential conflict between culture or religion and human rights can be addressed. Article 5 (a) of the Convention on the Elimination of All Forms of Discrimination against Women requires States "to modify the social and cultural patterns

of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women". The Committee on the Elimination of Discrimination against Women has also expressly stated that cultural practices such as female genital mutilation and authorization of polygamy contravene the Convention. Article 18 (3) of the International Covenant on Civil and Political Rights limits the rights to religion and beliefs as follows: "freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others". In his study on freedom of religion or belief and the status of women in the light of religion and traditions (E/CN.4/2002/73/Add.2), the Special Rapporteur on freedom of religion or belief condemned discrimination and intolerance against women that are based on or imputed to religion or tradition.

Sources: Frances Raday, "Culture, religion, and gender", *International Journal of Constitutional Law*, vol. 1, No. 4 (October 2003), p. 681; webpages of the Special Rapporteur on freedom of religion or belief (see [www.ohchr.org](http://www.ohchr.org)).

Discriminatory customary laws and practices are often recognized by or reflected in statutory laws, or trump these. Several constitutions that recognize women's equal rights also allow for specific exceptions in relation to customary laws and practices.

When discrepancies exist between the two bodies of law, women will find it very difficult to assert their rights under statutory law. Customary laws and practices are also frequently used to interpret statutory law provisions to the detriment of women's rights. Consequently, even if statutory laws do not discriminate between men and women or limit women's capacity to acquire housing, land and property, in practice one of the major constraints married and unmarried women face is discriminatory customary laws and practices shaping their social position and regulating family matters.

The coexistence of these two systems also tends to create confusion resulting from conflicts between the two bodies of law and from contradictions

inherent in statutory laws. For instance, some constitutions protect both customary laws relating to land as well as the principles of non-discrimination and gender equality. In such cases, politicians, judges and others enacting and interpreting these laws often fall back on custom that may discriminate against women. There have, however, been some positive judgements. For instance, the High Court in Kenya has upheld women's equal right to inherit contrary to customary law providing otherwise. In doing so, the Court specified that "the customary law which shall abrogate the right of daughters to inherit the estate of a father cannot be applicable as it shall be repugnant to justice and morality."<sup>30</sup>

***United Republic of Tanzania: specific prohibition of the application of customary law if it denies women's equal access to and control over land***

The 1999 Village Land Act contains specific provisions on women's equal access to and control over land. The Act specifically prohibits the application of customary law if it denies women lawful access to ownership, occupancy or use of land.

*Source: UN-Habitat, Rights and Reality: Are women's equal rights to land, housing and property implemented in East Africa? (April 2002), pp. viii, 114–122.*

Decisions related to housing, land and property are often taken locally, where officials are more likely to apply customary laws and practices. Local officials are also often reluctant to get involved in housing, land and property issues as they see these as a private family or clan matter. Overall, traditional leaders and local authorities are the main enforcers of customary laws and practices. Judges also apply customary laws in legal proceeding, especially those taking place before local courts. Women who have challenged customary laws and practices have also been subjected to threats and violence from their families and communities.

<sup>30</sup> *Re The Estate of Lerionka Ole Ntutu (deceased)* [2008] eKLR, High Court of Kenya at Nairobi, Succession Cause 1263 of 2000, decided 19 November 2008.

***South Africa Constitutional Court on inheritance and customary law: Bhe v. Magistrate, Khayelitsha & Ors.***

In the *Bhe Case*, the Constitutional Court of South Africa held that legislation that recognized customary law that prevented women from accessing equal rights to inheritance was discriminatory and should be struck down.

Its judgement concerned three inheritance cases. Applicants and public interest organizations challenged section 23 of the Black Administration Act, which provides for the application of customary law in succession matters. Customary law in South Africa favours male primogeniture in inheritance matters.

The Constitutional Court declared the customary rule of primogeniture unconstitutional and struck down the entire legislative framework regulating intestate deceased estates of black South Africans. According to the Court, section 23 of the Black Administration Act was anachronistic since it ossified “official” customary law and grossly violated the rights of black African persons relative to white persons. With regard to the customary law rule of male primogeniture, the Court held that it discriminated unfairly against women and illegitimate children on the grounds of race, gender and birth. The result of the order was that all deceased estates were to be governed, until further legislation, by the Intestate Succession Act 81 of 1987, whereby widows and children can benefit regardless of their gender or legitimacy. The Court also made orders for the division of estates in circumstances where the deceased person was in a polygamous marriage and was survived by more than one spouse.

*Source:* 2005 (1) BCLR 1 (CC), 15 Oct. 2004.

Access to financial resources and banking schemes to purchase housing or land can also be limited by discriminatory customary laws and practices, which may, for instance, require women to have the authorization of a male relative to access such banking schemes.

Despite the challenges posed by discriminatory customary laws and practices, positive developments have taken place in some areas where women and housing groups have started to address these issues. Legal aid organizations in rural Sierra Leone provide women with free legal advice, mediation between family members and within the community, and awareness-raising workshops on women's rights with members of the local community and local government. Amnesty International found that, in general, rural women were empowered by this assistance and believed these services were effective in resolving disputes. Women became aware of their rights, learned how to challenge or appeal rulings they felt were unjust or unfair, and became aware of other services available to them in the community.<sup>31</sup>

#### D. BIASED ATTITUDES

Gender bias within the administration and the judiciary also constitutes a serious hurdle to women's enjoyment of the right to adequate housing. While formal laws and policies appear to contain no evidence of gender discrimination, gender-biased attitudes can be dominant in land and housing administration, the legal systems or with landlords, making it extremely difficult for women to secure their right to adequate housing under the formal law. Issues related to marriage, inheritance or divorce are often perceived as private or family matters that should remain beyond the reach of the State. Traditional leaders—notably elders—and local authorities, who are the primary enforcers of customary laws and practices, also tend to have biased attitudes against women. Judges might also be hostile to the idea of ensuring women's equal access to and control over housing, land and property.

In several countries, single and divorced women wishing to buy or rent houses continue to face many obstacles. Landlords or property managers may also refuse to rent to teenage mothers or low-income minority women.

<sup>31</sup> Amnesty International, "Sierra Leone: Women face human rights abuses in the informal legal sector", AI Index: AFR 51/002/2006 (17 May 2006).

## E. LACK OF ACCESS TO REMEDIES AND AWARENESS OF RIGHTS

*If women knew they had rights we would have a different situation.*<sup>32</sup>

In many countries, there are no remedies to challenge discriminatory practices in housing, land or property matters. When remedies are available, women face serious hurdles in obtaining redress, both in the formal and in the customary systems. Deeply rooted social attitudes, gender bias in the judiciary, corruption, physical isolation, lack of awareness of rights, as well as limited confidence to pursue their claims can prevent women from obtaining redress in housing-, land- and property-related cases.

Women also often have fewer financial, political and legal resources to publicize and challenge particular violations before the courts, within the political system, the media or elsewhere. Women with limited social and economic resources are often prevented from pursuing legal claims against male relatives, whether through informal or statutory means, especially in the absence of legal aid schemes. In various countries, women appearing in courts have to be accompanied by a man, which puts them in a difficult position. Overall, few women pursue claims for their right to adequate housing against male relatives, as evidenced by the very sparse case law.

Following legal or other avenues to challenge discriminatory decisions affecting the right to adequate housing requires money, time and knowledge of a system women may not be familiar with. Access to administrative or judicial procedures providing redress for violations of statutory laws can be a problem in itself for most women. The costs and bureaucratic hurdles stop many women from pursuing housing, land and property claims. As they are constrained by their various daily responsibilities, women are often unable to go to court. Travel costs for

---

<sup>32</sup> Testimony from Tonga collected during the Pacific regional consultation.

women in rural areas, along with the cost of legal representation, prevent many from pursuing legal remedies, as legal aid programmes for women are rare. In jurisdictions offering some form of legal aid, it is often restricted to criminal matters. A Kenyan widow said that to go to court she had to pay, which was a waste of the money she needed for school fees.

When women do raise issues related to control over and ownership of housing, land and property, they often do so against their families, clans and communities. As a result, they may face serious harassment, violence or exclusion when they attempt to assert their rights. Fear of violence and social exclusion, along with actual threats, harassment and violence from the family and community at large, can therefore prevent women from pursuing legal claims.

Women also face serious hurdles in accessing remedies when issues related to housing, land and property are adjudicated by the family or the clan. Very often, such disputes are addressed at the local level, where customary laws and practices are given precedence over statutory laws. Judges in local courts are usually local chiefs and are, therefore, often experts only in custom but not in statutory law.

Many customary forums for decision-making and redress are dominated by male leaders and do not provide the space for women to participate equally. This creates a significant obstacle to women seeking redress for the imposition of custom, particularly in countries where it is legally recognized.

Another factor that directly affects women's access to remedies in the context of housing, land and property is their inadequate knowledge and lack of awareness of their rights. Even though lack or loss of housing, land and property affects them adversely, women are often not aware of their rights under the constitution or various laws, not to mention international human rights law.



## **F. LACK OF PARTICIPATION IN DECISION-MAKING**

Women are often unable to participate equally in decision-making processes that are relevant to the right to adequate housing, be it at the family, community or State level. Testimonies collected during the regional consultations underlined that even though equality between men and women is formally recognized in the law, the belief that women are unable to make decisions for themselves, their families and communities and that it is not their social role to do so, continues to prevent women from fully participating in decision-making related to housing, land and property.

Women's participation in customary forums is very limited, as decision-making is generally open to men only. Within the family women are often not involved in decisions pertaining to housing and land, particularly if they do not have sons. Women also rarely have a say in how the household budget is spent, affecting their ability to improve their housing. Gender bias within the administration also often results in women being absent from the processes where Government policies on housing, land and property are developed, with respect to slum-upgrading programmes, for instance.

Lack of women's participation in decision-making is particularly acute in post-conflict situations, when issues related to housing, land and property restitution are addressed. Women are often excluded from peace negotiations and peace agreements. As a result, women who were displaced during conflicts often find it difficult and problematic to return to their original homes, land and properties.

***The Principles on housing and property restitution for refugees and displaced persons<sup>a</sup>***

12.2 States should ensure that housing, land and property restitution procedures, institutions and mechanisms are age and gender sensitive, and recognize the equal rights of men and women, as well as the equal rights of boys and girls [...].

14.2 States and other involved international and national actors should, in particular, ensure that women [...] are adequately represented and included in restitution decision-making processes, and have the appropriate means and information to participate effectively. The needs of vulnerable individuals including [...] single female heads of households [...] should be given particular attention.

<sup>a</sup> Endorsed by the United Nations Sub-Commission on the Promotion and Protection of Human Rights in 2005.



## ● **SELECTED ISSUES**

The work and consultations carried out by the Special Rapporteurs on adequate housing has highlighted that the discrimination women face in housing, land and property tends to affect them disproportionately in the following contexts: inheritance, living conditions, forced evictions, domestic violence, HIV/AIDS and natural disasters.

Testimonies collected by the Special Rapporteur have also shown that this discrimination tends to increase their exposure to violence within the family and society and by the State. Testimonies clearly point to such violence as a common denominator in areas where women's right to adequate housing is weakly implemented, as illustrated below. In many instances, women also pointed to their serious difficulties to inform others publicly of the violations they face or to seek redress and how a "culture of silence" allows these violations to go unpunished.

### A. INHERITANCE

*When my husband died, his relatives came and took everything. They told me to take my clothes in a paper bag and leave. I left, because if I had resisted they would have beat me up. The relatives identified someone to inherit me. It was a cousin of my husband. They told me, "Now you are of less value, so we'll give you to anyone available to inherit you." I didn't say anything. [...] This is customary. [...] My in-laws took everything—mattresses, blankets, utensils. They chased me away like a dog. I was voiceless.<sup>33</sup>*

For many women, the low level of security of tenure they experience is due to the discrimination they face in relation to the inheritance of housing, law and property. This discrimination can be enshrined in statutory laws, as well as in customary laws and practices that fail to recognize women's equal rights to men in inheritance. As a result, women are either entitled to a lesser share than male relatives, or are simply dispossessed of any heritage of their deceased husbands or fathers.

<sup>33</sup> Human Rights Watch, *Double Standards: Women's Property Rights Violations in Kenya* (March 2003), p. 17.

Unequal rights in inheritance are also closely related to broader discrimination against women in marital property rights. Laws and practices which discriminate against women in the ownership and management of marital property are discussed in more detail in chapter II, section A, above.

### ***Human rights and inheritance***

In its general recommendation No. 21 (1994), the Committee on the Elimination of Discrimination against Women stated that:

*There are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband's or father's property at his death than would widowers and sons. In some instances, widows are granted limited and controlled rights and receive income only from the deceased's property. Often inheritance rights for widows do not reflect the principle of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished (para. 35).*

The Human Rights Committee, in its general comment No. 28 (2002) on the equality of rights between men and women, also stated that:

*[...] 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 (para. 26).*

Under many customary laws and practices, housing, land and property continue to be regarded as falling under the control of men. As a result, many widows are barred from inheriting property, are evicted from their lands and homes by in-laws and are stripped of their possessions. Similarly, daughters are often not allowed to inherit property on equal terms with their brother(s), on the pretext that they “will not need it” because they will eventually marry. Sometimes, women are given token property, such as household items or pieces of furniture (movable property). In general,

women's claims to inheritance can result in social exclusion, not only from the family but also from the community.

Violence is common within the context of inheritance. A woman's property is often forcibly seized by relatives, an attempt that can involve harassment, threats, physical intimidation, beating, rape and even murder. Even in cases where women are entitled to inherit part of their deceased father's or husband's property, social stigma, family pressure and violence often force them to give up their share in favour of male relatives. A woman can be at increased risk of violence from her in-laws or community members if she decides to fight for her share of the inheritance. This violence is frequently committed with impunity, as these matters are seen as private family matters.

#### ***Sierra Leone: new inheritance law ensuring women's rights***

In June 2007, the Sierra Leonean Parliament enacted a new inheritance law (Devolution of Estates Act) that entitles spouses (married under civil or customary law), as well as co-habiting partners, to a legal right to inheritance. This new law entitles women to property upon the death of their husbands, without undue interference from extended family members. Previously, the property of those who died intestate (without a will) would revert to their parents and brothers, while under the new law the majority of the estate will devolve to the widow and children.

#### ***Rwanda: new inheritance law ensuring women's rights***

Following the 1994 genocide and the widespread emergence of serious housing and land problems facing widows unable to reclaim their original homes, a new law on matrimonial regimes, liberalities and successions was adopted in 1999. While its implementation has been slow, it was crucial in recognizing equal inheritance rights for sons and daughters, creating a choice of property regimes upon marriage, and allowing a widow to administer the property.

In the Pacific region, landownership on most islands is still predominantly clan-based and rests with the male members of the clan. As a result, marital homes or clan land cannot be registered in the names of both spouses and women's monetary and non-monetary contributions to homes or clan land are not necessarily taken into consideration in any claim. The clan chiefs are the decision makers and, in most places, women cannot become chiefs. Customary laws and practices perpetuate a patriarchal system that discriminates against women, notably in relation to inheritance. The system of clan ownership is so strong on many islands that it is recognized even within the formal legal systems.

### ***Inheritance in Tonga***

In Tonga, under both statutory and customary laws, control and ownership of land and housing are male-specific and pass down only to male heirs. Widows are entitled to a life estate in the husband's property, until they die, get remarried or have sex outside of marriage. In 2010, the Royal Land Commission was mandated to examine land laws and practices with a view to providing more effective and efficient practices. To this effect, a series of meetings were scheduled in 2010, but as of 2011 the land law in Tonga has not been amended.

In several African countries, inheritance is an area where women face severe discrimination—enshrined both in statutory laws, as well as in customary laws and practices. Many widows are excluded from inheriting and daughters only rarely inherit. The high incidence of HIV/AIDS in the region has exacerbated this inheritance question.<sup>34</sup> Many widows, whether living in rural or in urban areas, have their property, including their land, home, vehicles, livestock, furniture and household items, taken following the death of their husbands. Widow's inheritance can also be subject to certain conditions. In some cases, widows can be coerced into the customary practice of "wife inheritance", whereby a widow is "inherited" by a male relative of her deceased husband. Many women cannot stay

<sup>34</sup> *Double Standards*, p. 16.

in their homes or on their land if they are not “inherited”. Women who refuse to be “inherited” become outcasts and find it difficult to survive, as they have lost their house and land and therefore their livelihoods. In addition to wife inheritance, “cleansing practices” also exist in certain communities. In order to “cleanse” the widow of her husband’s spirits, she is forced to have sexual intercourse with a social outcast, who is paid for his “services”. This is also often a condition for the widow to be able to retain her house and belongings. Women who refuse to take part are chased away by their in-laws. The choice is then often to return to their parents’ home or to move to urban areas, usually slum settlements.

***Examples of discriminatory laws in Africa affecting women’s equal rights in inheritance***

In Botswana, the Constitution specifically recognizes gender equality. However, under customary law, women are discriminated against in the acquisition of property, inheritance and other areas. When their husbands die, widows face the threat of losing their homes and properties.<sup>a</sup>

Section 16 of the Deeds Registration Act of Swaziland excludes registration of land titles in the name of women married in community of property, although a judge recently ordered that these discriminatory provisions should be removed from the country’s statutes.

In Uganda, despite the constitutional provision prohibiting discrimination against women and the Land Act expressly providing rights and protections for women and children, it is said that under customary law “women do not own land”. Inheritance law grants a widow only 15 per cent of the estate if her husband dies intestate, although there is reportedly no way to enforce even this minimal entitlement if the family of the husband opposes the widow.<sup>b</sup>

The Constitution of Zambia guarantees, in its article 23, non-discrimination in law and application, notably on the basis sex, however, it makes an exception for all laws regarding, in particular, adoption, marriage, divorce or devolution of property upon death.



Article 23 of the Constitution of Zimbabwe protects equality and non-discrimination. However, section 23 (3) allows for exceptions, notably in relation to matters of personal law and the application of “African customary law”.

- <sup>a</sup> UN-Habitat, *Land Inventory in Botswana: Processes and Lessons* (2010), p. 42.
- <sup>b</sup> UN-Habitat and USAID, *A Guide to Property Law in Uganda* (2007), p. 42–43.

In Northern Africa and the Middle East, women also continue to face discrimination owing to the application of customary laws and practices that are often reflected in statutory laws. The rules governing inheritance are rooted in Islam and its interpretation, whereby women get a lesser share than their male counterparts, usually one half of the amount that a male relative would get with the same degree of relatedness to the deceased. Women also tend to give up or renounce their share under social and family pressure. In Turkey, which has instituted secular law, women and men can inherit property on equal terms. However, tradition renders the application of the law very difficult. If women claim their right to equal inheritance, they might face violence, threats, harassment, as well as social exclusion. In Jordan, some communities consider that it is shameful for a woman to insist on receiving her inheritance, as it implies that her brothers are unwilling or unable to support her. Even if a woman is given her due share, actual control over it is another matter and, if she insists on independently managing it, she may alienate herself from those on whom she is dependent for housing and financial support.

***Reform of the Family Code in Morocco: persistent inequalities related to inheritance***

In Morocco, the new Family Code (*Moudawana*) adopted in 2004 brought in several reforms aimed at incorporating the principles of equality and non-discrimination. Yet, inequalities between men and women continue in relation to divorce and inheritance. Consequently, women are usually entitled to a smaller share than men. In certain

cases, women will not even receive their share because: (1) the father gave part or all of his property to his sons before he died; (2) the father established an endowment to the exclusive benefit of his sons; (3) the woman relinquishes her share to her brother(s) under pressure or to maintain good relations with her family.

Source: Centre on Housing Rights and Evictions (COHRE), *In Search of Equality: A Survey of Law and Practice Related to Women's Inheritance Rights in the Middle East and North Africa (MENA) Region* (Geneva, 2006), p. 75.

### ***Occupied Palestinian territory: measures to address renunciation of inheritance by women***

To discourage the practice of women renouncing their share of inheritance in favour of male relatives in the occupied Palestinian territory, the Head of the Higher Council of Sharia Jurisdictions and Head of the Sharia High Court issued a notice in 2011 which imposed certain conditions before a woman could be considered to legally renounce her inheritance share. The conditions include the passage of at least four months after the deceased person's death before a renunciation of inheritance can be registered.<sup>o</sup> The relevant authorities are also required to verify the real value of the inheritance share, based on a report by three experts authorized by the municipality or local council.

<sup>o</sup> Notice number 57/2011 issued on 10 May 2011 by the Head of the Higher Council of Sharia Jurisdictions and Head of the Sharia High Court.

In some families with large landholdings in Sind and the lower Punjab in Pakistan, the perceived need to "keep property within the family" has manifested itself in practices such as forced marriage or *haq bakhshwana* (forgo one's right). Where there is no suitable match within the family, the woman is "married" to the Koran, remaining a lifelong spinster, dependent on brothers and other male relatives.

In Georgia, customary law provides that the majority of the family property will be inherited by the sons. In Azerbaijan, when a daughter is married and leaves her home, her father says “now only your corpse may return”. If the daughter returns home, her father and community will pressure her to go back to her husband’s family because she is now part of that family and no longer a “burden” on her parents. As a result of these cultural practices, women do not inherit housing or property from the family into which they are born or the family into which they marry.

### ***Inheritance in Muslim countries and communities***

The first Special Rapporteur examined the family and inheritance laws in Muslim countries and communities and the impact they have on women’s right to adequate housing. Islam-inspired law—in particular the sharia—and its jurisprudential interpretation (*fiqh*) have a major impact on family life, covering issues such as divorce, polygamy, property settlements upon divorce and inheritance.

Traditional interpretations of Muslim laws, often applied through statutory law, generally give Muslim female heirs a lesser share than parallel male heirs. Women’s unequal inheritance share in Muslim countries and communities is not derived exclusively and/or directly from Islam, but has evolved through socio-cultural traditions. Hence, wide variations can be seen across Muslim countries and communities.

Certain Shia jurisprudence gives to daughters their parents’ entire estate, whereas some Sunni interpretations allow a sole surviving daughter merely half of the estate or two or more daughters a maximum of two thirds. In the Islamic Republic of Iran, the Special Rapporteur noted that women are, as a rule, entitled to half of the inheritance that men would receive and when a widow inherits from her husband, she does not have the right to inherit land, having only rights over liquid assets. A widow’s share in her husband’s inheritance is of only one eighth if she has children or one quarter if she does not.

While recognizing the diversity of Muslim communities, the Special Rapporteur found that this dual approach affected women: while Islam recognizes women’s right to inherit property, women’s unequal

share in inheritance compared to that of men is discriminatory and inconsistent with international human rights law. Furthermore, under custom, women are often coerced into surrendering their property rights. Some Islamic commentators, such as Shirin Ebadi, Nobel Peace Prize Laureate and human rights lawyer, and others, have pointed out that within the original teachings of Islam, the Koran and sharia, there is nothing that prevents an interpretation that gives women and men equal rights in inheritance matters.

*Source:* E/CN.4/2006/118.

While the preference for male heirs is still the rule in many parts of the world, some cultures favour female heirs. For example, the Khasi people of north-eastern India follow a matrilineal system of inheritance, which provides that only the youngest daughter is eligible to inherit ancestral property. In Bougainville (Papua New Guinea), the indigenous matrilineal system whereby women own and inherit land is still practised today.

## **B. FORCED EVICTIONS**

Forced evictions are carried out in a variety of circumstances and for various reasons such as to make way for development and infrastructure projects, urban redevelopment or city beautification projects, conflicts over land, the removal or reduction of housing subsidies for low-income groups, forced population transfers and forced relocations in the context of armed conflict. The Committee on Economic, Social and Cultural Rights noted in its general comment No. 7 (1997) that women tend to be disproportionately affected.

### ***Definition of forced evictions under international human rights law***

Protection against forced evictions is a key element of the right to adequate housing and is closely linked to security of tenure. Forced evictions are defined 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>9</sup>

Regardless of their cause, forced evictions are considered a gross violation of human rights and a prima facie violation of the right to adequate housing. Large-scale evictions in general can be justified only in the most exceptional circumstances and only in accordance with the relevant principles of international law.

If eviction may be justifiable, because the tenant persistently fails to pay rent or damages the property without reasonable cause, the State must ensure that it is carried out in a lawful, reasonable and proportional manner, and in accordance with international law. Effective legal recourses and remedies should be available to those who are evicted, including adequate compensation for any real or personal property affected by the eviction. Evictions should not result in individuals becoming homeless or vulnerable to further human rights violations.

In general, international human rights law requires States to explore all feasible alternatives before carrying out any eviction, so as to avoid, or at least minimize, the need to use force. When evictions are carried out as a last resort, those affected must be afforded effective procedural guarantees, which may have a deterrent effect on planned evictions. These include:

- An opportunity for genuine consultation;
- Adequate and reasonable notice;
- Availability of information on the proposed eviction in reasonable time;
- Presence of Government officials or their representatives during an eviction;
- Proper identification of persons carrying out the eviction;
- Prohibition on carrying out evictions in bad weather or at night;
- Availability of legal remedies;

➤ Availability of legal aid to those in need to be able to seek judicial redress.

- ° General comment No. 7 (1997), para. 3. The Committee goes on to note that “the prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.”

Women are often exposed to violence and intense emotional stress before, during and after an eviction, because of their close ties to the home and their role as caregivers for the entire family.<sup>35</sup>

Before an eviction, the psychological stress on learning about the eviction can destabilize the family atmosphere and cause emotional trauma. Sometimes, rape is also used by the evictors to break resistance.<sup>36</sup>

Women’s role in managing the household means that they may be the only ones at home at the time of the eviction, having to argue, negotiate and confront the evictors. They are also more exposed to violence as they are deliberately targeted by those carrying out the eviction. During evictions verbal abuse and beatings, rape and even killing are common.<sup>37</sup>

Following an eviction, women are also often rendered more vulnerable to abuse. The lack of shelter and privacy can lead to increased exposure to sexual and other forms of violence. Loss of self-esteem among men, resulting from the loss of housing, land or livelihood can also manifest itself in violence against women. Women’s lowered self-esteem, feelings of helplessness, increased tension and fear also tend to intensify following forced evictions.<sup>38</sup>

<sup>35</sup> COHRE, *Violence: The impact of forced evictions on women in Palestine, India and Nigeria* (2002), p. 74–75.

<sup>36</sup> “Economic and social policy and its impact on violence against women” (E/CN.4/2000/68/Add.5, paras. 52–57).

<sup>37</sup> *Ibid.*

<sup>38</sup> *Violence: The impact of forced evictions on women*, p. 74.

***Forced evictions in Myanmar and the impact on women***

Over 3,000 Shan from around 1,400 villages have been forcibly evicted by the military and moved to military-controlled relocation sites. Shan women have been reportedly raped ahead, during and following their relocation: between 1996 and 2003, there were 311 reported incidents of rape and other forms of sexual violence against Shan women.

*Source:* Asia regional consultation.

***Forced evictions in Indonesia and the impact on women***

Testimonies collected during the Asia regional consultation highlighted that resistance during forced evictions in Indonesia was met with violence by the State authorities, which targeted women. During evictions, women were reportedly subjected to verbal abuse, beatings, rape and killing.

Forced evictions also tend to have a much greater impact on women because of the role they play in the house and their greater contribution and commitment to sustaining the home. Women suffer not only the loss of their homes, but also the loss of their livelihoods, relationships and support systems. The destruction of a community as a whole has a strong effect on women. The places they used to go for support and social interaction are often destroyed. The first Special Rapporteur on violence against women noted in this respect that “while the entire family is affected by forced evictions, again it is the women who suffer most. Women will have to cope with the new circumstances, will have to fulfil their responsibilities as before, but with more limited means, and will need to work harder to make ends meet”.<sup>39</sup>

If compensation and resettlement packages are given to those affected by a forced eviction, women are often at a disadvantage, as these packages

<sup>39</sup> E/CN.4/2000/68/Add.5, para. 55.

are based on legal ownership of housing, land or property. Since in many societies women do not have legal rights to housing, land or property, they are not eligible. Women might also be excluded as a result of gender-biased definitions of families that assume men are heads of household and women are dependants.

***Cambodia: discrimination against women following an eviction***

In cases of eviction, women reported common discrimination when dealing with officials and private companies to negotiate compensation, the terms of relocation and access to basic services. For female heads of household, the situation appears to be worse, with reports of women who were not accompanied by a man being paid less compensation and offered smaller plots on relocation sites.

Lack of basic services such as safe drinking water, sanitation or electricity is also very common following an eviction. Even when resettlement is provided, the relocation sites often lack such basic infrastructure. In these cases, women tend to be the ones responsible for ensuring a continued supply of safe drinking water for their families and may face harassment, physical attacks and rape when walking long distance to collect water. The carrying of such heavy loads can also have a detrimental impact on their health. The lack of adequate sanitation facilities ensuring privacy in resettlement sites can also increase women's vulnerability to violence and lead to social stigma and isolation.

Another problem is that women may lose their livelihoods as a result of an eviction. Many women in slums and informal settlements carry out some kind of commercial activity or other casual work. Because relocation sites are normally far from city centres, such activities are compromised by the high costs of transport. Although rehabilitation packages following an eviction can sometimes include opportunities for alternative occupations (e.g., offers of one job per family as compensation), gender bias within the family, community or society at large may prevent women from taking advantage of these opportunities. Furthermore, their choice of alternative employment can be limited because of their lower level of skills, education, experience and mobility.



***Basic principles and guidelines on development-based evictions and displacement: specific gender requirements***

26. States must ensure the equal enjoyment of the right to adequate housing by women and men. This requires States to adopt and implement special measures to protect women from forced evictions. Such measures should ensure that titles to housing and land are conferred on all women.

33. Impact assessments must take into account the differential impacts of forced evictions on women [...]. All such assessments should be based on the collection of disaggregated data, such that all differential impacts can be appropriately identified and addressed.

38. States should explore fully all possible alternatives to evictions. All potentially affected groups and persons, including women, [...], have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider. In the event that agreement cannot be reached on a proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate.

47. Evictions shall not be carried out in a manner that violates the dignity and human rights to life and security of those affected. States must also take steps to ensure that women are not subject to gender-based violence and discrimination in the course of evictions [...].

53. Special efforts should be made to ensure equal participation of women in all planning processes and in the distribution of basic services and supplies.

56. [...] (b) Resettlement must ensure that the human rights of women [...] are equally protected, including their right to property ownership and access to resources; [...].

62. Women and men must be co-beneficiaries of all compensation packages. Single women and widows should be entitled to their own compensation.

Source: A/HRC/4/18, annex I.

An additional type of forced eviction that affects only women is that carried out by family members, with the acquiescence of the State. In its general comment No. 7 (1997), the Committee on Economic, Social and Cultural rights noted in this respect that “women [...] are especially vulnerable [to forced evictions] given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including homeownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless” (para. 10). In the case of forced evictions carried out by family members, a State’s liability can arise, first, from an omission to ensure women’s legal security of tenure and, second, from a failure to punish the perpetrators. A lack of due diligence to prevent, prosecute and punish this type of forced evictions would trigger a State’s liability under international human rights law. The Special Rapporteur has indicated in this respect that forced evictions of women resulting from domestic violence comes within his mandate but also within that of the Special Rapporteur on violence against women.

#### ***Forced evictions by family members – testimony from Fiji***

Sera got married to Joe and moved to his village. Sera’s family got her a job in Sydney, Australia. A few months later they also found a job for her husband in Sydney. The couple worked and sent money back home and built their matrimonial house in Joe’s village. Sera returned to the village and matrimonial house. Joe remained in Sydney and had an affair. Joe asked her to move out of the matrimonial house and harassed her. She approached the *Turaga ni Koro*, but they told her to move out of the house because it was the husband’s village.

Source: Case study collected during the Pacific regional consultation.

### C. INADEQUATE HOUSING CONDITIONS

*[Home] means somewhere safe, that I have my space that's mine, that nobody else goes into but me unless I want them to come into that place. It means not having to live on someone's couch [...] or having to sleep on a bench all night until daybreak where I can go to a drop-in centre and eat and have coffee or a nap. [...]*

*Home is a place that is safe and secure and you don't have anybody there who is going to hurt you.<sup>40</sup>*

Inadequate housing is characterized by overcrowding, indoor pollution, inadequate building materials and the absence of safe drinking water, sanitation and electricity. Poverty in urban areas means not only very low incomes and associated hunger, but also overcrowded housing conditions, isolation from basic services and livelihood opportunities and exposure to a number of hazards, such as floods, landslides or fires.

In many parts of the world, an increasing number of women are living in inadequate housing. During his mission to Peru in March 2003, the Special Rapporteur noted that a disproportionate numbers of women lived in inadequate and insecure housing, which lacked safe drinking water, sanitation and basic services. Moreover, testimonies that he heard during the regional consultations highlighted that programmes aimed at addressing inadequate housing conditions often excluded single women or single mothers.

***Single women or single mothers excluded from programmes aimed at addressing inadequate housing conditions***

In the Irkutsk region in the Russian Federation, programmes have been designed to address the precarious housing situation of young families, but single mothers are often excluded as they are not considered "family", although the region has a disproportionately high number of elderly women, divorced women and widows.

<sup>40</sup> Rusty Neal, "Voices: women, poverty and homelessness in Canada" (Ottawa, National Anti-Poverty Organization, May 2004), pp. 3 and 4.

Inadequate housing conditions have specific and wide ramifications for women as they tend to spend more time at home than men. "Home" is a place where women interact socially and where many of them work. It is also where they care for their children. A home provides women a secure place to live, ensuring privacy and protection against harassment or attacks. Conversely, women living on the streets become much more vulnerable to violence and sexual assaults. Testimonies from the North American regional consultation pointed to reports of systematic murders and disappearances of homeless indigenous women in Canada.

***India: lack of adequate housing and violence against nomadic women***

*If we had a house we could lock we would be safe. At the moment, living under the trees, we are always open to abuse and violence against women ...*

Dholi belongs to the Bhavaria nomadic tribe in India. National park policies prohibit nomads from living in the forests in accordance with their traditional culture. Wherever they try to settle, nomads are often harassed by local communities. As the men often have to travel for work, women face the brunt of the harassment, which includes the burning-down of houses and violence. When Bhavaria women try to access sources of water, they are often beaten up and raped by members of the communities which own these sources.

Source: Testimony collected during the Asia regional consultation.

Indoor pollution resulting from poor-quality stoves and inadequate ventilation, lack of protection from the heat or the cold tend to have a disproportionate impact on women and their health. The lack of safe drinking water, sanitation or electricity within the home affects women in particular, as they are responsible for collecting water and fuel. The time needed to collect and carry water places a heavy burden on them and is one explanation for the very large gender gaps in school attendance in many countries.<sup>41</sup> Physical security may also be at risk when access to safe

<sup>41</sup> United Nations Development Programme, *Human Development Report 2006: Beyond Scarcity—Power, Poverty and the Global Water Crisis* (Basingstoke, United Kingdom, Palgrave Macmillan, 2006), p. 47.

drinking water and sanitation is restricted. In Morocco, women reported being vulnerable to rape as they had to walk long distances to access water. During the Pacific regional consultation, women identified lack of sanitation as one of the most critical housing-related issues for them.

### ***Access to adequate sanitation and violence against women***

In informal settlements in Nairobi, women face particular challenges to have access to safe sanitation. In some cases, they may use pit latrines, which are shared by as many as 50 people, and they often have to walk a considerable distance to reach them. Public latrines cost money, which these women frequently lack, and the facilities are closed in the evening. The lack of privacy afforded by shared latrines affects women differently, particularly during their menstruation. In general, women do not dare access sanitation facilities at night because of the high risk of violence, including sexual violence. Women also bear the brunt of the health consequences of inadequate sanitation, having to care for children and other family members who become ill and pay for health care.

*Source:* Amnesty International, "Insecurity and indignity: Women's experiences in the slums of Nairobi, Kenya", AI Index: AFR 32/002/2010 (7 July 2010).

### ***Cambodia: precarious conditions in slums deeply affect women***

Instability resulting from inadequate living conditions deeply affects women's daily lives. Owing to the precarious conditions in slums, women are always afraid of fires or floods or concerned about the well-being of their children. Women in Cambodia testified that there were very limited channels of dialogue with officials on possible upgrading. They were repeatedly told that they were illegal residents and, for that reason, no improvements could be made to the sites.

Lack of space and overcrowding may also have an impact on women's physical and psychological well-being. Violence against women can result from inadequate housing conditions. The location and environment of their homes may also affect their physical safety. Women living in poor urban areas may be at greater risk of violence, rape, and physical and mental abuse. In Sri Lanka, a study on domestic violence in the plantation sector highlighted that women living in a single room with their entire family are more likely to experience domestic violence due to the lack of space, privacy and proximity to family members.<sup>42</sup>

Segregated housing, one of the main consequences of intersectional discrimination, also has specific ramifications for women. Segregated housing is often informal, inadequate and substandard, and characterized by a lack of public transport and basic services, including schools and health centres. Testimonies from the regional consultation for Central Asia and Eastern Europe reported cases of ambulances not taking women to hospital to give birth. As segregated housing tends to be informal, residents lack a formal address or registration. This is an additional obstacle for women who are, as a result, unable to access basic services for themselves or their children.

Segregated settlements are also away from city centres and job opportunities, and lack adequate roads and connections to the public transport network.

### ***Segregated housing and the impact on Roma women***

Throughout Europe, Roma are living in segregated settlements with substandard housing, often located in toxic areas, near highways, waste dumps, floodplains or areas susceptible to natural disasters. The settlements often lack running water, sewage systems, electricity or heating and are far from schools and hospitals. This not only has an impact on health but also significantly increases the burden on women.

<sup>42</sup> Asia regional consultation.

Testimonies from the regional consultations also highlighted instances of women being forcibly separated from their children on the grounds of inadequate living conditions. In many parts of the world, children may be removed from their parents' care and placed in State care if their housing conditions are judged to be inadequate. Testimonies indicated that, in Canada, women who cannot afford adequate housing or who are homeless are considered to be unable to care for their children adequately.<sup>43</sup> This is particularly the case for indigenous women, who also face significant cultural barriers in accessing shelters, State assistance and legal redress. In the United States, the Special Rapporteur on the human right to safe drinking water and sanitation expressed concern about inability to pay one's water bill leading to disconnections from the water network. With no running water, these houses can be deemed unfit for habitation and children are taken away from parents on this basis.<sup>44</sup>

#### **D. THE LINKS BETWEEN DOMESTIC VIOLENCE AND WOMEN'S RIGHT TO ADEQUATE HOUSING**

*In Vanuatu, when a woman marries she goes to her husband's place. Any orders for land or housing against the husband (even in situations of domestic violence) are met with very aggressive behaviour because the common view is that it is his clan's land and she is living on his clan's land, and there is no shared ownership.<sup>45</sup>*

Testimonies collected by the Special Rapporteur have highlighted the close link between domestic violence and women's right to adequate housing. The term "domestic violence" refers to violence occurring within the private sphere, generally between individuals who are related by blood, by law or through intimacy.<sup>46</sup>

<sup>43</sup> See, for instance, A/HRC/10/7/Add.3, para. 64.

<sup>44</sup> A/HRC/18/33/Add.4, para 51.

<sup>45</sup> Testimony collected during the Pacific regional consultation.

<sup>46</sup> E/CN.4/1996/53, para. 23.

### ***Violence against women***

Gender-based violence, or violence against women, has been defined by the Committee on the Elimination of Discrimination against Women as “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”

Violence against women can occur at different levels, within the family, community and by the State. According to the Committee, family violence is one of the most insidious forms of violence against women, with lack of economic independence forcing many women to stay in violent relationships.

Violence against women is a manifestation of historically unequal power relations between men and women on both individual and collective levels. Acts and threats of violence against women serve to perpetuate these unequal power relations. The 1993 Declaration on the Elimination of Violence against Women states that “violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared to men”.

*Sources:* Committee on the Elimination of Discrimination against Women, general recommendation No. 19 (1992), paras. 6 and 23; and preamble to General Assembly resolution 48/104.

The lack of protection of women’s right to adequate housing can make them more vulnerable to domestic violence. In particular, the strong correlation between the lack of secure tenure and domestic violence has come up throughout the work of both Special Rapporteurs. Laws that acknowledge the nexus between violence against women, especially domestic violence, and women’s right to adequate housing are beginning to emerge, including the Domestic Violence Law in Mongolia, as well as the Spanish Law on Comprehensive Measures against Gender-based Violence (*Ley de medidas de protección integral contra la violencia de género*) of 2004, which provides that victims of domestic violence shall



be given priority in access to public housing and shall be referred to specialized shelters. Brazil, Cambodia, India and Serbia have each enacted legislation which provides for the right of a victim of domestic violence to remain in the family home and for the perpetrator to be removed. In 2009, the Commissioner for Human Rights of the Council of Europe issued his Recommendation on the implementation of the right to housing, in which he paid specific attention to women victims of violence. He observed that “in most countries, domestic violence is a key cause of women’s homelessness and presents a threat to their security of person and security of tenure.”<sup>47</sup>

Denial of secure tenure through gender-biased laws, policies, regulations or customary laws and practices can also make women more vulnerable to domestic violence. If women do not enjoy security of tenure, they may not be able to leave an abusive relationship. They may have to make a choice between becoming homeless—often with their children—or facing physical and psychological violence at home. When shelters for battered women are not available, many women who leave their homes become vulnerable to homelessness and may suffer further violence as a result. Even if women do have security of tenure, their inability to remove the perpetrator from the house—because there is no family, community or State support, or specific legislation providing for this—seriously limits their ability to escape a violent relationship.

---

<sup>47</sup> Sect. 4.3.6. The Recommendation specifically calls on States to “adopt anti-violence provisions in housing legislation and policies and ensure that domestic violence laws include provisions to protect women’s right to housing, including the right to privacy and security” (sect. 5).

### ***Domestic violence in Egypt***

Azza had been married for 12 years when her husband kicked her out with her two daughters, because she refused to put up with his violent behaviour. She lived in a dilapidated home in Giza without drinking water and the rent was more than double what she earned by selling handicrafts. A divorced man living in the building harassed her and tried to force his way through her door. She called the police, who took them both to the station. The neighbour colluded with her husband and agreed to say that she was married many times. She was accused of polygamy and the police held her in custody. Because of the social stigma arising from the false charges against her, Azza's landlord evicted her after two months, despite her five-year rental contract.

*Source:* Testimony from the Middle East and North Africa regional consultation.

The participants in the regional consultations strongly believed that, if women were owners of their homes, there would be less domestic violence. Research in Kerala, India, found that 49 per cent of women with no property reported physical violence, against 7 per cent of women with property.<sup>48</sup> In a study carried out in West Bengal, India, women facing domestic violence similarly identified landownership as an important factor that would have enabled them to protest against domestic violence sooner than they did.<sup>49</sup> A similar study carried out in Sri Lanka highlighted that while women did not report that having property protected them from domestic violence, they did mention the advantages of property in helping them deal with a violent situation—namely that of providing economic security.<sup>50</sup>

<sup>48</sup> Pradeep Panda, "Rights-based strategies in the prevention of domestic violence", Working Paper No. 344 (Centre for Development Studies, March 2003), pp. 61–62. Available from [www.cds.edu](http://www.cds.edu).

<sup>49</sup> International Center for Research on Women, *Property Ownership and Inheritance Rights of Women for Social Protection: The South Asia Experience—Synthesis Report of Three Studies* (2006), p. 4.

<sup>50</sup> *Ibid.*, p. 9.

***Control over housing, land and property and vulnerability to domestic violence***

“In the Cook Islands, women hold the land rights over swampy areas, which are an important source of food, so women are seen as the providers. I have lived in the village Pue on the main island for 20 years. The village is split into two, with the Pukapukans living on one side (the swampy side) and the Ratongans living on the other side. There has been little to no domestic violence on the Pukapukan side, while there is a high level of domestic violence on the Ratongan side. One reason for this difference may be that women hold rights to valuable land on the Pukapukan side (i.e., the swampy land). Therefore, security levels are high among women.”

*Source:* Testimony collected during the Pacific regional consultation.

As mentioned above, in the absence of secure tenure, domestic violence can greatly increase women’s vulnerability to homelessness, especially when they are not protected by law enforcement officials or by the legal system itself. Some of the pervasive cultural assumptions about a woman’s need to “leave” a violent household—as opposed to the need to remove a violent partner—undermine women’s enjoyment of the right to adequate housing.

Similarly, overcrowding has adverse consequences for individuals and families. In her mission report from the Maldives, the second Special Rapporteur on adequate housing notes that “such hardship also creates conditions conducive to domestic violence and sexual abuse. In overcrowded houses, women and children are particularly vulnerable to violence and sexual abuse. According to a survey conducted by the Ministry of Health and Family in 2006, one in three women aged 15–49 years have experienced physical or sexual abuse, while one in six women reported having been sexually abused before the age of 15.”<sup>51</sup>

<sup>51</sup> A/HRC/13/20/Add.3, para. 47.

***Testimony from a 37-year-old single mother from a rural community in South Africa***

"[...] When the child cried too much my husband would hit me and tell me that I did not know what I was doing ... that I was a terrible mother [...].

"The more I was hit the more the child cried and the more I was hit again and so it goes on. This happened for a very long time. My child was very nervous all the time.

"I got pregnant again three years later, but this time we had our own place to stay. It was small, but at least I only had to deal with my husband. He was drinking more and more at this time. When the new baby was 7 months old he beat me very badly. I can't even remember why. Too much happened that day. He picked up my first child and said take the other one because he accused me of having the second child with someone else. He said to get out of the house and to find the father of [the] child and for this man to pay for the child. There was no other man. It was in July I remember and very cold. I went to his parents' place and they said I was a bad and expensive wife and to go to my parents. It was late so I couldn't go there.

"So I just walked and walked. I found something like an old mattress—a foam piece—near the rubbish and took it and my child to the field. She was very cold and cried and cried so I covered her with my body.

"When I woke up she was very still. I knew she had passed. My husband and his family blamed me for killing her. I felt very alone because there was no one to go to."

*Source:* Lillian Artz, "Access to justice for rural women: special focus on violence against women" (Cape Town, Institute of Criminology, University of Cape Town, 1998).

In the Islamic Republic of Iran, if a woman considers leaving her husband because he represents a threat to her safety, the difficulties she will face when attempting to rent or purchase a new house and the absence of alternative accommodation, coupled with discriminatory custody practices,

may compel her to stay in an abusive relationship. There are insufficient shelters available for victims of domestic violence and there is no legal provision guaranteeing the immediate removal of a husband from the family home if he is a danger to the woman's physical and/or psychological well-being. If a woman leaves the family home, even because of domestic violence, this may be considered abandonment of the home and can be used against her if the husband decides to file for divorce.<sup>52</sup>

In Europe and North America, women risk becoming homeless if they escape violent relationships within the home. The lack of sufficient shelters or specific legislation allowing the perpetrators to be removed from the house gives little choice to women who decide to leave their partners. When women lose their fixed address, they also face the risk of having their children taken away by welfare services.

### ***Domestic violence and homelessness***

In the United States of America, many homeless women are escaping domestic violence. In the North American regional consultation, women experiencing domestic violence stressed the problems associated with obtaining protection orders against violent partners and retaining access to rental homes. Protection orders expose women to the risk of having their children taken into State care, as the police tend to report such situations to the department of children's services. The prospect of losing their children discourages women from reporting the violence and obtaining protection orders. Women also reported a lack of shelters and the short maximum stays allowed there. Indigenous women reportedly tend to avoid shelters as they find them "culturally hostile". Testimonies also highlighted that women who have a record of staying in shelters are discriminated against by being denied rental leases for this very reason, further limiting their housing options.

*Sources:* National Law Centre on Homelessness and Poverty, "Homelessness in the United States and the human right to housing" (Washington, D.C., January 2004), p. 10; and North American regional consultation.

<sup>52</sup> E/CN.4/2006/41/Add.2, paras. 98–99.

## E. HIV/AIDS

*Women and girls are commonly discriminated against in terms of access to education, employment, credit, health care, land and inheritance. [...] Relationships with men [...] can serve as vital opportunities for financial and social security, or for satisfying material aspirations. [...] The combination of dependence and subordination can make it very difficult for girls and women to demand safer sex (even from their husbands) or to end relationships that carry the threat of infection.<sup>53</sup>*

Statistics from UNAIDS reveal that worldwide women represent 50 per cent of all adults living with HIV/AIDS, while they represent nearly 60 per cent of infected adults in Sub-Saharan Africa. Gender inequality constitutes an underlying factor of women's vulnerability to HIV/AIDS. Women who lack control over economic assets—including housing, land and property—and are economically dependent on male partners are less likely to direct their sexual life, making them more vulnerable to HIV/AIDS.

Women's lack of access to and control over housing, land and property often translates into restricted economic options, which might reduce their bargaining power over sexual matters. Growing evidence shows that protecting women's right to adequate housing increases their economic security and empowerment, which in turn reduces their vulnerability to unsafe sex practices.<sup>54</sup> In a report on domestic violence and women's vulnerability to HIV/AIDS in Uganda, Human Rights Watch interviewed women who felt constrained to remain in relationships with HIV-positive men who beat and raped them because they feared being thrown out of the house or off the land.<sup>55</sup>

<sup>53</sup> Joint United Nations Programme on HIV/AIDS (UNAIDS) and World Health Organization, *AIDS epidemic update* (Geneva, December 2002), p. 18.

<sup>54</sup> The Global Coalition on Women and AIDS, *Economic Security for Women Fights AIDS*, No. 3, p. 1; Richard Strickland, "To have and to hold: women's property and inheritance rights in the context of HIV/AIDS in Sub-Saharan Africa", Working Paper (International Center for Research on Women, June 2004).

<sup>55</sup> Human Rights Watch, *Just Die Quietly: Domestic Violence and Women's Vulnerability to HIV in Uganda* (August 2003), p. 37.

In turn, the impact of HIV/AIDS on women's housing security cannot be underestimated. The HIV/AIDS pandemic can threaten women's access to and control over housing, land and property in contexts where they cannot inherit on an equal basis with men. Generally, the epidemic has made women more vulnerable to disinheritance (for more details on inheritance, see sect. A above). A widow whose spouse has died of HIV/AIDS may find her property pilfered and diminished by her in-laws. In other cases, widows are blamed for killing their husbands by infecting them with HIV/AIDS and in-laws use this as a justification to dispossess them. In some cases, relatives delay the administration of the estate, waiting for the beneficiaries to die. As a result, many widows and their children do not receive antiretroviral therapy because they cannot access the property (including money) they are entitled to.<sup>56</sup> Overall, the HIV/AIDS pandemic has led to an increase in cases of in-laws evicting widows upon the deaths of their husbands, notably in Sub-Saharan Africa.

Discriminatory customary laws and practices such as "wife inheritance" and "cleansing", which are sometimes a prerequisite for a widow to keep her home or stay on her land, may also contribute to the transmission of HIV/AIDS (for more details on these practices, see sect. A above).

Customary laws and practices or statutory laws that prevent women from inheriting on an equal basis with men can also put widows at greater risk of contracting HIV/AIDS, as it can force women to engage in unsafe sexual behaviour to ensure their economic security. The vulnerability of HIV-positive women is exacerbated when they are being thrown off their lands and out of their homes following the deaths of their husbands, as they lose the means to care for themselves and their children when they are the most in need of resources. Women not only lose assets they could use for medical care, but also the house they need to endure the effects of HIV/AIDS. Women who admit having HIV/AIDS also run the risk of being socially excluded and thrown out of their house, notably in countries

<sup>56</sup> UN-Habitat, *Law, Land Tenure and Gender Review: Southern Africa – Namibia* (Nairobi, 2005), p. 22.

where divorce laws fail to recognize their right to adequate housing or in the case of unregistered customary marriages.

### ***HIV/AIDS and the impact of Operation Murambatsvina***

Operation Murambatsvina, initiated by the Government of Zimbabwe on 19 May 2005, led to the forced evictions of up to 700,000 people. Several reports have highlighted how the forced evictions interrupted access to health care for people living with HIV/AIDS and also increased the risk of HIV infection among the affected population.

A national survey carried out in November 2005 of 5,407 households found that 61 per cent of people living with HIV/AIDS had lost access to home-based care; 46 per cent had lost access to antiretroviral therapy; 45 per cent had lost treatment for opportunistic infections; and 22 per cent had lost their access to reproductive health support.

Vulnerability to HIV infection also increased following the evictions, notably for women. Displaced women were reported to have engaged in transactional sex—for instance, exchange of sex for shelter—or commercial sex work as a result of the loss of their livelihoods owing to the evictions.

*Sources: Human Rights Watch, No Bright Future: Government Failures, Human Rights Abuses and Squandered Progress in the Fight against AIDS in Zimbabwe (July 2006), pp. 23–26; ActionAid, An in-depth study on the impact of Operation Murambatsvina/Restore Order in Zimbabwe (November 2005), pp. 21–22.*

## **F. NATURAL DISASTERS AND CLIMATE CHANGE**

The disproportionate impact of natural disasters and climate change on women has been observed in the context of several disasters in recent years, such as the Indian Ocean tsunami in late 2004, the massive earthquake in South Asia in October 2005, Hurricane Katrina in the United States of America in 2005 and the large earthquake in Haiti in 2010. These experiences have shown that women are more at risk of becoming



homeless and experiencing violence as a result of such disasters. This is partially because they are over-represented among those already living in inadequate housing conditions, so when disaster strikes, they are likely to suffer dire consequences.

There is an undeniable link between poverty and vulnerability, which have unquestionable gender dimensions. Natural hazards turn into massive disasters for the populations most at risk whose access to adequate housing, water, sanitation, health, electricity, land and other resources is already limited. Furthermore, inadequate responses to such disasters and lack of consideration for the human rights of those affected create a human-induced tragedy that exacerbates the plight of those already suffering and may increase the gender inequalities that existed prior to the disaster.<sup>57</sup>

Inadequate temporary accommodation in post-disaster situations also renders women vulnerable to sexual and gender-based violence. Numerous reports have documented an increase in such violence against women in Haiti following the devastating earthquake there in early 2010.<sup>58</sup> In response to these findings, the Inter-American Commission on Human Rights made specific recommendations to the Government of Haiti to improve security for women and girls in the camps, such as:

*ensure the presence of security forces around and inside the [internally displaced persons'] camps, in particular female security forces and especially near the bathrooms; improve lighting inside the camps; implement measures to facilitate the filing of legal actions and to improve the efficiency of judicial investigations, including in particular training police officials in their duties related to cases of violence against women; and provide free assistance by specialized doctors who have experience in treating victims of sexual violence.*<sup>59</sup>

---

<sup>57</sup> A/64/255, para. 21.

<sup>58</sup> See for example, Amnesty International, "Aftershocks: Women speak out against sexual violence in Haiti's camps", AI Index: AMR 36/001/2011 (6 January 2011).

<sup>59</sup> "IACHR expresses concern over situation in camps for displaced persons in Haiti", press release, 18 November 2010.

The presence of military forces in some camps where tsunami survivors were living, as well as the lack of privacy in temporary shelters, also raised serious concerns regarding women's physical safety, and increased their vulnerability to physical and sexual violence.<sup>60</sup> In the context of disasters, instances of domestic violence can also increase. For example, in Nicaragua 27 per cent of female survivors and 21 per cent of male survivors of Hurricane Mitch reported increased violence within the family.<sup>61</sup>

After a disaster, women also find themselves in inadequate living conditions, frequently in temporary accommodation or even homeless. The camps and settlements often do not have adequate access to water and sanitation, placing a serious burden on women. One year after the Indian Ocean tsunami, the first Special Rapporteur drew attention to the marginalization of women in rehabilitation and reconstruction processes, resulting in many women living in substandard conditions that failed to meet international human rights standards.<sup>62</sup>

In the United States, after Hurricane Katrina hit New Orleans, Louisiana, in 2005, reconstruction efforts focused heavily on the owner-occupied sector rather than on the rental sector, even though before the disaster more than half the population of New Orleans were tenants. The reconstruction effort also neglected the need for affordable housing for low-income individuals. Heading 77 per cent of public housing households and 88 per cent of voucher-subsidized housing units, women were disproportionately affected by the unavailability of affordable housing following the hurricane.<sup>63</sup> Reconstruction efforts after the Indian Ocean tsunami similarly proved to be gender-blind in some instances,

<sup>60</sup> See United Nations, "Relief and rehabilitation efforts remain problematic one year after Asian tsunami, say UN experts", press release, 19 December 2005.

<sup>61</sup> Women's Edge Coalition, "Women, natural disaster, and reconstruction", fact sheet. Available from [http://womenthriveworldwide.org/index.php?option=com\\_kb&page=articles&articleid=5](http://womenthriveworldwide.org/index.php?option=com_kb&page=articles&articleid=5) (accessed 16 March 2012).

<sup>62</sup> See United Nations, "Relief and rehabilitation efforts remain problematic one year after Asian tsunami".

<sup>63</sup> Brookings Institution and London School of Economics, *A Year of Living Dangerously: A Review of Natural Disasters in 2010* (April 2011), available from [www.brookings.edu](http://www.brookings.edu).

for example “exclud[ing] women from livelihoods assistance and on occasion directly undermin[ing] women’s pre-existing rights, such as their rights to housing or land in matrilineal communities.”<sup>64</sup>

The second Special Rapporteur on adequate housing has also drawn attention to the effects of climate change on the right to adequate housing. In the context of urban settlements, she has observed that “increased water stress results in decreased access to water and sanitation and as water sources dry out, people are forced to move further in search of water for drinking, cooking and hygiene. This has a particular impact on women and girls, who are usually responsible for fetching water, with their health and access to education often suffering as a result.” In the context of resettlement, she has also confirmed the trends observed with respect to rehabilitation and reconstruction following natural disasters, i.e., that women encounter problems related to their lack of tenure and property rights and are frequently ignored in the process of rebuilding livelihoods.<sup>65</sup>

## **G. FINANCIAL CRISIS**

The current financial crisis, which began in 2007, has had a worldwide impact on the enjoyment of the right to adequate housing. In the United States and other countries, where the sub-prime mortgage crisis precipitated the onslaught of the financial crisis, the links with the right to adequate housing are particularly pertinent. The e-consultations organized by the second Special Rapporteur on the right to adequate housing in preparation for her 2012 report on women and the right to adequate housing identified the financial crisis as a cross-cutting theme affecting all regions of the world. Even before its onset, many women were living in a precarious financial situation. The recent events have only served to exacerbate the risk of violations of their housing and equality rights.

---

<sup>64</sup> A/66/270, para. 19.

<sup>65</sup> A/64/255, paras. 15 and 59.

Studies have shown that women, and members of certain minority groups, were more likely to be victims of predatory lending, thus obtaining sub-prime mortgages and facing a higher risk of foreclosure and homelessness as a result. For instance, women in the United States—and ethnic minority women, in particular—were 32 per cent more likely than men to be targets of sub-prime and predatory lenders, despite having on average higher credit scores.<sup>66</sup> The Special Rapporteur observed in her 2012 report on women and adequate housing that “the consequences of foreclosure for women are similar to what has been documented in terms of the impact of forced evictions, namely increased social isolation, increased exposure to domestic violence, and deepened poverty.”<sup>67</sup>

The resulting economic recession has had an impact on the enjoyment of economic and social rights, including the right to adequate housing, across the world. In particular, States have been cutting social programmes, including housing programmes, which have had a disproportionate impact on women, who represent the majority of those benefiting from such programmes. In 2011, the United States cut US\$ 2.8 billion from its federal housing programmes.<sup>68</sup> Across Europe, austerity measures have also reduced the availability and affordability of public housing. Compounded with chronic disparity—such as the gender pay gap<sup>69</sup>—this results in more difficulties for women.

The e-consultations of the Special Rapporteur also revealed that, in Africa, “reductions in foreign aid, as well as foreign direct investments and remittances, have directly resulted in significant cutbacks in national-level

---

<sup>66</sup> National Council for Research on Women, “NCRW Big Five: Women, homeownership, and sub-prime mortgages—A need for fair lending practices”, fact sheet. Available from [www.ncrw.org/sites/ncrw.org/files/Subprime%20mortgages.pdf](http://www.ncrw.org/sites/ncrw.org/files/Subprime%20mortgages.pdf) (accessed 16 March 2012).

<sup>67</sup> A/HRC/19/53, para. 15.

<sup>68</sup> Department of Defense and Full-Year Continuing Appropriations Act, 2011.

<sup>69</sup> In the European Union, for example, there is a persisting gender pay gap of 18 per cent on average (“The gender pay gap in the Member States of the European Union: quantitative and qualitative indicators”, Belgian Presidency report 2010, 23 November 2010).

housing programmes. In addition, the recent growth in land-grabbing and the sale of formerly communal lands to foreign investors [have] made women's access to land even more difficult, and also [jeopardize] directly their rights to adequate housing, water and sanitation, food and health."<sup>70</sup>

---

<sup>70</sup> A/HRC/19/53, para. 16.

---

## CONCLUSIONS AND RECOMMENDATIONS

The work done to address women's right to adequate housing, including that done by the United Nations Special Rapporteurs on adequate housing, has clearly demonstrated that there is a major gap between the recognition of women's right to adequate housing in international law and national laws, and the reality of its non-realization.<sup>71</sup>

In too many places, blatantly discriminatory laws and policies which deny women their right to adequate housing persist. These laws must be repealed and brought into compliance with international human rights standards. States should also review their laws and policies to identify instances where seemingly gender-neutral laws, such as those which use the concept of the "head of household", can have a discriminatory impact on women. In addition to eliminating discriminatory provisions, whether they are part of statutory or customary law, States must also put in place specific measures to ensure women's enjoyment of their right to adequate housing. This should include explicit recognition of this right and obligations of non-discrimination in this regard, explicit provisions for women's participation in the elaboration, implementation and monitoring of laws, policies and programmes, the establishment of accountability mechanisms which are accessible to women, and a targeted focus on the most vulnerable and marginalized groups, including women from such groups. National laws and policies should also make reference to international obligations and provide for mechanisms for implementing the recommendations of human rights bodies. Furthermore, specific efforts are required to ensure that women know their rights and are empowered to claim them.

Recent years have seen considerable development in gender budget analyses and human rights budget analyses. These tools should be used

---

<sup>71</sup> For further conclusions and recommendations, see the reports of the Special Rapporteur (E/CN.4/2003/55, paras. 74–81, E/CN.4/2005/43, paras. 72–79, E/CN.4/2006/118, paras. 79–87, and A/HRC/7/16, paras. 36–41).

to assess the degree to which the State is allocating the maximum of its available resources towards ensuring women's right to housing. In this regard, it is important to recall that the requirement of non-discrimination is an obligation of immediate effect. The failure to invest in programmes to ensure women's equal right to adequate housing can be a clear marker of non-compliance with human rights standards.

Ensuring effective implementation of the right to adequate housing also requires monitoring, which depends on the availability of data. OHCHR has developed a framework for the identification of human rights indicators, including some illustrative indicators relating to the right to adequate housing.<sup>72</sup> It is crucial to disaggregate data by gender and by other grounds of discrimination to facilitate a comprehensive understanding of which groups are deprived of adequate housing. The identification of indicators and the collection of data relating to adequate housing should also be participatory, in particular drawing on women's experience.<sup>73</sup>

The international and regional human rights mechanisms have a leadership role to play in drawing attention and responding to denials of women's right to adequate housing. The Special Rapporteurs have undertaken important work in this regard. The United Nations treaty bodies, especially the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights, have also addressed concerns regarding women's right to adequate housing to States parties. The intersection between the provisions of their two treaties is an area where further research could be carried out to offer more detailed guidance on the specific human rights obligations relating to women and the right to adequate housing. The newly established Working Group on discrimination against women is another mechanism which might contribute to greater conceptual clarity in this regard.

---

<sup>72</sup> See HRI/MC/2008/3.

<sup>73</sup> Some interesting civil society initiatives are described in Benjamin Groulx, *Género, Vivienda y Hábitat* (Red Hábitat, 2010).

Civil society and non-governmental organizations play a crucial role in monitoring the recommendations of human rights mechanisms with regard to women's housing rights. They may be key in assessing progress and identify emerging issues.<sup>74</sup>

Women's right to adequate housing is also closely related to issues of land and property. In this context, insecure tenure, forced evictions, restitution of housing and land after displacement are human rights concerns that have received increased attention. Emerging global issues, such as food security, climate change and rapid urbanization, have renewed the attention given to land, its use, control and possession by States or private actors. Yet little has been done to identify the specific impact of these situations on women and how to address them. The gender dimensions of land as a human rights issue and women's equal rights when it comes to access, use and control over land are additional areas where further work should be undertaken.

The development of tools that would fully integrate the gender perspective, such as eviction impact assessments or methodologies for monitoring security of tenure, can contribute to efficiently addressing the particular impact of some situations on women.

As is evident throughout this publication, women's rights are often violated by persons who are not State actors. The due diligence standard which requires the State to prevent, investigate, punish and redress human rights violations, as well as to prevent impunity, provides guidance on State obligations in this regard. The Convention on the Elimination of All Forms of Discrimination against Women also specifically requires States to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men

---

<sup>74</sup> For example, civil society organizations in Peru produced a progress report three years after the visit of the Special Rapporteur on adequate housing: *Situación del Derecho a la Vivienda en el Perú*.



and women” (art. 5). Addressing prejudices and stereotypes which are detrimental to women and which are deeply embedded in almost every culture of the world has been one of the most challenging tasks of realizing women’s rights. Non-State actors play a central role in maintaining and perpetuating prejudicial attitudes towards women. Shifting cultural notions about women’s inferiority and stereotypes about women’s role in the family and in society is critical to guaranteeing women’s right to adequate housing as well as their other fundamental human rights. The Committee on Economic, Social and Cultural Rights in its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights has recognized the immediate obligation to “prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination” and has called for an “active approach to eliminating systemic discrimination”. This guidance makes it clear that States have concrete obligations to address cultural factors which fuel discrimination against women. The required steps in this regard will vary across nations and cultures, but promising practices could be highlighted more systematically. More analysis could also be undertaken to assess whether current efforts to shift cultural attitudes towards women are sufficient.

Beyond State obligations, work on the responsibilities of businesses for human rights abuses has been a major topic of international discussion in recent years. The United Nations Human Rights Council endorsed a set of Guiding Principles on Business and Human Rights in 2011, and created a new Working Group on the issue of human rights and transnational corporations and other business enterprises to promote their dissemination and implementation. Research and advocacy could further explore the application of the Guiding Principles to situations where private actors occupy a position that renders them responsible for the realization of

a particular human right (such as landlords and banks or other lending institutions).<sup>75</sup>

While much important work has been done to highlight the gender-specific dimensions of the right to adequate housing, much more is required if women are to enjoy this right, and many other associated rights, in practice. Some areas for future work have been highlighted above. Women's right to adequate housing requires continued international, national and local attention, and it is integrally linked to broader imperatives of eliminating widespread gender discrimination. In fully guaranteeing women's right to adequate housing, important steps can be made towards the elimination of all forms of discrimination against women.

---

<sup>75</sup> See the report of the Special Rapporteur on the right to safe drinking water and sanitation on non-State service provision, in which she noted that "Compared to other business activities, the provision of water and sanitation services is characterized by special features: the services relate directly to the fulfilment of human rights. While non-State actors are well positioned to positively contribute to the realization of the rights to sanitation and water through service provision, the activities of service providers, whether through their direct actions or through failure to live up to the mandate delegated to them, can also potentially result in abuses of the rights to water and sanitation. In this regard, their activities are intrinsically linked to the realization of human rights, and therefore they need to observe particular requirements in exercising due diligence." (A/HRC/15/31, para. 28).

Photo credits: © George Hsia (top) and © Los Angeles Community Action Network (bottom)

Designed and printed by the Publishing Service, United Nations, Geneva  
GE.12.42276 – July 2012 – 5,459 – HR/PUB/11/2

United Nations publication  
Sales No. E.11.XIV.4  
USD 12  
ISBN 978-92-1-154192-2

