

PROGRESS REPORT
ON REMOVING DISCRIMINATION AGAINST WOMEN
IN RESPECT OF PROPERTY & INHERITANCE RIGHTS



UN-HABITAT

Tools on Improving Women's Secure Tenure
Series 1, Number 2

August 2006

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Progress Report on removing Discrimination against Women in Respect of Property & Inheritance Rights

1. Introduction

1.1 Significance of Inheritance for Women

Women own only an estimated 1-2 percent of all titled land worldwide which is often cited as an indication of low levels of inheritance of property¹. Inheritance is one of the commonest ways for women to acquire or access land. Since women are not generally able to purchase property nor usually benefit from land reforms², in most cases, a woman could become a only landowner by inheriting the land from her husband or companion on his death³. Even though various innovative approaches, such as women cooperatives, have increased women's access to property, (equal) inheritance rights would go a long way in improving women's rights in, access to and control over land and housing. A range of cultural, social, political, and legal factors contribute to women's lack of property and inheritance rights though the obstacles to security of tenure vary widely⁴. Pursuit of gender equality in inheritance rights has been one of the most difficult challenges in rights based approaches owing to the complexity as well as well entrenched patriarchal characteristics of socio-economic, cultural and religious practices.

In several respects, women are considered or treated as legal minors or have unequal status or entitlement to inheritance shares which impacts on their ability to acquire, enjoy, transfer and manage their inheritance. This is further exacerbated where there are post conflict situations⁵ or HIV/AIDS epidemics⁶. An indicator of low status and economic dependence of women is their general inability to access of property and inheritance rights⁷. Without direct property rights, women are only able to gain access to resources through their partner. This follows patriarchal assumptions whereby the male is seen as the natural protector and head of the family whereas the land title in the name of the women as seen as individualising property. Therefore, this report explores the extent to which women's equal property and inheritance rights, as mandated by international human rights standards, are protected at the national level. The first part of

¹ USAID (2003) *Women's Property and Inheritance Rights: Improving Lives in Changing Times: Final Synthesis and Conference Proceedings Paper* (Washington DC: USAID).

² Tsikata, D (2003) 'Securing Women's Interests within Land Tenure Reforms: Recent Debates in Tanzania' *Journal of Agrarian Change* 3 (1-2): 149-83.

³ UN-HABITAT (2006) *Policymakers' Guide to Women's Land, Property and Housing Rights across the World* (Nairobi: UN-HABITAT)

⁴ See Wanyeki L.M (2003) *Women and Land in Africa—Culture, Religion and Realizing Women's Rights* (London: Zed Books)

⁵ United Nations Development Fund for Women (2001) *Women's land and property rights in Situations of Conflict and Reconstruction: A Reader based on the Feb, 1998 Inter-Regional Consultation in Kigali, Rwanda* (Kigali: UNIFEM)

⁶ International Center for Research on Women. (2004) *To Have and To Hold: Women's Property and Inheritance Rights in the Context of HIV/AIDS in Sub-Saharan Africa*. (Washington, D.C.: International Center for Research on Women)

⁷ Shrestha, S (1999) Nepal: The Right to Land is the Right to Livelihood' *Women in Action* 2.

this progress report briefly introduces the human rights and gender equality framework for inheritance rights and offers the rationale for monitoring inheritance rights. The second part provides an overview at country level of factors, which still stand in the way of women's enjoyment of their human rights. In the third part, Constitutions of a cross section of countries are tabulated and analysed. While the final part offers reflections on the progress report.

1.2 International Inheritance Rights

The prohibition of discrimination on the basis of a person's sex, and the recognition of equal rights between men and women are clear and firm features of international human rights law⁸. While these human rights already imply that women's rights to land, housing and property, including through inheritance, are to be equal with those of men, more explicit recognition of these rights have also been laid down in international human rights treaties⁹ regional conventions¹⁰ and various resolutions of human rights treaty bodies¹¹ and the Platform of Action adopted at the 1995 Beijing World Conference on Women. Barring the ratified treaties, general international standards vary in their ability to bind States and the response of States in recognising and implementing these rights in practice is diverse.

For example, the primary international legal instruments prohibiting gender discrimination is the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)¹². The UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), for example, requires signatories to "take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular to ensure, on a basis of equality of men and women. The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property..." A number of countries have yet to ratify the treaty and among those who have, reservations or opt-out clauses have been entered. Further, considerable gaps and discrepancies exist between CEDAW provisions, national legislation and customary practice. In particular, several

⁸ See Centre on Housing Rights and Evictions (2001) *Sources 2: Selected Bibliography on Housing Rights and Evictions* (COHRE: Geneva); Centre on Housing Rights and Evictions (2000) *Sources 4: Legal Resources for Housing Rights: International and National Standards* (COHRE: Geneva) and Centre on Housing Rights and Evictions (2000), *Sources 5: Women and Housing Rights and Evictions* (COHRE: Geneva)

⁹ International Covenant on Economic, Social and Cultural Rights (ICECSR), adopted December 16, 1966, G.A. Res. 2200A (XXXI), 993 U.N.T.S. 3 (entered into force January 2, 1976); International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, (entered into force March. 23, 1976)

¹⁰ See for example the African Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU doc. CAB/LEG/67/3rev.5 21 I.L.M. 58 (1982) (entered into force October 21, 1986).

¹¹ See UN-HABITAT (2006) *Women's Equal Rights to Land, Housing and Property in International Human Rights Law* (Nairobi: UN-HABITAT) which provides an overview of the most relevant human rights provisions related to women's land, housing and property rights, including through inheritance.

¹² CEDAW, adopted December 18, 1979, G.A. Res. 34/180, U.N. Doc. A/34/46, entered into force September 3, 1981 and acceded to by Zimbabwe on May 13, 1991, article 12.

countries in Africa and Asia allow constitutional equality can be over-ridden by personal, family, or customary laws which often discriminate against women¹³.

1.3 Recent Developments with Respect to Inheritance Rights

There have been further developments which have reinforced gender equality with respect to inheritance rights. The Millennium Development Goal 3 which relates to Gender Empowerment has been further elaborated to include equal access to resources, including land¹⁴. The UN Millennium Project Task Force on Education and Gender Equality in its 2005 report identifies strategic priorities and practical actions for achieving women's empowerment by 2015. These include: strengthening opportunities for post-primary education for girls; investing in infrastructure to reduce women's and girls' time burdens; guaranteeing women's and girls' property and inheritance rights; increasing women's share of seats in national parliaments and local governmental bodies; and combating violence against women and girls. Various countries, communities and institutions have implemented different combinations of these actions and shown good results.

In 2005, World leaders reaffirmed the goals and objectives of the gender equality Beijing Platform for Action (1995) as essential in achieving the Millennium Development Goals. Through a ground breaking paragraph 58 on 'Gender equality and the Millennium Development Goals' the broadened the scope of MDG #3 beyond the limited focus on primary education. The World Summit Outcome document commits to five of seven priorities identified by the Millennium Project Taskforce on Education and Gender Equality including gender equality in the right to own and inherit property, though women's right to land has not been explicitly recognized.

1.4 Objective of this Report

This report is based on global overview of women's land and property rights carried out by the Land and Tenure Section of the Shelter Branch, UN-HABITAT incorporating recent research by other stakeholders. The objective of this report is to provide an easy comparative record of the progress of selected countries in achieving gender equality with regard to inheritance rights. This is offered through a review of relevant domestic legislation in form of a table. While the context of implementation of inheritance is dealt elsewhere¹⁵ and is briefly noted in the following section, this report is primarily concerned with the legal status of inheritance rights in national legislations. The gaps between legislation and practice too are beyond the scope of this report¹⁶.

In most countries, international law is not directly applicable, but must be domesticated through the enactment of national legislation.¹⁷ Without enactment and implementation

¹³ Nelson, B. and Chowdhury, N. (1994) *Women and Politics Worldwide* (New Haven: Yale University Press)

¹⁴ UN Millennium Project Task Force on Education and Gender Equality (2005) *Equality and Empowering Women* (Earthscan, London).

¹⁵ Oxfam (2002) *Gender Perspectives on Property and Inheritance: A Global Source Book* (London: Oxfam)

¹⁶ Fenrich, J, and Higgins TE (2001) 'Promise Unfulfilled: Law, Culture, and Women's Inheritance Rights in Ghana' *Fordham International Law Journal* 25: 259–360.

¹⁷ The Constitution of Bosnia and Herzegovina provides one of the few exceptions, as it states in Article II(2): "The rights and freedoms set forth in the European Convention for

of such national laws, a country falls short of its obligations under international human rights law. While progress has been made in various countries with regard to the adoption of equal rights and non-discrimination provisions, there are still countries, which have not yet recognised these rights at national level. This progress report is aimed at systematically providing information in an easily accessible format to a wide range of stakeholders with a view to monitoring progress as required by the Millennium Development Goals. The list of countries is not comprehensive but is intended to provide general trends with more countries being added to the analysis over time.

2. Factors blocking Women's Equal Property and Inheritance

In reading the formal constitutional or legislative status of gender equality inheritance rights at country level, the following factors preventing fulfilment of women's human rights to property and inheritance need to be assessed

2.1 Some Constitutions Still Contain Discriminatory Provisions

An increasing number of countries have recognised women's equal rights in their Constitutions, thus complying with international human rights standards and obligations. However, there are still countries, such as Zimbabwe, Zambia, Lesotho and Kenya, where discrimination in customary and personal law matters (such as inheritance) is still permitted under their current Constitution¹⁸. In the notorious *Magaya case* in Zimbabwe, the Supreme Court ruled that Ms. Magaya could not inherit land, because customary law does not permit women to inherit and the Constitution still allowed discrimination in such matters. Such court decisions show the disastrous consequences that can follow from discriminatory legal provisions. Constitutional provision that prohibits discrimination, including in customary law and practice (as laid down in the Constitutions of Uganda, South Africa and Mozambique) are best practices.

2.2 Other Discriminatory Laws and Policies

Even today laws and policies related to land and housing that explicitly discriminate against women still exist. In Swaziland, for example, the law specifically excludes married women from registration of title to land in their name.¹⁹ In most countries, land related laws and policies are gender neutral and do not address existing discrimination. For example, many land laws allow for the co-ownership of land, but spouses have to

the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law." In relation to other international human rights instruments, however, there is no direct applicability. Two other exceptions are Argentina and Namibia. Articles 22 and 75 of the Constitution of Argentina accord international human rights law similar status as constitutional norms. Article 144 of the Constitution of Namibia declares that international agreements that are binding upon Namibia form part of the law of Namibia.

¹⁸ See for example Kibwana K and Mute L (2000) *Law and the Quest for Gender Equality in Kenya* (Nairobi: Clairpress); Rugadya M and Busingye H (2002), *Gender Perspectives in the Land Reform Process in Uganda* (Kampala: Uganda Land Alliance).

¹⁹ A woman married in community of property cannot register land in her own name because she is considered to be a legal minor, subject to the marital power of her husband. Women and Law in Southern Africa (1997), *Family in Transition: the Experience of Swaziland* (WLSA) p. 101.

mutually agree on this and take active steps to register as co-owners. In practice, only a small proportion of, usually well educated, urban-based and relatively wealthy people do so. Even among this group, many women face cultural attitudes that favour registration of land and housing in the name of only men. Innovative approaches, such as in Tanzania's Land Act of 1999, seem much more protective of women's interests, needs and rights. In this Land Act, land occupied by both spouses is now presumed to be co-registered unless otherwise indicated by the spouses.

In Latin-America, most civil codes now include provisions on registration of land in the name of both spouses. However, in practice these provisions are widely misunderstood and misused: cases of brothers or fathers and sons registering land jointly are reportedly widespread, and defeat the purpose for which such provisions were formulated. Cultural attitudes and lack of awareness and clarity about implementation of such provisions go hand in hand in preventing the implementation of joint titling for spouses.

Laws related to marital property and inheritance rights remain discriminatory in most Sub-Saharan African and various other countries. In countries such as Lesotho and Swaziland, married women are seen as legal minors, who cannot enter into contracts without the consent of their husband. While laws increasingly recognise the equal inheritance rights of daughters, this is often not the case regarding widows. In the few countries where the laws recognise women's equal marital property and inheritance rights (for example in Latin America), cultural attitudes in many areas in Latin America pressurise a daughter to relinquish her right to inherit land, to her brother. In many sub-Saharan African countries, the idea of women inheriting land is seen as a threat to the continuity of clan land. In Eritrea, married women's rights to land are seen as a threat to the stability of the society.²⁰ Even in various matrilineal societies, such as in Malawi, Zambia, Mozambique and Tanzania, land market pressure and individual registration processes are threatening the continuity of inheritance systems that so far have seemed to protect women more than patrilineal systems. Religious laws usually entitle women to inherit property, but the share of inheritance is invariably smaller, and there is an emphasis on access rather than ownership rights.

2.3 Eroded Customary Laws and Practices

Due to colonial influences, individualisation of land tenure, land market pressure and other factors, many customary laws and practices have eroded over time. The forms of solidarity that used to exist and that protected women from exclusion have now disappeared from such customary practices in many areas. Examples abound in Eastern and Southern Africa and parts of Asia. Even where statutory national laws recognise women's rights to land, housing and property, "traditional" values prevail amongst judges, police officers, local councillors and land officials²¹. They often interpret statutory laws in what at present is understood to be customary ways, as a result of which women are deprived of the rights they should enjoy under statutory law²².

²⁰ UN-HABITAT, *Proceedings of the African Regional Civil Society Consultation on Women and Adequate Housing*, presentation on Eritrea by Worku Zerai, Nairobi, 2002.

²¹ Nyamu-Musembi C (2002), *Are Local Norms and Practices Fences or Pathways? The Example of Women's Property Rights*, in in Abdullahi A. An-Na'im, *Cultural Transformation and Human Rights in Africa* (New York: Zed Books)

²² Food and Agriculture Organization (FAO). 2002. *Gender and Access to Land*. Land Tenure Study 4, Rome: FAO)

2.4 Registration of Land in the Name of Husband

While in communal land tenure systems women had significant access and rights to use communal resources, through their roles as household managers, they were further excluded when land tenure was individualised and invariably adjudicated and registered in the name of “heads of households” or men. Without legal protection women are at risk of suddenly becoming landless. This happens in many cases when the husband sells the family land. Upon divorce, women still have to prove their contribution to the marital home in court, as court cases in Zambia and Zimbabwe illustrate. Upon the death of the husband, the marital home is included in the deceased husband’s estate and is divided among his heirs. Many succession laws only entitle widows to a temporary use right of the marital home. However, if the marital home had been registered jointly, it would not become part of the estate upon the death of any spouse. Instead the widow would remain registered right holder of the land and house with the authority to sell, mortgage or carry out any other transaction.

Unequal land distribution and widening gaps between rich and poor have further excluded women²³. Overemphasis on privatisation, individual freehold tenure and rigid planning and registration procedures that are costly, lengthy and often inaccessible to the poor deepen the gap between those who can and those who cannot afford security of tenure.

3. Overview of Relevant Constitutional Provisions

Constitutions are also called “the supreme law of the land”, as they usually supersede and provide the basis for all other national legislation. As mentioned in Section 2 some constitutions declare (parts of) international human rights law to be directly applicable in their country.²⁴ Most countries however still require the domestication of international law into national legislation. This is often done through a constitutional amendment. Thus, constitutions are a good starting point to check if countries recognise and apply particular human rights.

Equal rights of women and men to land, property and housing rights under international law have been recognised by several constitutions throughout the world²⁵. The right to property is conceived in the national constitutions either as a personal absolute right or as a priority for state action, falling short of an enforceable right. Over the past 30 years most Latin American constitutions have conferred equal rights to their citizens, regardless of their sex, race or social condition, though their treatment of land, property and housing rights vary. They generally do not guarantee a universal right to land to all persons as they do with the right to property. Some countries such as **Colombia, Brazil, Peru and Venezuela**, maintain that property implies duties and that it has a social function. **Mexico**, however, which was the first country in the world to attribute a

²³ Agarwal B (1995) *A Field of One’s Own: Gender and Property in South Asia* (Cambridge: Cambridge University Press)

²⁴ See footnote 17, where Bosnia and Herzegovina, Argentina and Namibia are discussed as examples where parts of international human rights law is declared to be directly applicable.

²⁵ UN-HABITAT (2002) *Rights and Reality: Are Women’s Equal Rights to Land, Housing and Property Implemented in East Africa?* (Nairobi: UN-HABITAT)

social function to property in its 1917 Constitution, later introduced a series of amendments that represented a considerable retrogression.

In Southern Africa, constitutional rendition of gender equality and property rights is diverse²⁶. Apart from **Malawi**, in the rest of the region, no specific mention is made of women in constitutional provisions that relate to property rights. **Mozambique** and **Namibia**, for example provide extensive property rights but **Botswana**, **Lesotho**, **Swaziland**, **Zambia** and **Zimbabwe** subject the rights to personal and customary laws which leads to gender discrimination. This is also the practice in other parts of the world. For example, the **Indian** Constitution recognises the equal rights of women and men but it also recognises personal laws (in inheritance and marriage, divorce, separation) of its different ethnic and religious groups. **Nepal** constitutionally provides for equal property rights although neither formal nor customary law otherwise provides for equal rights of men and women. In the Balkans, for example in the Constitution of **Bosnia** and **Herzegovina** ensure 'the highest level of internationally recognised human rights and fundamental freedoms' and specifically mentions the European Convention for the Protection of Human Rights as directly applicable and enjoying supremacy over all domestic law.

In Table 3.1 below the relevant provisions in constitutions of a cross section of countries are described, and an analysis of whether these countries have recognised women's equal rights and the prohibition of discrimination is included.

The table is divided into four columns:

- The first column lists the cross section of countries in alphabetical order;
- The second column lists whether that country's constitution contains a provision that prohibits discrimination on the basis of sex;
- The third column lists whether that country's constitution contains a provision that explicitly recognises women's equal rights;
- The fourth and last column checks whether these countries recognise the right to land, housing and/or property *in general*, including through distribution of marital property and inheritance, in their constitutions. If a specific provision on women's rights on land, housing and/or property is contained in a constitution, this will be specifically mentioned in this column. In most cases, only one or two of these rights are *generally* recognised in the constitution. As the right to property is safeguarded in most countries through a provision clarifying when expropriation of property may take place, such provisions are also added here.

²⁶ COHRE (2004) *Bringing Equality Home: Promoting & Protecting the Inheritance Rights of Women: A Survey of Law & Practice in Sub-Saharan Africa* (Geneva: COHRE)

Table 3.1 Overview of Relevant Constitutional Provisions

COUNTRY	Prohibition of discrimination on basis of sex	Explicit recognition of women's equal rights	Recognition of right to land, housing and/or property
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Bosnia and Herzegovina	Yes Article II(4) states that the enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina, without discrimination on any ground such as sex.	No	Article II (3) (k): Right to property
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Botswana	No Article 15 prohibits discrimination, but does not list “sex” as a ground of discrimination. However, the court has interpreted this clause as to include “sex” as one of the grounds. ²⁷	Yes Section 3(a)	Articles 3(j) and 8: Protection from deprivation of property without compensation
COUNTRY	Prohibition of discrimination on basis of sex	Explicit recognition of women’s equal rights	Recognition of right to land, housing and/or property

²⁷ *Unity Dow v. Attorney General of Botswana* (1991) BLR 231. See the Centre on Housing Rights and Evictions (COHRE), *Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women, A Survey of Law and Practice in Sub-Saharan Africa*, Geneva, 2004, pp. 39 - 40.

Brazil	Yes Article 3(IV) but only as fundamental objective of the state. Article 5(XLI) states that the law shall punish any discrimination against fundamental rights and liberties, but does not define discrimination. Linked to Article 3(IV), Article 5(XLI) could be interpreted as being applicable to discrimination on the basis of sex.	Yes Article 5(1) – equal rights and duties	Article 5(XXII): The right to own property is guaranteed. Article 5(XXIII): Ownership of property shall attend to its social function . Article (XIV): The law shall establish the procedure of expropriation for public use/need, or for social interest, against just and prior compensation in money, with the exception of the cases set forth in this Constitution. Article 5(XXX): <i>The right to inheritance</i> is guaranteed.
Cambodia	Yes Article 45(1): All forms of discrimination against woman shall be abolished. Article 46(3): The State and society shall provide opportunities to women, especially to those living in rural areas without adequate social support, so they can get employment, medical care, and send their children to school, and to have decent living conditions	Yes Article 31(1): The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights. Article 32(2): Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of ... sex.	Article 44(1): All persons, individually or collectively, shall have the right to ownership . Only Khmer legal entities and citizens of Khmer nationality shall have the right to own land . Article 44(3): The right to confiscate possessions from any person shall be exercised only in the public interest as provided for under law and shall require fair and just compensation in advance. Article 36(3): The work by housewives in the home shall have the same value as they could receive when working outside the home.
COUNTRY	Prohibition of discrimination on basis of sex	Explicit recognition of women's equal rights	Recognition of right to land, housing and/or property

China	No	<p>Yes</p> <p>Article 48: Women in the People's Republic of China enjoy equal rights with men in all spheres of life, political, economic, cultural and social, and family life</p> <p>Article 33: All citizens of the People's Republic of China are equal before the law. Every citizen enjoys the rights and at the same time must perform the duties prescribed by the Constitution and the law.</p>	<p>Article 10: <i>Land in the rural and suburban areas is owned by collectives</i> except for those portions which belong to the state in accordance with the law; house sites and private plots of cropland and hilly land are also owned by collectives. The state may in the public interest take over land for its use in accordance with the law. No organization or individual may appropriate, buy, sell or lease land, or unlawfully transfer land in other ways. All organizations and individuals who use land must make rational use of the land.</p> <p>Article 13: The state protects <i>the right</i> of citizens <i>to own lawfully earned income, savings, houses and other lawful property.</i> The state protects by law <i>the right of citizens to inherit private property.</i></p>
Colombia	Yes Article 5 and 13	Yes Article 13	Article 58 recognises the right to property , but the social function of property prevails over private interests. Article 51 recognises the right to a dignified life for all Colombians.
Croatia	No Article 14 implies such prohibition by stating that everyone in the Republic of Croatia shall enjoy rights and freedoms regardless of “gender”.	Yes Articles 3 and 14	Article 48(1) recognises the right of ownership and Article 48(4) guarantees the right to inherit.

COUNTRY	Prohibition of discrimination on basis of sex	Explicit recognition of women's equal rights	Recognition of right to land, housing and/or property
Egypt	<p>No</p> <p>While Article 40(1) declares all citizens to be equal before the law, Article 40(2) states: "They have equal public rights and duties without discrimination between them due to race, ethnic origin, language, religion or creed."</p>	<p>No</p> <p>Article 11 states that "the State shall guarantee the proper co-ordination between the duties of woman towards the family and her work in the society, considering her equal with man in the fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence." In Article 8, the State guarantees equality of opportunity to all citizens.</p>	<p>Articles 29 and 32: <i>private ownership has a social function</i> and may not conflict with the general welfare of the people.</p>
Eritrea	<p>Yes</p> <p>Article 7(2) prohibits "any act that violates the human rights of women or limits or otherwise thwarts their role and participation." Article 14(2) prohibits discrimination on account of a person's sex. Article 8(3) prohibits discrimination by the judiciary: "Judges shall be free from corruption or discrimination and, in rendering their judgment, they shall make no distinctions among persons."</p>	<p>No</p> <p>Article 14(1) states that all persons are equal before the law, which implies women's equal rights.</p>	<p>Article 23(2) stipulates that <i>all land</i>, water and natural resources of Eritrea <i>belong to the State</i>. Citizens may have usufruct rights. The recognition in Article 23(1) of <i>the right of any citizen to acquire, own, and dispose of all property</i> individually or in association with others and to bequeath to heirs, thus refers to developments on the land. Article 23(3) deals with expropriation of property in the national/public interest, subject to the payment of just compensation and in accordance with due process of law.</p>

COUNTRY	Prohibition of discrimination on basis of sex	Explicit recognition of women's equal rights	Recognition of right to land, housing and/or property
Ethiopia	Yes Article 25	Yes Article 25 and Article 35(1). Article 35(3) allows for affirmative measures to remedy the historical legacy of inequality and discrimination suffered by women in Ethiopia. Article 35(4) prohibits laws, customs and practices that oppress or cause bodily or mental harm to women, and the State commits itself to enforce the right of women to eliminate the influences of harmful customs.	Article 40(3) states that <i>land is a common property</i> vested in the State and the peoples of Ethiopia and cannot be sold or otherwise exchanged. Article 40(1) and (7) recognise <i>the right to own buildings or permanent improvements</i> built/brought about on the land by citizens. Articles 40(4) and (5) recognise the right for peasants and pastoralists to the allocation of free land and protection against eviction. Articles 34(1) and 35(2) explicitly recognise <i>women's equal marital rights</i> upon and during marriage and upon divorce. Article 34(4) allows for the enactment of a law recognising religious and customary marriages. Discrimination against women within such marriages is prohibited through Article 35(4). Article 35(7) recognises <i>women's equal rights to acquire, administer, control, use, transfer, administer and control property. They shall also enjoy equal treatment in the inheritance of property.</i>
COUNTRY	Prohibition of discrimination on basis of sex	Explicit recognition of women's equal rights	Recognition of right to land, housing and/or property

Ghana	No While Article 17(2) and (3) explicitly prohibit discrimination on the basis of a person's sex, Article 17(4) opens the door for exceptions: "Nothing in this article shall prevent Parliament from enacting laws that are reasonably necessary to provide - (b) for matters relating to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;	Yes Article 17(1)	Article 18(1) recognises <i>the right to own property</i> either alone or in association with others. Article 20(1) lists grounds for compulsory possession or acquisition of private property by the State: defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of property for public benefit. Article 20(2) provides for prompt and fair compensation and access to the High Court in cases of expropriation. Article 20(3) requires the State to <i>resettle</i> persons whose land has been expropriated to suitable alternative land with due regard for their economic well-being and social and cultural values.
India	Yes Article 15(1) and (2), while Article 15(3) contains the possibility to apply affirmative action policies for women and children.	No Article 14 is implicit: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."	The <i>right to property</i> was guaranteed under Article 19 until 1979, when it was omitted in the 44 th amendment during the Janata party regime.
Jordan	No Article 6(i) prohibits discrimination, but only on the ground of race, language or religion.	No Article 6(i) stipulates that all Jordanians shall be equal before the law.	Article 11 states <i>that no property of any person may be expropriated except</i> for purposes of public utility and in consideration of a just compensation, as may be prescribed by law.

COUNTRY	Prohibition of discrimination on basis of sex	Explicit recognition of women's equal rights	Recognition of right to land, housing and/or property
Kenya	<p>No Even if Article 82(1) prohibits laws discriminatory in content or effect, Article 82(4) still allows for exceptions with respect to marriage, divorce, devolution of property on death or other matters of personal law</p>	<p>No Article 70 states that every person in Kenya is entitled to the fundamental rights and freedoms of the individual, irrespective of sex. However, this Article is followed by many exceptions to the main rule, among which Article 82(4) still allows for discrimination in customary and personal law matters.</p>	<p>Article 75 provides <i>protective provisions against compulsory possession or acquisition of private property</i>, but lists as exceptions: defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of property for public benefit. Prompt payment of full compensation, and right of direct access to the High Court is also provided for. Articles 114 – 120 deal with Trust Land, communal land vested in county councils.</p>

<p>Lesotho</p>	<p>No Article 18(4) (b) still allows discrimination against women in personal law matters such as marriage, divorce and devolution of property upon death. Article 18(4) (c) still allows the continued application of customary law and therefore condones those customary laws that discriminate against women's equal property and inheritance rights.</p>	<p>No Article 4(1) recognises and declares every person in Lesotho to be entitled to the fundamental rights and freedoms of the individual, whatever "his sex", but such rights are subject to limitations laid down in other Sections. Linked to Article 18(4) (b) and (c) this means that discrimination of women in areas related to property and inheritance rights is allowed.</p>	<p>Article 17(1) recognises <i>the freedom from arbitrary seizure of property</i>. Listed <i>exceptions</i> from this freedom are: defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of property for public benefit. Article 17(3) deals with prompt payment of full compensation and access to court, while Article 17(4) lists twelve other grounds for expropriation.</p>
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COUNTRY	Prohibition of discrimination on basis of sex	Explicit recognition of women's equal rights	Recognition of right to land, housing and/or property
Mexico	Yes Article 1	Yes Article 4	Article 27(1) vests the ownership of Mexican land and water in the Nation, which may transmit the title thereof to private persons, thereby constituting private property. <i>The right of communities to communal (ejido) land and the right of individuals and groups to private land</i> (with expropriation only in public interest and with payment of compensation) are regulated in the other paragraphs of Article 27, which since 1992 allow for the privatisation of communal (ejido) land.
Morocco	No	No <i>Only equal political rights (Article 8(1) and equal rights to education and work (Article 13) are explicitly recognised</i>	Article 15(1) guarantees <i>the right of private property</i> and free enterprise. According to Articles 15(2) and (3), the law may prescribe limitations to these rights and uses, if required by socio-economic development planned for the Nation, and the law shall prescribe circumstances and provisions related to expropriation.
Mozambique	Yes Article 67	Yes: Article 66 Article 57 contains some affirmative provisions regarding women's emancipation and role in all spheres of society.	Article 46(1) and (2) vest <i>the ultimate ownership of land in the State</i> and prohibit sales, mortgage or other alienation of land. Article 46(3) recognises the right to use and enjoy the land for all Mozambican citizens. The right to the use and enjoyment of the land shall be granted to individual or collective persons, while the social purpose of land shall be taken into account (Article 47(2)). The State determines the conditions for use and the law shall govern the terms for establishment of rights in respect of land. (Article 47(1) and (3)).

COUNTRY	Prohibition of discrimination on basis of sex	Explicit recognition of women's equal rights	Recognition of right to land, housing and/or property
Namibia	Yes Article 10(2)	No Article 10(1) stipulates that all persons are equal before the law. Only Article 14(1) explicitly recognises women's equal rights before, during and upon dissolution of marriage	Article 16(1) recognises <i>the right of all citizens in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property</i> individually or in association with others and to bequeath their property to their heirs or legatees. Article 16(2) stipulates that the State may expropriate property in the public interest subject to the payment of just compensation, in accordance with requirements and procedures to be determined by Act of Parliament.
Nepal	Yes Article 11(2) and (3). Article 11(3) allows for affirmative action policies for women	No Article 11(1): All citizens shall be equal before the law. No person shall be denied the equal protection of the laws.	Article 17(1) recognises <i>the right of all citizens, subject to existing laws, to acquire, own, sell and otherwise dispose of, property.</i> Article 17(2) provides that the State shall not, except in the public interest, requisition, acquire or create any encumbrance on, the property of any person. Article 17(3) states that the basis of compensation and procedure for giving compensation for any property requisitioned, acquired or encumbered by the State in the public interest, shall be as prescribed by law.

COUNTRY	Prohibition of discrimination on basis of sex	Explicit recognition of women's equal rights	Recognition of right to land, housing and/or property
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<p>Nicaragua</p>	<p>Yes Article 27(1) Furthermore, Article 48 states: <i>“The State has the obligation of eliminating obstacles that in fact prevent equality among Nicaraguan people and their effective participation in the political, economic and social life of the country”</i>.</p>	<p>Yes Article 27(1) Furthermore, Article 73 stipulates that family relations rest on respect, solidarity and absolute equality of rights and responsibilities between the man and woman.</p>	<p>Article 64 recognises <i>the right to decent, comfortable and safe housing</i> that guarantees family privacy. Article 44 recognises <i>the right to personal property</i> and necessary goods, essential for the integral development of each person.</p>
<p>Nigeria</p>	<p>Yes Article 15(2) and Article 42(1).</p>	<p>No Article 17(2)(a) recognises equality of rights, obligations and opportunities before the law.</p>	<p>Article 16(2)(d) states that the State shall direct its <i>policy towards ensuring that suitable and adequate shelter</i> ... are provided for all citizens. Article 43 recognises <i>the right to acquire property</i>, while Article 44 deals with grounds and conditions for compulsory possession or acquisition of such property.</p>
<p>Philippines</p>	<p>No</p>	<p>Yes Article 14: “The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.”</p>	<p>Article 9 states that <i>private property</i> shall not be taken for public use without just compensation.</p>
<p>Rwanda</p>	<p>Yes Article 11</p>	<p>Yes Preamble and Article 11</p>	<p>Article 23 states that <i>private property</i>, whether individual or collective, shall be inviolable. No infringement shall take place except for the reason of public utility, in the cases and manner established by law, and in return for fair and prior compensation.</p>

COUNTRY	Prohibition of discrimination on basis of sex	Explicit recognition of women's equal rights	Recognition of right to land, housing and/or property
Senegal	Yes	Yes, Preamble, Articles 1 and 7. Article 15 recognises <i>women's equal right to access, possess and own land</i> . Article 19 recognises <i>women's right to own and administer marital property</i> .	<i>The right to an adequate standard of living, including housing</i> , as laid down in the Universal Declaration on Human Rights, is recognised in the Preamble of Senegal's Constitution. Articles 8 and 15 recognise the <i>right to property</i> , only to be expropriated in the public interest and only accompanied by fair and prompt compensation.
South Africa	Yes Article 9(3)	Yes Article 9(1)	Article 25 recognises <i>the right to property</i> . Article 26 recognises <i>the right to access adequate housing</i>
Swaziland	Partially DRAFT: Article 21. Article 116 recognises non-discriminatory customs or traditions – however, exclusively male and non-elected Council of Chiefs are to decide on changes of custom	Yes DRAFT: Article 29(1)	Article 15(1)(d) recognises the <i>right to protection from deprivation of property without compensation</i> except as otherwise provided by law. Section 35(1) stipulates that a surviving spouse is entitled to “ <i>a reasonable provision out of the estate of the other spouse</i> ”, whether there is a will or not and whether civil or customary marriage.
Tanzania	Yes Article 13(5)	Yes Article 13(1)	Article 24 recognises the entitlement of <i>every person to own property</i> and provides for fair and adequate compensation in case of lawful deprivation of such property.

COUNTRY	Prohibition of discrimination on basis of sex	Explicit recognition of women's equal rights	Recognition of right to land, housing and/or property
Thailand	No	Yes Article 24: Man and woman shall have equal rights. Section 25: All persons are equal before the law and shall enjoy equal protection under the law.	Article 37 states that the <i>property right of a person is protected</i> . The extent and the restriction of such right shall be specified by law. The succession is protected. The right of succession of a person shall be specified by law.
Tunisia	No	Yes Article 6: All citizens have the same rights and the same duties. They are equal before the law. Article 7: The citizens exercise the plenitude of their rights in the forms and conditions established by the law. The exercise of these rights cannot be limited except by a law enacted for the protection of others, the respect for the public order, the national defence, the development of the economy, and social progress.	Article 14 recognises the <i>right to property</i> , which is exercised within the limits established by the law.
Uganda	Yes Article 2(2) and 21(2)	Yes Article 21(1)	Land rights- Article XIV refers to the state objective that all Ugandans enjoy rights and opportunities to (...) <i>decent shelter</i> . Article 26(1) states that every person has the <i>right to own property</i> , either individually or in association with others. Article 31(2): "Parliament shall make appropriate laws for the protection of <i>the rights of widows and widowers to inherit the property</i> of their deceased spouses ...".

COUNTRY	Prohibition of discrimination	Explicit recognition of	Recognition of right to land, housing and/or
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	on basis of sex	women's equal rights	property
Zambia	No Article 23(4) of the Zambian Constitution allows discrimination in the area of customary law, family law and other areas such as adoption, marriage, divorce and inheritance.	No Article 11(1) recognises and declares every person in Zambia to be entitled to the fundamental rights and freedoms of the individual, whatever "his sex". However, the same article states that the entitlement of these rights and freedoms are subject to limitations contained in Part III related to Fundamental Rights and Freedoms. Linked to Article 23(4), this means that discrimination against women in areas related to property and inheritance rights is allowed.	Article 16 provides for <i>protection against deprivation of property</i> , which may only be carried out under an Act of Parliament providing for payment of adequate compensation.
Zimbabwe	No Section 23(3)(a) allows discrimination in the area of customary law, family law and other areas such as adoption, marriage, divorce and inheritance.	No	Article 16 provides for <i>protection against deprivation of property</i> , which may only be carried out under an Act of Parliament providing for payment of adequate compensation.

4. Conclusions

Ensuring women's equal rights to property and access to resources are critical in the fight against poverty. Women's inheritance and housing rights are an important component of this strategy. The formal codification of rights, even if constitutionally enshrined, does not guarantee their implementation by women. Socio-economic circumstances such as in **Ethiopia**, civil war as in **Somalia** and the **Angolan** war, refugee influx in **Serbia**, attitudes towards minorities such as the Roma in the Balkans, property grabbing with regard to HIV/AIDS widows and orphans in **Zimbabwe**, natural disasters as in **Indonesia** as well as political nepotism and corruption worldwide undermine constitutional promises where they exist. It is argued that rather than formal equality in access to land, specific affirmative measures are needed to rectify the discriminatory practices of the past as well as present day obstacles for the majority of women. These measures must be targeted towards women's specific experiences, needs and priorities rather than a mere existence of Constitutional principles must generate gender responsive laws and regulations, awareness and empowerment and require supportive judicial interpretation and enforcement. A variety of creative approaches within countries are needed to ensure that women can claim their rights. This progress report through its brief contextual summary, the tabulated status of constitutional provisions and diverse results raises several questions as to why particular countries have chosen particular positions. That is a matter for further analysis. There is also literature on what needs to be done at a policy and strategic level. Here are four recurring themes.

4.1 Better Implementation of Laws and Policies

Laws and policies, when recognising women's equal rights to land and property, are still very difficult to implement. Even where progressive laws are in place, weak enforcement mechanisms and lack of funding often undercut their effectiveness. Inheritance is often viewed as a private matter, which explains the hesitation governments often display in 'interfering' with the issue²⁸. Regulations and guidelines for the implementation of laws and policies are often very technical and in many cases have not yet been written from a gender perspective. As a result, for example, forms for registration of land, often simply lack the space to indicate joint registration of both spouses. Moreover, the land officials who work with these forms often lack any gender awareness. Inheritance procedures are often also quite technical, centralised, and difficult to access for many women. Persistent cultural and customary attitudes also work

²⁸ COHRE (2004) *Bringing Equality Home: Promoting & Protecting the Inheritance Rights of Women: A Survey of Law & Practice in Sub-Saharan Africa* (Geneva: COHRE)

against implementation of women's rights.²⁹ Customary laws and practices sometimes take precedence over constitutional and legal provisions for equality³⁰. This is especially so in the areas of family, inheritance and land rights, nationality and personal status.

4.2 Better Access to Information on Inheritance Rights

Among men and women, there is still a lack of gender and human rights awareness on the serious repercussions that the denial of women's rights continues to have, and of the possible strategies that can be used to implement these rights on the ground. Inadequate laws and systems of enforcement are often accompanied by lack of awareness of laws that do exist and insufficient understanding of options for legal redress and the resolution of disputes. In addition, many women do not have information, confidence, experience and resources to obtain their legal entitlements.³¹ While increasing attention is being paid to the factors mentioned above - in research, advocacy and lobbying work - this report seeks to provide updated information on the constitutions and on the laws related to land, housing, property and inheritance rights in various countries. As the tables indicate, the current legal status in a cross-section of countries indicates diversity in practice.

Women may not be aware that legal means exist through which they can claim their rights, and few women have access to legal advice in face of entrenched public beliefs that property ownership is an exclusively male domain. Awareness is not only required for rights holders but in many instances other stakeholders and actors including land professionals, policy makers, judges and magistrates who need the capacity and knowledge to interpret and implement national laws with respect to equal inheritance rights. Support for paralegal services to help women pursue cases, support for strategic litigation that can establish legal precedents, training for lawyers, judges, registrars and police in women's rights, advocacy with traditional leaders, financial support for community and women's organizations and networks to provide advice and emergency assistance, and documentation and dissemination of best practices is necessary³². Without gender aware officials on bodies dealing with land allocation, inheritance and dispute settlement, a male bias among these officials is likely to continue to stand in the way to women's enjoyment of their rights. Moreover, inclusion of women in

²⁹ Lastarria-Cornhiel S et al (2003) *Joint Titling in Nicaragua, Indonesia and Honduras: Rapid Appraisal Synthesis*, (Wisconsin-Madison: Land Tenure Centre), 2003. UN-HABITAT (2002) *Rights and Reality: Are Women's Equal Rights to Land, Housing and Property Implemented in East Africa?* (Nairobi: UN-HABITAT)

³⁰ Human Rights Watch (2006) *No Bright Future: Government Failures, Human Rights Abuses and Squandered Progress in the Fight against AIDS in Zimbabwe* (New York: HRW)

³¹ Testimonies of women and women's organisations in various meetings, such as the Gender and Land meeting organised by OXFAM and FAO, Pretoria, June 2003 and the meetings in Asia, Latin America and the Middle East, organised for the UN Special Rapporteur on Adequate Housing (see www.ohchr.org/housing).

³² See for example, strategies adopted by the Global Coalition on Women and Aids (2005)

decision-making and policy formulation processes is crucial, especially among vulnerable groups such as slum dwellers, ethnic minorities etc.³³

4.3 Engage with Customary and Religious Practices

Experience has shown that statutory or Constitutional interventions are ineffective where traditional laws and customs do not recognise gender equal inheritance rights to land, property and housing for women. This cultural relativism, is evident in both reservations lodged by several States in respect of gender equality provisions of CEDAW as well as in deference of some Constitutional and legal provisions to customs. The persistence of customary norms in land issues represents a conundrum. While a number of customary norms are patriarchal in nature, the dismissal of all customs can not only be alienating but also misses a wide range of practices which do have positive implications for women's lives. Moreover, the mere substitution of customary land rights with statutory rules has failed to improve women's security of tenure since custom still provides legitimacy and influences general opinion and decision makers. Therefore, several women's groups point to the diversity of cultural practices and challenge the stereotyping of custom as necessarily static, unchanging or incapable of gender responsiveness. Therefore, rather than concentrate solely on legislative reform, dialogue with elders and other enforcers of customs and traditions are necessary to raise awareness and find ways to harmonizing customary norms while at the same time, respecting women's equal rights. In practice, civil society and paralegal networks have shown that such an approach can create breakthroughs. For example, rather than reiterate the traditional position that under Islamic law providing women inferior property rights, current research shows that innovative approaches and interpretations can offer far greater gender responsive property rights.

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4.4 Develop Tools for Inheritance Rights

The wide gap between policy aspirations, even legal provisions, and the practice points to the lack of pro-poor, affordable and scalable gendered tools. A whole range of interconnected gendered tools are required to realize women's inheritance secure tenure. For example, a number of tools are involved in securing inheritance rights. Tools linking land registry to the civil registry, tools on gender-accessible dispute settlement mechanisms must correlate to tools on gender sensitive administration of estates in inheritance cases. Tools, which have for long been devised on male interests and priorities, need to be developed recognising women's experiences, needs and participation, in order to be effective. Tools are the converters of objectives in legislation, policy or principles into implementation. It is the knowledge, skill and ability on how to practically deliver results. Principles guide and direct actions and goals and policies reflect political will, but without tools, they are merely abstract phrases which remain aspirations. The Global Land

³³ Beijing + 5, *Political Declaration and Initiatives to Implement the Beijing Declaration and Platform for Action*, June 2000; COHRE, *Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women*, 2004, Geneva.

Tool Network (GLTN) is one such network that is developing gendered tool through a women led approach which can facilitate better access to land, property, inheritance and housing rights for women.

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