

TOOLS FOR CHANGE

Applying United Nations standards to secure women's housing, land, and property rights in the context of HIV



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*A woman works in a rice field near Chengdu, Sichuan.
UN Photo/John Isaac*

A photograph of a person in a field, possibly a farmer, with a large woven basket. The image is overlaid with a teal color gradient.

INTRODUCTION

THIS “TOOLS FOR CHANGE” MANUAL is an easy-to-use resource of international human rights tools for advocates working on women’s housing, land, and property rights in the context of HIV. It brings together the relevant international human rights documents and highlights core concepts, rights, and means of enforcement, providing examples of successful advocacy from around the world. Moreover, it draws on the voices of women, gathered through a series of focus-group discussions in different countries, to explain these rights and their uses in practical terms.

This manual was originally conceived during a strategic meeting on property and inheritance rights as they relate to HIV, held during the 2009 United Nations Commission on the Status of Women, where organizations gathered from around the world.¹ It emerged from the realiza-

tion that through hard work, advocates have managed to get a number of UN instruments to include protection for women’s housing, land, and property rights, and member states have pledged to abide by them. However, many advocates at the national level do not even know of these international instruments, even though they might be helpful in their work, particularly as governments may not be meeting their international human rights obligations.

Advocates need a better understanding of international human rights and government obligations in order to ensure government accountability and advance women’s housing, land, and property rights. This manual seeks to empower advocates working in the context of HIV by making the relevant United Nations standards and interpretations clear and accessible—to make them “Tools for Change.”²

Who Should Use this Manual?

The manual is intended for use by advocates seeking to claim housing, land, and property rights for women, especially in the context of HIV. This includes women facing denial of housing, land, and property themselves, as well as advocates and service providers working on HIV, legal practitioners advocating for the rights of their clients, and judges, magistrates and traditional leaders concerned with ensuring justice. For some, the information in this manual may be a useful review and reference; for others, it may be a first-time introduction to various human rights concepts. In all cases, we hope the manual will provide you with insight and new ways of thinking about women’s rights within the context of HIV, as well as about concrete ideas for their application.

METHODOLOGY FOR THE COLLECTION OF WOMEN'S TESTIMONIES

THE HUIAROU COMMISSION WORKED WITH its members in Peru, Philippines and South Africa to host a number of conversations with women in local communities, to gather their perspectives on human rights, what they mean to them, and how they can be used to claim women's rights. They were asked questions like "What do human rights mean to you?" and "How can women's rights be protected?" Women from different backgrounds participated in these discussions. The women who were interviewed are married, divorced, widowed, or single; some women are old, and some are young. Some live in rural areas, others in urban centers. Many are mothers. Many are living with HIV. But all are members of grassroots women organizations: In Peru, members of *Mujeres Unidas Para una Comunidad Mejor* ("Women Together for a Better Community"), who are supported by the non-governmental organization (NGO) *Estrategia*, are based in Lima. *Mujeres Unidas* and *Estrategia* work together to ensure women are at the center of gaining secure land and housing titles. In the Philippines, the interviewed women are all members of the *Grassroots Women Empowerment Centre (GWEC)*. They are working to ensure that women and their communities are not forcibly evicted, and when they are relocated, that they are given proper resettlement according to human rights standards and interpretations. Lastly, *Rural Women's Movement (RWM)* members, living throughout the province of *KwaZulu-Natal*, South Africa, work together for the empowerment of women and to combat violations of their rights, especially within the context of HIV.

These women organized their own focus-group discussions concentrating on a series of questions related to human rights, housing, land, and property rights within the context of HIV. Some

women had previously been exposed to human rights concepts, while others had not. It is clear that they understand the linkages between women's rights and HIV, and how human rights principles support and uphold women's equality. While the women interviewed live in different communities and countries, there is remarkable similarity in the struggles they experience, and in how they understand and define their rights.

When women in these communities were asked what human rights are and what they mean to them, they discussed the right to live peacefully, to be independent and free, and to have their dignity and equality respected. All of these ideas are fundamental to what we mean when we talk about human rights. This manual has many quotes from these women. Through these quotes and testimonies, women share their deep understanding of what human rights mean to them, and we hope that their voices make the concepts of human rights real.

The manual also draws on the work of local advocates and grassroots women to showcase practical strategies for applying human rights. For instance, it includes the practices of other Huairou Commission members, mostly linked together through a joint partnership initiative of the Huairou Commission and the *Centre on Housing Rights and Evictions (COHRE)*, the *Women's Land Link Africa (WLLA)*. The WLLA serves as platform for community-based organizations and their partners to come together to work for women's land and housing rights in Africa.³ Additionally, it includes contributions by *Women and Law in Southern Africa (WLSA)-Malawi*, and *Federation of Women Lawyers (FIDA)-Kenya*, which coordinate *Women's Inheritance Now (WIN)*, a network of legal practitioners and human rights activists aiming to advance women's housing, land, property and inheritance rights in the context of HIV

in Eastern and Southern Africa through the sharing of information, experiences and strategies.⁴ The Kenya Legal and Ethical Issues network on HIV and AIDS (KELIN) and others also provided insights into their work, highlighting important strategies that work to address inheritance and HIV and AIDS.

The manual additionally benefited from feedback received from advocates attending both the Commission on the Status of Women and the International AIDS Conference in 2010.

OVERVIEW OF THE MANUAL

Chapter One, “Context: The Interconnection between Property, Violence, and HIV,” focuses on what human rights are and their importance to women, particularly within the context of HIV. This section outlines the various violations of women’s rights that occur within the context of HIV, most notably related to housing, land, and property. This chapter also discusses the connections between two health pandemics plaguing countries around the world: the HIV pandemic, and the pandemic of violence against women.

Chapter Two, “The Rights at Stake,” addresses some core rights and their meanings, with attention towards women’s right to equality and non-discrimination; equality in marriage; the right to adequate housing; women’s equal rights to land and property; and the right to the highest attainable standard of health.

Chapter Three, “Enforcement: Making Rights Real for Women,” examines strategies used by advocates to protect women’s rights. This includes challenging discriminatory or punitive laws, law reform to protect women’s rights, enforcement of protective laws, transforming customs and traditions that discriminate against women’s hu-

man rights education and strengthening positive aspects of culture, and women’s participation in national strategies and policies.

Chapter Four, “How to Use Human Rights,” provides specific recommendations on how to incorporate international human rights tools into advocacy at the national and international level.

Finally, the Annex of this manual contains the full text, or relevant excerpts, of international human rights standards and interpretations in the area of women’s housing, land, and property rights.

We hope that these materials will provide advocates with “Tools for Change” to finally realize and uphold women’s basic human rights, as related to housing, property, and land. Only when we do so will we finally turn the tide against HIV.



*Women of the grassroots organization Mujeres Unidas Para Un Pueblo Mejor (Peru) discuss implications of human rights in their lives.
NGO Estrategia/Lima, Peru*



CHAPTER 1

CONTEXT: THE INTERCONNECTION BETWEEN PROPERTY, VIOLENCE AND HIV

A. HIV AND WOMEN'S INEQUALITY

HIV IS HAVING A DEVASTATING impact on the lives of millions of people around the world. While not exclusively a woman's issue, the gender dimension of HIV cannot be ignored. According to UNAIDS, globally, more than 50% of people living with HIV are women, rising to 60% in sub-Saharan Africa.⁵ In many countries, girls and young women are more vulnerable to HIV infection than boys and young men.⁶ In sub-Saharan Africa, for example, nearly three out of four (74%) young people aged 15–24 years living with HIV are female.⁷

A combination of factors heightens women's vulnerability to HIV. While simple physiology makes women more likely to become infected if exposed to the virus, social and cultural factors exacerbate that vulnerability. Gender inequality and the disempowerment of women and girls have contributed significantly to the rampant spread of HIV. Women in certain communities – such as women living in poverty, sex workers, women in minority groups, and refugee and internally displaced women – are particularly vulnerable to the impact of HIV.

Marital status rarely protects women, and may even serve to expose women more to HIV, especially in the case of early marriage. Data suggests that for young women in particular, marriage is

actually associated with increased risk of HIV infection. In one study of sexually active married and unmarried young women and girls in sub-Saharan Africa, researchers observed, “married adolescent girls and young women have higher rates of HIV prevalence than their sexually active unmarried counterparts. More than four-fifths of new HIV infections in women happen in marriage or long-term relationships with primary partners. In sub-Saharan Africa, an estimated 60 to 80% of HIV-positive women were infected by their husbands. In Mexico, as another example, more than 30% of women diagnosed with HIV learn of their status after their husbands are diagnosed.⁸ Given commonly expressed views about the dangers of premarital sex and deeply held beliefs about the relative safety of marriage, these findings may initially seem counter-intuitive. Yet the most plausible explanations for these differences are fairly straightforward, even obvious.”⁹ A woman's unequal status affects all aspects of her life, including the possibility of getting HIV. In India, a 2006 study of women living with HIV found it likely that nearly 80% of the women widowed by AIDS had been infected by their husbands.¹⁰

Women living with HIV also often face more stigma than men living with HIV. They are also frequently blamed for bringing HIV into the household. Often, these women are evicted

from their homes and experience other violations of their human rights, worsening an already difficult situation. A study in India, for example, showed that in 6.4% of cases where women revealed a positive status, their spouses and family members responded by renouncing them, compared with 1.3% of men who had the same experience. In the aftermath of their HIV disclosure, 12.3% of females, compared with 6.9% of males, were abandoned, segregated, and verbally and/or physically abused. Five and a half percent of females, compared with 1.9% of males, were forced to leave their homes.¹¹

Women who are dependent upon men for survival face increased risk of infection. Married women may fear abandonment by husbands, or they may fear the consequences of leaving abusive and unfaithful partners. Single or widowed women, with no other means of income, are often forced to engage in sexual relations with men who promise food or funds for necessities, such as children's school fees.¹² For women trapped in these situations, they may have little to no control over their sexuality or sexual health.

Too often the unique needs and vulnerabilities of women and girls are overlooked by HIV-prevention programs that pay inadequate attention to questions of unequal power. Universal behavioral-change messages – such as “be faithful to your partner” or “use a condom every time you have sex” – minimize the question of who controls the decision to remain monogamous or use a condom. Too often, women – particularly those who remain faithful to their partners but are nevertheless vulnerable to HIV – find little value in what prevention programs promote. Additionally, because so many standard prevention messages fail to reach them, many women are unaware of what puts them at risk of infection.

B. HIV AND WOMEN'S HOUSING, LAND, AND PROPERTY RIGHTS

Women perform 66% of the world's work and produce 50% of the food, but earn 10% of the world's income and own only about 1% of the property.¹³ Land plays a critical role in the lives of many people living in poverty. It is an important economic asset that enables agricultural production and may contribute to food security and social security for women and their families. Yet, women frequently lack access to and control over land and other critical assets. Globally, women own less than 15% of the world's land,¹⁴ and about 1% or 2% of land titles.¹⁴

“In many countries, national laws restrict women's ability to own, inherit, or dispose of property. . . . Legal and social inequality renders women economically dependent on their husbands, leaving them little choice but to remain in relationships where they cannot refuse sex or insist on condom use. Women often sink into poverty upon the death of their husband, or the dissolution of their marriage, finding their choices and possibilities so diminished that they have to trade sex for survival, or rely on situations of lodging or work that expose them to sexual abuse or violence. Each of these factors places women at a heightened risk of HIV infection.”¹⁶

Many women throughout the world depend on men to access and control housing, land, and other assets. Limited access to economic resources, fear of violence, and cultural norms force many women to yield control over sexual relations to men. Social norms and a lack of economic empowerment make women more vulnerable to HIV because they are less able to decline sex or ensure safe sex with their partners.¹⁷

In parts of sub-Saharan Africa, not only are women unable to access and control property, but they are considered property themselves. Women are subjected to “wife inheritance,” a customary practice that forces a widow into relations with her late husband’s male relatives who “inherit” her. The practice, combined with a lack of legal protection for women’s land and property rights, fuels HIV rates among women in sub-Saharan Africa, according to the United Nations Commission on HIV/AIDS and Governance in Africa.¹⁸

Wife inheritance is still practiced in these areas. A widow who does not want to be inherited in some areas is forced to leave her house and property and she loses the custody of her children. And her children lose their inheritance rights.

— Rural Women’s Movement Member,
KwaZulu-Natal, South Africa

Not only does gender inequality make women initially more vulnerable to the disease, but once a woman is infected, she may face loss of property or inheritance, plunging her further into poverty. The Centre on Housing Rights and Evictions (COHRE) has noted that one of the greatest problems that women living with HIV face is an inability to secure property:

Women’s inability to possess and manage property may result in their impoverishment, particularly in cultures which have a propensity to humiliate or shun HIV/AIDS infected women and girls... In many cases, subsequent to the HIV/AIDS related deaths of male partners or disclosure of their HIV/AIDS status, women are divested of their marital property, inheritance

*rights, livelihoods, and at times even their children, by relatives who forcibly evict them from their homes.*¹⁹

Similarly, the Joint United Nations Programme on HIV/AIDS (UNAIDS), the United Nations Population Fund (UNFPA) and the United Nations Development Fund for Women (UN Women) have observed, “The abuses of human rights that women deal with on a daily basis can become nearly insurmountable obstacles when HIV/AIDS is involved. One of the most serious economic effects of HIV for women has been the loss of property.”²⁰

Addressing the HIV Pandemic for Women:

Meaningful prevention programming for women requires creating programs that help women gain control over their economic, social and sexual lives. Such programming must emphasize the realization of women’s housing, land, and property rights as a non-negotiable first step. Women’s economic empowerment is central to achieving social equality, higher productivity and acceleration of all the Millennium Development Goals (MDGs).

Currently, women and girls represent 70% of the 1.2 billion people that live on less than one dollar a day, and women make up 50% of the 33.2 million people who have HIV worldwide. Women’s economic empowerment is critical.

Studies on the correlation between property rights and women’s roles in the household and community show that women who have rights over land and housing, independent from those of their husbands or fathers, are more respected in the community, avoid situations of violence and are better able to improve their own lives as well as those of their children.²¹ The International Center on Research on Women (ICRW) has observed: “Research and interventions strategies are just beginning to consider the role that women’s property ownership

and inheritance rights might play in potentially breaking the cycle of AIDS and poverty. There is growing evidence to suggest that where women's property rights are upheld, women acting as heads and/or primary caregivers of HIV/AIDS affected households are better able to manage the impact of AIDS. Additionally, preliminary evidence indicates that such rights may help prevent further spread of HIV/AIDS by promoting women's economic security and empowerment, thereby reducing their vulnerability to domestic violence, unsafe sex, and other AIDS-related risk factors."²²

In other words, not only would realization of these rights help women living with HIV to cope more effectively, but realizing women's housing, land, and property rights would enable women to avoid situations where they are vulnerable to infection in the first place. Many have suggested that the way to make sex safer for women is by ensuring that they have access, not only to condoms, male and female, but to title deeds.²³ When women have control over land, communities as a whole benefit.²⁴

The former United Nations Commission on Human Rights, in a resolution on "Women's Equal Ownership, Access to and Control over Land and the Equal Rights to Own Property and to Adequate Housing," linked "the growing prevalence of HIV/AIDS in women with laws that inhibit the full enjoyment of women's rights to land ownership and inheritance," and called for "positive change and attention to women's empowerment and protection of women's housing and land rights to make women less vulnerable to HIV/AIDS."²⁵

C. HIV AND VIOLENCE AGAINST WOMEN

HIV, limited economic security, and violence against women are interlinked. As Human Rights Watch has noted:

A woman's limited economic security may increase the likelihood of her engaging in high-risk behaviour such as commercial sex work or transactional sex. Many economically dependent women stay in high-risk, violent marriages. Widows also face major obstacles: many are stripped of their property and left to struggle to support themselves and their children while they are at their weakest. These factors combine with violence, or the threat of violence, to create an environment within which women are trapped into having unprotected sex with HIV-positive men and are unable to seek information or treatment on HIV infection and AIDS.²⁶

Violence against women is defined as "violence that is directed against a woman because she is a woman or that affects women disproportionately [including] acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty."²⁷ Unlike other forms of violence, violence against women is most often perpetrated by women's family members or intimate partners. Within the home or within the community, violence against women is usually perpetrated by males who traditionally hold positions of power over women and girls.

Violence against women is a universal problem that manifests itself in different forms in every country and culture. Globally, during their life-

time, “1 in 3 women have been beaten, coerced into sex, [or] otherwise abused,” “10-69% of women reported being physically assaulted by an intimate male partner at some point” and “intimate partners commit[ted] 40-70% of homicides of women.”²⁸ Since 2000, the United Nations General Assembly has approved many resolutions condemning violence against women.²⁹ Various norms and practices that are biased against women may make them more susceptible to violence, and also to concurrent housing rights violations.

Women suffer from violence in our homes - it is for this reason we need to be educated on our rights to defend ourselves against our abusive husbands.

— Mujeres Unidas Member,
Vista Alegre Community, Peru

The United Nations General Assembly, in its landmark **Declaration on the Elimination of Violence against Women**, acknowledged that “violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women.”³⁰ Moreover, “violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”

Violence against women and HIV are closely intertwined. In 2003, the United Nations Task Force on Women, Girls and HIV/AIDS in Southern Africa identified three key factors that contribute to the greater vulnerability of women and girls to HIV infection: violence against women within

relationships, exploitative transactional and intergenerational sex, and the culture of silence surrounding sexuality.³¹

Domestic violence in particular increases women’s risk of HIV infection. Women abused by their partners are less able to protect themselves from HIV infection. They have difficulty insisting on condom use, refusing sexual advances, and controlling their sexual relationships. Research from Rwanda, South Africa, and Tanzania indicates that women who experience domestic violence face up to three times the risk of HIV infection than other women.³² They also face increased stigma and discrimination.

HIV-positive status is also a trigger for violence. Studies in sub-Saharan Africa and Southeast Asia reported that between 3.5 and 14.6% of women who disclosed their positive-status to their partners faced violent reactions. Disempowered socially and economically, women are easy scapegoats for the disease and often blamed for bringing it into the relationship. Abandonment and loss of economic support is often coupled with violence, and thus a close connection between physical and economic abuse.³³

Additionally, because of the stigma attached to HIV infection and the abuse inflicted on so many women when their male partners or in-laws find out that they are HIV-positive, many women conceal their true status or avoid getting tested altogether. About 71% of women in the developed world and only 52% of women in the developing world shared their HIV status with their partners. Rates of non-disclosure are especially high among women seeking antenatal care, a time of particular vulnerability and economic dependence. In one study in sub-Saharan Africa, 77.8% of HIV-positive pregnant women failed to

share their status with their partners, even after 18 months of follow-up. This has severe consequences for adherence to treatment. A clinic in Zambia, which provides free antiretrovirals for women who test HIV-positive, reported that more than 60% of eligible women refuse treatment because they fear violence and abandonment if their partners find out their status.³⁴

As women, we have the right not to be maltreated by our husbands.

— GWEC Member, Barangay Lambakin,
Philippines

Today, the human rights world recognizes the need to address both violence against women and economic disempowerment in HIV programs. UNAIDS has prioritized these issue in the UNAIDS Action Framework: Addressing Women, Girls, Gender Equality and HIV.³⁵ The Operational Plan to the Framework states:

Violence against women and girls is one of the most pervasive manifestations of gender inequality and is an indicator of the status of women in a society. Violence against women is both a cause and a consequence of HIV infection. Therefore, violence needs to be dealt with as an integral part of multisectoral HIV responses... [P]rogrammes should also increase women's social and economic empowerment and stop harmful traditional practices.³⁶

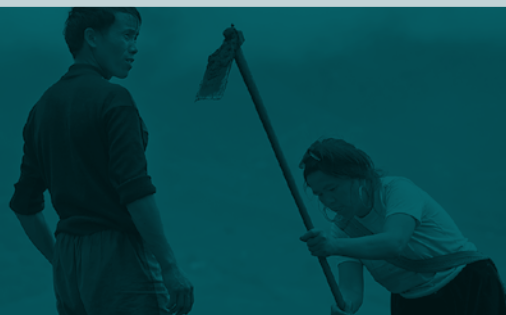
Access to housing, property, and land has been shown to help women prevent domestic violence. Asset control gives women greater bargaining power within households, which helps protect against domestic violence, a key risk factor in HIV. Research in Kerala, India,³⁷ for example, found that 49% of women with no property reported physical violence compared to only 7% of women who did own property. Furthermore, women who own, control or access property are better positioned to improve their lives and cope when they experience crises. Land and housing are extremely empowering for women.



*Farmers in a mountainous area of Sapa, Viet Nam.
UN Photo/Kibae Park*

CHAPTER 2

THE RIGHTS AT STAKE



A. WHAT ARE HUMAN RIGHTS, AND WHERE ARE THEY FOUND?

HIV is a human rights issue for women. Advancing human rights and promoting gender equality are core aspects of effective HIV responses. Human rights are not abstract concepts, but rather entitlements that can be demanded and have the power to change people's lives. Human rights are part of written international law and related standards, defined in **Conventions**,³⁸ **Treaties**³⁹ and **Declarations**⁴⁰ that spell out specific rights and obligations. They are meant to form the basis for national and local legislation and policies that govern.

Informed communities who apply the rights to their own realities make demands on government to ensure these rights are protected and promoted. As we have seen in the first Chapter, housing, land and property rights for women, when they become reality, are empowering for women as well as their communities. The (former) United Nations Commission on Human Rights has reaffirmed that "all human rights are universal, indivisible, interdependent and inter-related and that women's equal ownership, access to and control over land and the equal right to own property and to adequate housing contribute to the full realization of human rights."⁴¹

Some key things to know about human rights:

- *Human rights are universal.* That means they apply to everyone, everywhere, regardless of sex, race, religion or any other distinction or status. Everyone has rights simply because they are human beings. These rights cannot be taken away no matter what local laws, policies, practices, or social attitudes dictate.
- *Human rights are indivisible.* That means human rights relate to one another in fundamental ways. It is impossible to experience a violation of only a single human right at a time. Rather, most situations involve violations of multiple human rights. Human rights violations also often cross the boundaries of "civil and political," and "economic, social and cultural" rights violations.
- *Human rights entail specific obligations.* These obligations are discussed further in Chapter 3 of this document, but for now it's important to know that rights also have specific legal dimensions. Rights should be thought of as "justiciable," meaning they can be brought up in court and enforced by a court, because they are "codified," or made a part of law. But the courts are not the only way to hold governments accountable to their human rights obligations.

International Human Rights Standards and Interpretations

Adopted unanimously in 1948 by the United Nations General Assembly, the **Universal Declaration of Human Rights (UDHR)** contains important provisions relating to women and the right to housing, land and property.⁴² Though not a legally binding document, the UDHR has since gained universal acceptance and can now be cited as a leading standard of human rights norms. The UDHR notes that “All human beings are born free and equal in dignity and rights.” The provisions contained in the UDHR relating to women’s right to housing, land and property were subsequently codified in the **International Covenant on Civil and Political Rights (ICCPR)**⁴³ and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**⁴⁴ as well as other United Nations treaties. The UDHR and the two Covenants have inspired more than 80 subsequent international human rights instruments, which together constitute a comprehensive system of legally binding treaties for the promotion and protection of human rights.

Human rights entitle us to live peacefully, to have a happy family and meaningful human relationships. My parents taught me human rights, to live well with people, to work for people. This is the basic concept, the basis of our own human rights. In reality, my human rights come from my heart, from my own humanity, and the basis is my desire and understanding to live well with others.

— GWEC member,
Northville, Bulacan, Philippines

One of these is the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**, which has been described as the international bill of rights for women.⁴⁵ The Convention addresses the various aspects of discrimination faced by women and provides measures aimed at ensuring the de facto (in practice) and de jure (in law) equality of women and men and the overall protection of women against discrimination. It obliges States Parties (i.e., those countries that have ratified, or become a “party” to a treaty) to embody the principle of equality of women and men in their national legal frameworks and “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women” (Article 2).

CEDAW is a fundamental tool in the advancement of women’s rights to housing, land and property. It obliges States Parties to grant women legal capacity in civil matters equal to that of men, including equal rights to conclude contracts and to administer property and equal treatment in all stages of procedure in courts and tribunals (Article 15). In the context of marriage and family relations, the Convention requires States Parties to uphold equal rights and responsibilities for women and men during marriage and at its dissolution and to ensure “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” (Article 16). CEDAW also specifies the particular rights of rural women, including the right to have access to agricultural credit and loans, the right to equal treatment in land and agrarian reform, and the right to enjoy adequate living conditions (Article 14).⁴⁶

In addition to the main text of treaties setting out general rights, it is important to look to how these general rights have been interpreted and applied to specific situations.⁴⁷ These are authoritative interpretations that come from a variety of sources, including treaty monitoring bodies, special procedures (including Special Rapporteurs), outcomes of international conferences, and case law at the national and international levels. Reports and recommendations published by international human rights bodies provide the basis for the interpretation of and guidance on the application of international human rights norms such as non-discrimination, substantive equality and State obligations.

A number of authoritative interpretations speak to land and housing rights for women, as well as equal inheritance and marital property rights. These include those by international treaty monitoring bodies. For example, the UN Human Rights Committee (overseeing the International Covenant on Civil and Political Rights) has adopted General Comment No 18 on Article 3 on Non-Discrimination,⁴⁸ which includes provisions for women's equal property and inheritance rights, as well as General Comment No 28 on Article 3,⁴⁹ governing Equality of Rights between Men and Women. Additionally the UN Committee on Economic, Social and Cultural Rights issued General Comments No 4⁵⁰ and 7⁵¹ on Adequate Housing and Forced Evictions, respectively. General Comment No 12 on the Right to Adequate Food also speaks to national strategies including guarantees of rights to land for women as a measure for preventing discrimination in access to food or resources for food.⁵² Lastly, the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) has adopted General Recommendation No 21 on Equality in Marriage and Family Relations, which explicitly calls for women's equal rights to inheritance and equal ownership in property acquired during marriage.⁵³

My understanding of human rights is my freedom to be independent, my good relationship with my neighbors... to respect their rights. These rights come from me and not from other people. My understanding of human rights is that it is my right to do what I want to do.

— GWEC member,
Northville 5, Bulacan, Philippines

The Special Rapporteur on Adequate Housing, appointed in 2000, has also prepared background documents on women's housing and land rights that demand equality in rights and practice for women in regards to land, housing and inheritance. The Special Rapporteur on Violence against Women, appointed in 1998, has also recognized the intimate links between housing and land rights and violence against women. The Rapporteur has called upon States to ensure equality and non-discrimination in land and housing for women so they may improve their social status and avoid situations of abuse and exploitation.⁵⁴

United Nations resolutions,⁵⁵ whether from the General Assembly or the Human Rights Council, are also an important source of international human rights law, though they are not binding on States. Like Declarations, resolutions do not carry the weight of treaties as they are not formally ratified. Rather, they are voted on and adopted by United Nations bodies such as the Human Rights Council and the Commission on the Status of Women. Resolutions are persuasive statements by bodies charged with monitoring human rights compliance and can provide important interpretive tools when used in conjunction with binding provisions.

Every day we encounter poor people who are being deprived of their basic rights, because they are not aware of their rights. And if you are not aware of your rights, you are nothing in this world.

— GWEC Member, Barangay Caysio, Sta Maria, Bulacan, Philippines

A number of resolutions have passed on women's rights to housing (at the former Commission on Human Rights as well as the United Nations Commission on the Status of Women). In 2005, the Commission on Human Rights adopted Human Rights Resolution 2005/25, on "Women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing," following similar resolutions passed in 2001 and 2003.⁵⁶ The resolution recognizes the links between violence, HIV and the lack of adequate housing, recognizing the link between the "growing prevalence of HIV/AIDS in women with laws that inhibit the full enjoyment of women's rights to land ownership and inheritance" and supporting a call for "positive change and attention to women's empowerment and protection of women's housing and land rights to make women less vulnerable to HIV/AIDS." The resolution invites "Governments to take further appropriate measures to address the increasing rate of homelessness or inadequate housing for women, including its underlying factors, such as gender inequality, HIV, poverty and violence."⁵⁷ The Commission on the Status of Women adopted Resolution 42/1, urging States to design and revise laws to ensure that women are accorded full and equal rights to own land and other property, including through the right to inheritance.⁵⁸ Other resolutions protect

women's rights to health, to education, access to finances, to security, and to self-determination. There are a number of very strong resolutions that support women's rights very specifically.

The United Nations Declaration of Commitment on HIV/AIDS⁵⁹ sets targets for Governments at the global, regional/ sub-regional and national level to strengthen or enforce legislation and other measures to eliminate all forms of discrimination against women, and to ensure the full enjoyment of all human rights and fundamental freedoms by people living with HIV and members of vulnerable groups. The Declaration seeks the enforcement of legal protections, including for inheritance rights.⁶⁰ Many of these targets have not been met. Note that in 2011, there was also development of the United Nations Declaration of Commitment on HIV/AIDS, which also reiterated commitments set forth in 2001.

Regional Human Rights Standards

Today, many regions also have legally binding human rights instruments. These include the African Charter on Human and People's Rights, the American Convention on Human Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms. These and others are detailed below.

The **African Charter on Human and People's Rights**, adopted in 1981, and the subsequent Protocol concerning women's rights are of particular interest to women in Africa, especially sub-Saharan Africa where women's housing, land and property are routinely violated.⁶¹ The Charter itself stipulates that the rights enshrined within it apply to all persons regardless of sex, that all are entitled to equality before the law, and that all are obliged to treat others without discrimination.

In response to the criticism about the lack of specific provisions concerning women's equal rights and after much lobbying by human rights organizations across Africa, the **Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa** was subsequently adopted in 2003.⁶² The Protocol underscores the principles of non-discrimination and obliges States Parties to "enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination, particularly those harmful practices which endanger the health and general well-being of women."⁶³ The same article (Article 2) requires that States Parties "commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices 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 women and men."

The Protocol calls for appropriate national legislative measures that encourage monogamy as the preferred form of marriage and require marriages to be recorded in writing and registered according to national laws to ensure legal recognition (Article 6). It also requires that in case of separation, divorce, or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage (Article 7), and that existing discriminatory laws and practices shall be reformed to promote and protect the rights of women (Article 8).

Most importantly in relation to housing, land, property and inheritance concerns, the Protocol obliges States Parties to take all appropriate measures to promote women's access to and control

over productive resources such as land and guarantee their right to property (Article 19), articulates the rights of widows in terms of treatment, custody of children, and remarriage (Article 20), and stipulates that "a widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it."⁶⁴ For such provisions, the Protocol to the African Charter represents an important tool for future policy advocacy on these issues.

The importance of these rights, for all of us is without these rights people will not experience peace; people will fight and kill each other because they do not respect their neighbor's opinion. It is important to respect each other's opinion, to respect old people. That's my understanding of human rights. This is really important to have ... in our home, in our area, in our community.

— GWEC Member, Lambakin Community,
Philippines

The **Revised Arab Charter on Human Rights** protects civil, political, economic, social and cultural rights. It upholds the right to non-discrimination, the right to equal treatment, and the right to privacy.⁶⁵ The revised Charter states: "Men and women have equal human dignity and equal rights and obligations in the framework of the positive discrimination established in favour of women by the Islamic Shariah and other divine laws and by applicable laws and international instruments. Accordingly, each State party pledges to take all the requisite measures to guarantee equal op-

portunities and effective equality between men and women in the enjoyment of all the rights set out in this Charter.” The revised Charter contains a provision on the right to own property (Article 31) and the right to housing (Article 38). It also provides for a remedy if the rights enshrined in the instrument are breached (Article 23).

The **Charter of Fundamental Rights of the European Union** contains numerous equality and non-discrimination provisions (Articles 20, 21 and 23) as well as a clause on the right to housing (Article 34 (3)).⁶⁶ The **European Social Charter (revised)** underscores the right of all persons to non-discrimination and contains a specific provision on the right to housing (Article 31).⁶⁷

In the Americas, the **American Convention on Human Rights** recognizes the right of non-discrimination on the basis of sex (Article 1), as well as the rights to property (Article 21) and privacy (Article 11).⁶⁸ Also in the Inter-American system, the **Convention of Belém do Pará** is the sole legally binding international instrument on violence against women. It is a significant treaty because it grants women a right to petition the Inter-American Commission on Human Rights on issues of gender-based violence.⁶⁹

Specific rights enshrined in the instruments as discussed are particularly relevant in ensuring women’s housing, land, and property rights within the context of HIV. These rights are further discussed in the next sections, which give an overview of the content of these “core rights” and their meanings, as well as outlining the concrete obligations of States to uphold these rights. Advocates working to advance women’s rights can rely on these to support their advocacy efforts at all levels, highlighting that women’s rights are indeed human rights.

B. THE RIGHTS TO EQUALITY AND NON-DISCRIMINATION

Non-discrimination and equality are cornerstone human right principles, and these rights have direct implications for women’s access to housing, land, and property, and also with regards to HIV. These rights are protected in the Universal Declaration of Human Rights, as well as in subsequent international and regional human rights instruments. Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights explicitly recognize the right to equality between women and men and the right to non-discrimination.

Based in part on these standards, the (former) United Nations Commission on Human Rights has affirmed that “discrimination in law against women with respect to acquiring and securing land, property and housing, as well as financing for land, property and housing, constitutes a violation of women’s human right to protection against discrimination.”⁷⁰ Let’s look in detail at what the right to non-discrimination means for women:

Article 2(1) of the **International Covenant on Civil and Political Rights** says, “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁷¹ This enshrines the right to non-discrimination vis-à-vis all other rights contained in the treaty.

Gender discrimination refers to the systematic, unfavorable treatment of individuals on the basis of their gender that denies them rights, opportu-

nities or resources; it is a difference in treatment of people based on gender or sex. This difference contributes to structural inequality in society. It occurs whether intentionally or unintentionally, when a law, policy, program or action has the effect of discriminating against women.

For women, gender discrimination is experienced as unequal treatment because of being a woman. It can also be experienced on the basis of marital status, such as discrimination against wives, single women, divorced women, widows, or on the basis of pregnancy or sexuality. Sexual harassment of women and violence against women are also understood as forms of gender discrimination under international human rights law.⁷²

Of special importance is the right to equality between men and women, as this right is often blatantly violated. Equality between women and men (also known as gender equality or sex equality) refers to the equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the “same” but that women’s and men’s rights, benefits and opportunities will not depend on whether they are born male or female. According to the United Nations Office of the Special Advisor on Gender Issues and Advancement of Women, gender equality also implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men.⁷³

The right to equality encompasses all aspects of life. Men and women should be treated equally and should be able to access and enjoy their rights on an equal footing. Gender equality is not a women’s issue. It should concern and fully engage everyone, men as well as women. The *UNAIDS Action Framework for addressing women,*

girls, gender equality and HIV explicitly recognizes the importance of engaging men and boys in HIV responses since attitudes about the appropriate behaviour of women and men contribute to gender inequality and the spread of HIV. For example, stereotypes about masculinity, with expectations that men assume a dominant role in relationships and have multiple partners, put both men and their partners at risk. Men and boys must also challenge these harmful conceptions about masculinity and work to end violence against women. Effective policy and programming should therefore include men and boys to adequately address the gender dimensions of HIV.⁷⁴

Article 3 of the **International Covenant on Civil and Political Rights** also enshrines the right to equality between women and men, noting “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.”⁷⁵ Practically speaking, the right to equality means that States have an obligation to ensure sex equality through the adoption and implementation of positive measures, such as “affirmative action” policies and programs which seek to benefit women and rectify patterns of social inequality.

Similarly, Article 2(2) of the **International Covenant on Economic, Social and Cultural Rights** states, “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁷⁶ Women in particular experience gender-based discrimination in housing, land and property with respect to their ability to hold legal title, as well as discrimination with

regard to issues of housing and property. Such discrimination places women in a vulnerable position economically and socially, exposing them to situations of violence, and impeding their ability to control their own lives. Article 3 of the International Covenant on Economic, Social and Cultural Rights specifically obliges States Parties to ensure equality between women and men, stating, “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.”⁷⁷

B.1 EQUALITY BEFORE THE LAW

The right to equality between women and men, which has been interpreted as a right that places an obligation on States to take positive action (sometimes referred to as positive discrimination or affirmative action) aimed at ensuring women are not disadvantaged vis-à-vis men in the attainment of rights, should not be confused with the right to equality before the law, which is a separate right under international law. Article 7 of the **Universal Declaration of Human Rights** says: “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”⁷⁸ Integral to this right is Article 6, the right to be recognized as a person before the law. Similar provisions are incorporated into the **International Covenant on Civil and Political Rights**, which states in its Article 26 that, “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this

respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁷⁹ Article 16 also states that, “Everyone shall have the right to recognition everywhere as a person before the law.”⁸⁰

This means that the law must be the same for everyone, and should be applied the same way to all, regardless of a person’s sex or gender. The principle of equality before the law is especially important for groups that are in the minority, such as indigenous people or groups that have less political or economic power, such as people living in poverty. This also means that judges, government officials and police are also answerable to the same body of law, and that everyone is equal before the law.

The United Nations International Guidelines on HIV/AIDS and Human Rights recognize that: “It is only if the right to equality and anti-discrimination are violated, that the virus can take advantage of the social, political, and economic vulnerability this creates to flourish unabated among women, children and politically subjugated race and ethnic groups.”⁸¹

Men and women fight in marriages. Men do not want to acknowledge that women have the same power they have – men want to keep all the power for themselves, and make the marriage unequal.

— Mujeres Unidas Member,
Rosales du Pro, Peru

In Focus: Kenya

At national levels, women have brought their claims for equal rights over housing, land property and inheritance to courts, and judges have many times found clarity through the application of international human rights standards. In Kenya, for example, recent case law has better secured the inheritance right of widows and unmarried daughters, regardless of the legal designation of some regions in the country as regions where customary laws on property inheritance shall apply.⁸² In *Mary Rono vs Jane Rono*,⁸³ for example, the legal question was whether it was proper and lawful for the lower court to award less acreage of land forming part of the deceased father's estate to daughters of the deceased on the basis that they were women and had prospects of marrying in the future. The judge, after considering the provisions of the Kenyan Law of Succession Act, which deferred matters concerning customary land ownership to customary law, considered the relevance and applicability of international law to the determination of the case. The judge observed that Kenya had ratified various human rights instruments and ruled that the deceased's land that was at the center of the succession dispute be equally and equitably shared by the deceased's nine sons and daughters. In the case, the court for the first time directly applied the Convention on the Elimination of All Forms of Discrimination against Women to determine an inheritance case. The decision, which was issued in April 2005, is now the guiding authority on matters of inheritance, especially where inheritance rights of daughters and widows are in question, and has been used by High Court judges when deciding on succession cases in several different communities whose customary laws do not allow inheritance of a deceased person's property by daughters.

B.2 THE RIGHT TO EQUALITY IN MARRIAGE

Part of the right to equality entails a right to equality specifically within the institution of marriage. Human rights protect men and women as equals, both within and outside of marriage. Women have the same rights as men to marry, to found a family, to share in property and to make decisions about marriage. Under Article 23 of the **International Covenant on Civil and Political Rights**, States Parties need to: "take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children."⁸⁴

The United Nations Human Rights Committee has taken this further, underscoring that "States are required to treat men and women equally in regard to marriage in accordance with article 23 ... Men and women have the right to enter into marriage only with their free and full consent, and States have an obligation to protect the enjoyment of this right on an equal basis."⁸⁵ The Committee further notes:

To fulfill their obligations under article 23, paragraph 4, States parties must ensure that the matrimonial regime contains equal rights and obligations for both spouses with regard to the custody and care of children, the children's religious and moral education, the capacity to trans-

mit to children the parent's nationality, and the ownership or administration of property, whether common property or property in the sole ownership of either spouse. States parties should review their legislation to ensure that married women have equal rights in regard to the ownership and administration of such property, where necessary... Equality during marriage implies that husband and wife should participate equally in responsibility and authority within the family.⁸⁶

The right to equality also extends to the dissolution of marriage. The Human Rights Committee has specifically stated:

States parties must also ensure equality in regard to the dissolution of marriage, which excludes the possibility of repudiation. The grounds for divorce and annulment should be the same for men and women, as well as decisions with regard to property distribution, alimony and the custody of children. Determination of the need to maintain contact between children and the non-custodial parent should be based on equal considerations. 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.⁸⁷

Article 16 of the **Convention on the Elimination of All Forms of Discrimination against Women** also upholds these rights, and obligates all States Parties to take appropriate measures to eliminate discrimination against women. "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women... (h) the same rights for both spouses in respect of the ownership, acquisition, management administration enjoyment and disposition of property, whether free of care or for a valuable consideration."⁸⁸

Now, it is not only about problems of couples, it is actually concerned with everything in human life – that's why it's called a human right.

— GWEC Member,
Lambakin Community, Philippines

Despite these protections, the reality is often different for women who are still treated as secondary in marriage. Women are often denied the right to participate in decision-making within the family and risk being disinherited from land, particularly if they are blamed for bringing HIV into the household.

Many women, particularly in sub-Saharan Africa but also in other parts of the world, suffer immensely from property grabbing and the practice of disinheritance. It is important for women to be able to claim ownership of property during marriage, as well as upon the death of a spouse. Therefore, one should pay attention to the language that one uses to advocate on behalf of women. Discussions about women "inheriting" property from a deceased spouse may reinforce the idea that property rights vest primarily in the husband, not the wife. Similarly, language about a woman's "disinheritance" may fail to account for the fact that women are often stripped not just of their inheritance but of their own property.⁸⁹

Therefore the problem is a lack of women's equal rights to marital property, which must be addressed in order to secure women's right to equality. Women must be able to inherit on an equal basis with men. Even more fundamentally, women must be able to own and exercise control over resources on an equal basis with men.

Marital property rights are regulated according to the regime governing the marriage. In many cases, this is a civil regime, and thus, the marital property would be determined by statute. In other cases in many local jurisdictions in Africa, marriage is entered into under custom, and thus customary law governs the marital property and how it is determined and divided. Usually, property of a marriage entered into under civil law is governed by statute. However, marriages entered into under custom are not protected by statute and are instead governed by traditional norms.

If those norms are discriminatory, and women are denied equality, women may still seek redress in the statutory system, for in most cases the Constitution would not allow discrimination against women. However, in some countries, such as Zambia and Zimbabwe, the Constitution allows

for discrimination in application of custom and tradition. Article 23 of the Zambian Constitution permits discriminatory laws to exist in the area of personal law, and customary law in any matter. Thus, if customary norms discriminate against women, there is no possibility to seek redress.⁹⁰

It is also difficult in general for women to bring property and law claims in court. Poor and vulnerable groups often do not have enough knowledge or awareness about their rights. Moreover, bringing a case to court has ramifications that often outweigh the potential property gain from a judgment. These include, for example, fear of witchcraft (women fear they will be bewitched if they go against their in laws in court against property grabbing for example) or loss of social net, where women are shunned by their family or community after the “shameful” process of claiming their rights in court.

In Focus: Uganda

On ensuring women’s equal rights in marriage, law from Uganda is interesting and instructive.⁹¹ The Ugandan Constitution has several positive attributes for women. First, it specifically prohibits discrimination against women. Second, it outlaws customs, beliefs and traditions that contravene the Constitution, which is stated as supreme law of the land. Third, the Constitution also promotes affirmative action to address the effects of past inequalities. However, the practice of implementation has been difficult. For example, Uganda’s Succession Law has been challenged on the grounds of gender discrimination.⁹² The Law allowed a widow only 15% of the estate of her husband upon his death, with the rest to be divided between children and other dependents. Where the term “legal heir” was defined, a male heir is preferred to a female one. The Law was also written as if women did not, in fact, have the capacity to own property. Section 27 of the Law provided that, when a man died, his property would be distributed to his heir(s), but no such arrangement is made for inheriting the property of a deceased woman. Under sections 15 and 16, a woman could take her husband’s domicile, but a man could not take his wife’s domicile. Therefore, in the case of *Law Advocacy for Women in Uganda v The Attorney General*, petitioners argued that the above sections of the Act were unconstitutional, as they discriminated against women.⁹³ They won their case, and the discriminatory sections of the law were struck down.

C. WOMEN'S EQUAL RIGHTS TO LAND AND PROPERTY

Throughout the world, women rarely own their land and housing. Much of the world's land is accessed informally. For example, in Peru, 81% of rural property and 53% of urban property is outside of the official legal order. In Africa, between 50 and 70% of land for urban housing is accessed informally.⁹⁴ Women are often not recognized in informal systems, though under formal ones they often do not fare any better.⁹⁵

Gender inequality with regard to land and property are linked to notions that men are the best custodians of land. Land given to women is seen as being "lost" in the event of a marriage or a divorce. Also, women are sometimes viewed as incapable of managing property effectively. It is often presumed that men will support women, and therefore that there is no need for women to have their own property. These presumptions are often reflected in property laws, which do not acknowledge a woman's rights to own an equal share of property with her husband during and after a marriage.⁹⁶

In many countries, a complicated mix of customary law and statutory provisions, regulations and administrative provisions, and informal practices and traditions all combine to structure women's rights in property, land and housing. When formal laws do exist that protect women's rights, women are still prevented from accessing these protections due to customary or traditional practices and/or judicial or administrative hurdles. As such, women are unable to access or afford land and housing in their own right. They are made to rely on their relationships to males. Even in formal registration systems, housing is often registered only in the name of the male, as the "head of the household." In some parts of Africa, traditional leaders, who normally allocate land in commu-

We have the rights to be titled in our land... which give dignity to us and our children.

— Mujeres Unidas Member,
Vista Alegre, Peru

nal areas, refuse to give land to women, instead demanding that women are represented by their male relatives in order to be allocated land.⁹⁷

Yet, this is against international human rights standards and interpretations. Article 16 of the **Convention on the Elimination of All Forms of Discrimination against Women** provides that:

*States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: ... (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.*⁹⁸

Furthermore, the United Nations Committee on the Elimination of Discrimination against Women in its General Recommendation No. 21 on "Equality in Marriage and Family Relations," said:

*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, women are granted limited and controlled rights and receive income only from the deceased's property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished.*⁹⁹

*In Focus: Malawi*¹⁰⁰

In Malawi, the courts are often inconsistent in their rulings on marital property and there is disagreement over marital property within the system of Higher Courts. Recent cases have held that the Constitution, Section 24(1)(b)(i), determines that women have the right to a fair disposition of property held jointly with a husband in case of divorce. Cases of property owned solely by either the husband or the wife are not affected. In the case of *Jane Mkulichi v. Henry Mkulichi*,¹⁰¹ decided in 2009, the Court stated that the ultimate guiding law covering distribution of marital property is the Constitution under section 24 (1)(b)(i), which, according to the judgment:

Confers upon every woman the right to a fair disposition of property held jointly with a husband in the event of a divorce ... the property to which a wife is entitled to fair distribution upon divorce is that which she jointly owned with a husband. The provision does envisage a situation in which a husband or wife would own property solely and such property would not be the subject of distribution between the parties in the sad event of a divorce. The court therefore would have to ascertain which property was jointly owned by the parties before subjecting it to distribution.

Contributions to the maintenance of property items, housekeeping and child-care by spouses are generally not accepted as sufficient for any proprietary rights,¹⁰² which disadvantages women whose contribution in the household is usually not monetary. The High Court has extended this interpretation in matters related to intestate succession.¹⁰³ However, the High Court Principal Registry in Mzuzu has taken a different approach. In the case of *Kayira v. Kayira*¹⁰⁴ Chikopa J. stated the position of the law as follows:

We had occasion to debate the distribution of matrimonial property [in another case]... Quite apart from everything that we said in that case about the distribution of matrimonial property on the dissolution of a marriage, it is clear that the starting point is section 24(1) (b) of the Constitution.

We are aware that some have tended to read the words in paragraph (i) strictly and think therefore that the property to be distributed should only be such as is jointly held. We hold a different view. We think ... the Constitution should be interpreted in a generous and broad fashion as opposed to a strict, legalistic and pedantic one. A manner that gives force and life to the words used by the legislature and avoids at all times interpretations that produce absurd consequences. Pursuant to the foregoing, we refuse to interpret paragraph (i) to mean only such property as is held [jointly] in the name of the husband and wife on the date of the dissolution of the marriage. That would unjustly disadvantage either of the parties to the marriage [experience has shown the disadvantaged to be mostly the wife].

The Mzuzu registry has reiterated this position in a number of cases since then.¹⁰⁵ In the case of *Ellen Shaba v. David Chizunga*,¹⁰⁶ the judge stated that:¹⁰⁷

Many times, men tend to have a novel view of the amount of contribution a housewife makes to the overall properties a family holds. Many wrongly believe that the mere fact that the woman was

not working puts her in a weak position when it comes to sharing of the property. Her contributions can easily be quantified as cooking, washing, cleaning the house, looking after the husband and children all of which she does not get paid for. The same applies to a jobless man vis-à-vis a working wife mutatis mutandis.

Despite the existence of cases in the Court of Appeals and elsewhere demanding a broad interpretation of the Constitution that broadly defines common property in marriage, as cited above, various High Courts are not consistent and in many cases continue to interpret the Constitution strictly. Without a Supreme Court ruling to decide the issue, case law in Malawi on property in marriage, and thus inheritance, will not be clear. Women and Law in Southern Africa, in May 2010, brought a case against the Attorney General of Malawi challenging the validity of section 17 of the Married Women's Property Act of 1882, on grounds that these statutes deprive Malawian women of their rights to equality and to acquire property, as guaranteed by sections 20(1), 24(1)(b)(i) and 28 of the Constitution. A solid rule on women's marital property would resolve the wavering by Malawian High Courts. This is one of the few cases being heard by the Constitutional Court in Malawi and its outcome could have a significant impact on the lives of women in Malawi.

In Focus: South Africa

The Bhe case concerned two minor girls who sought to inherit their deceased father's estate. The case was brought against their grandfather who, under "black" law and custom, was to inherit his deceased son's estate. The grandfather intended to sell the girls' home. The girls sought a Court Order that the rule of primogeniture under black law and custom must be interpreted and developed in line with the Constitution, so as to allow them and other girls in their position to inherit from their deceased father's estate. On 26 September 2003, the Bhe judgment was handed down in the Cape High Court by Justice Ngwenya and ordered by Presiding Justice Hlophe. The Court found for the girls, and declared, inter alia, that Section 23(10)(a)(c) and (e) of the Black Administration Act are unconstitutional and invalid; that Regulation 2(e) of the Black Administration Act, Regulations for the Administration and Distribution of the Estates of Deceased Blacks, promulgated under Government Notice R200 of 6 February 1987 is invalid; and that Section 1(4)(b) of the Intestate Succession Act 91 of 1987 is unconstitutional and invalid. The Court concluded:

We should make it clear in this judgment that a situation whereby a male person will be preferred to a female person for purposes of inheritance can no longer withstand constitutional scrutiny. That constitutes discrimination before the law. To put it plainly, African females, irrespective of age or social status, are entitled to inherit from their parents' intestate estate like any male person. This does not mean that there may not be instances where differentiation

on gender lines may not be justified for purposes of certain rituals. As long as this does not amount to disinheritance [sic; i.e.: disinheritance] or prejudice to any female descendant. On the facts before us, therefore, the first two applicants are declared to be the sole heirs to the deceased's estate and they are entitled to inherit equally.

In March 2004, the Constitutional Court confirmed the Bhe case (Constitutional Court Case No. 49/03) and the accompanying case,¹⁰⁸ agreeing that primogeniture as under customary law is discriminatory, and classified as unconstitutional all legislation that allows such discriminatory laws to be applied. After the Constitutional Court's decision in Bhe, South Africa enacted the Reform of Customary Law of Succession and Regulation of Related Matters Act to give widows and daughters equal inheritance rights with widowers and sons. The Intestate Succession Act will govern the estates of anyone who has not left a will and is subject to customary law.

D. THE RIGHT TO ADEQUATE HOUSING

Adequate housing is fundamental to survival and to living a dignified life with peace and security. Everyone has the right to adequate housing. In international law, it is found within the right to an adequate standard of living, enshrined in Article 25 of the **Universal Declaration on Human Rights**,¹⁰⁹ and Article 11 of the **International Covenant on Economic, Social and Cultural Rights**.¹¹⁰ The Committee on Economic, Social and Cultural Rights, which is the committee that oversees implementation of the Covenant, notes that the right to adequate housing should be seen holistically, encompassing the right to live somewhere in security, peace and dignity. In 1991 the Committee defined the right to adequate housing, which forms a part of the Covenant (and is legally binding) and found that seven conditions must be met to ensure that housing is adequate. The Centre on Housing Rights and Evictions (COHRE) has explained how each of these seven elements relates to women.¹¹¹

1. Security of Tenure: Security of tenure is defined as the right of all individuals and groups to effective protection by the state against

forced evictions.¹¹² *Tenure for women is often insecure because it is dependent upon their relationship to a male. Victims of domestic violence, without legal claim in the home and facing obstacles to obtaining housing on their own, must often face the choice of homelessness or remaining prisoners of violence.*

I pity my children because they have the right to own our house but... the National Housing Authority (NHA) says that my husband is the man of the house, our contract with the NHA is in his name – not even shared with me. My children do not have any rights over the house and are left to his mercy.

— GWEC Member,
Northville, Philippine

2. Availability of Services, Materials, Facilities and Infrastructure: Adequate housing requires access to potable water, energy for cooking, heating and lighting, sanitation, washing facilities, food storage, refuse dis-

posal, drainage and emergency services. *The importance of the proximate availability of these services is clear, considering the reality of many women's daily lives, often bearing the primary responsibility for the care of household, children and other family or community members.*

If I leave my husband, we really lose our right to own our place – I can't do anything on my own, so I have to bear whatever he does and say against me and my children. If we leave him, we do not know where to go – I have grandchildren... We cannot afford to pay rent.

— GWEC Member,
Northville 5, Philippines

3. **Affordability:** The housing affordability principle stipulates simply that the amount a person or family pays for their housing must not be so high that it threatens or compromises the attainment and satisfaction of other basic needs. *This provision must be interpreted so that women, often economically marginalized, are able to afford adequate housing through appropriate credit and financing schemes.*
4. **Habitability:** Inhabitants must be ensured adequate space and protection against the cold, damp, heat, rain, wind or other threats to health or structural hazards. *In this respect, women must also be protected from domestic violence, a clear threat to their health.*
5. **Accessibility:** Disadvantaged groups such as the elderly, children, the physically and mentally disabled, people living with HIV, victims of natural disasters and other groups should

be ensured some degree of priority consideration in housing. *Women are also a traditionally disadvantaged group vis-à-vis housing, due to societal and cultural discrimination and subordination. Women with disabilities or HIV are even further marginalized. As such, States must undertake specific measures to address the needs of specific groups of women in gaining access to housing.*

6. **Location:** Housing must be situated so as to allow access to employment options, health care services, schools, childcare centers and other social facilities. *The location of housing is especially vital for women, as they are the ones most often charged with taking care of the household and raising children, to allow them the opportunities to fulfill other fundamental rights and achieve gender equality.*
7. **Cultural Adequacy:** Housing must allow for the expression of cultural identity and recognize the cultural diversity of the world's population. *Women must be given the chance to effectively participate in the planning of housing to ensure a reflection of their cultural identity, and women must also be able to have a say in the creation and interpretation of cultural standards related to housing.*

The contracts with National Housing Authority (NHA) for our house is in my husband's name only, as he is the head of the family – NHA said, if you are married, the contract is always in the name of the husband because he is the man of the family.

— GWEC Member,
Northville, Philippines

Often, there is confusion about whether women can legally secure tenure for themselves without a spouse. Sometimes this confusion arises from a misunderstanding of laws providing that married women and men share ownership of land as “joint tenants.” This means that both husband and wife have equal ownership of the property and an equal right to possess it. If one of them passes away, the other retains ownership over the entire property. Outside of joint tenancy, however, a woman still has a right to enjoy security of tenure regardless of her relationship status with a man.

It is important that the women tackle housing issues – these are our human rights. Usually the men take on these issues, but the community does not benefit when they do. The women must assume the challenges, to access housing programs from the State and other ways to secure their tenure. They will benefit and the whole community will benefit too.

— Mujeres Unidas Member,
Vista Alegre Community, Peru

E. THE RIGHT TO BE PROTECTED FROM FORCED EVICTIONS

The right to adequate housing also implies the right to be protected against forced evictions, as this is a key aspect of security of tenure. Forced evictions, 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,” are a clear violation of the **International Covenant on Economic, Social and Cultural Rights**, in particular Article 11 (1).¹¹³ The

Some of us have been forcibly evicted from our natal and marital homes after we disclosed our HIV health status as positive. ... Our right to adequate housing is sometimes violated or we are threatened with evictions even by our own spouses. A lot of us have been evicted from our homes after the death of our spouses, as some men strongly believe that women are responsible for spreading the HIV in the communities.

— Rural Women’s Movement Members,
KwaZulu-Natal, South Africa

right to not be forcibly evicted from one’s home is a fundamental human right, which has been addressed in detail by the United Nations Committee on Economic, Social and Cultural Rights. The Committee has held that “forced evictions are prima facie [“on their face”] incompatible with the requirements of the [International Covenant on Economic, Social and Cultural Rights] and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law” (emphasis added).¹¹⁴

The (former) United Nations Commission on Human Rights has also affirmed “that the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing.”¹¹⁵ In 2004, the Commission reiterated that “every woman, man and child has the right to a secure place to live in peace and dignity, which includes the right not to be evicted unlawfully, arbitrarily or on a discriminatory basis from their home, land or community.” The Commission also noted that while certain groups were more vulnerable to forced eviction because of social exclusion and discrimination, the fact remains that “women in all

groups are disproportionately affected, given the extent of statutory and other forms of discrimination which often apply in relation to the property rights of women, including homeownership and rights of access to property of accommodation, and given the particular vulnerability of women to acts of genderbased violence and sexual abuse when they are rendered homeless” (emphasis added).¹¹⁶

After the death of a spouse or father, women are often disinherited and forcibly removed from land and home by in-laws, community members or others who claim the land/housing is theirs. In times of massive evictions, women suffer unequally, forced to re-build their lives and to continue acting as care-givers for their families.

We have the right not to be evicted, as 20 years living in the area protects us.

— Mujeres Unidas Member,
Rosales du Pro, Peru

We experienced that when we were still along the track. We were forcibly evicted -- they destroyed our houses. We do not know where to take our belongings. We do not have the right to complain because we are squatters. We do not know what to do.

— GWEC member,
Northville, Philippines

They gave us notice but we thought it will take some more years before it will happen because I've been hearing this eviction issue since I was very small.

— GWEC Member,
Northville 5, Philippines

F. THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH

All persons – women, men and children – have the right to the highest attainable standard of health. It is a right that goes beyond the mere absence of disease to encompass everything we need as human beings to be our healthiest. The World Health Organization (a United Nations body) defines health as a “state of complete physical, mental and social well-being.”¹¹⁷ The right to health includes primary health care, reproductive health, mental health, family planning and other aspects of health. This right is also recognized in many international human rights treaties, including within the International Covenant on Economic, Social and Cultural Rights, which states in Article 12: “The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, and political belief, economic or social condition.”¹¹⁸ For women coping with the effects of HIV and AIDS, their access to housing, land and property can be a powerful determinant of their health status. The **International Covenant on Economic, Social and Cultural Rights** also enshrines the right to the highest attainable standard of health in its Article 12.¹¹⁹

What does the right to health mean? A right to health care meets the following criteria:

- **Availability** of health facilities, goods, and services
- **Accessibility** of health facilities, goods and services; this includes:
 - Non-discrimination
 - Physical accessibility
 - Economic accessibility/affordability
 - Information accessibility

- **Acceptability** of health facilities, goods, and services; they must be:
 - Respectful of medical ethics
 - Culturally appropriate
 - Sensitive to gender and life-cycle requirements
- **Quality** health facilities, goods, and services that are scientifically and medically appropriate¹²⁰

The right to the highest attainable standard of health includes not only a right to health care, but also a right to the underlying determinants of health, including civil and political rights.¹²¹ The right to health is linked closely with:

- *The Right to Food:* International standards protect the right to food, an integral part of the right to health of women. Nutrition programs and provision of food are substantial components of primary health care strategies.
- *The Right to Adequate Housing:* Adequate housing includes safe drinking water, access to basic services and other living conditions necessary to protect persons from health related environmental risks.
- *The Right to Education:* Women and girls have a right to education, which includes education on health problems and methods for preventing and controlling disease.
- *The Right to Life:* Health is closely connected to life and deteriorating health conditions, such as those brought about through the progression of HIV and AIDS, which may lead to early or otherwise preventable death.

The right to the highest attainable standard of health also carries with it specific obligations. The World Health Organization (WHO) has designed a

plan of goals and programs to achieve minimum levels of health for all. Yet, in a context in which health problems associated with poverty and inequality continue to pose the main obstacles to attain minimal levels of well-being for most of the world's population, much more needs to be done. Access to health care can depend on the individual's capacity to pay; thus, patients are turned from citizens who have rights and responsibilities into clients or consumers.¹²²

In order to meet their obligations in this area, States must immediately ensure the "minimum core" of the right, which includes non-discriminatory access to health care; equitable distribution of health facilities, goods, and services; essential medicines, as defined by the WHO;¹²³ minimum essential food, potable water, basic shelter, and sanitation; national public health strategies and plans of actions adopted and implemented through a participatory process. National strategies and plans must give particular attention to vulnerable and marginalized groups in both their process and content.¹²⁴

For women, the right to health has special relevance within the context of HIV. The United Nations Committee on Economic, Social and Cultural Rights has specifically noted that:

*The prevention, treatment and control of epidemic, endemic, occupational and other diseases... requires the establishment of prevention and education programmes for behaviour-related health concerns such as sexually transmitted diseases, in particular HIV/AIDS, and those adversely affecting sexual and reproductive health, and the promotion of social determinants of good health, such as environmental safety, education, economic development and gender equity.*¹²⁵

Similarly, the United Nations Committee on the Elimination of All Forms of Discrimination against Women has held:

*The issues of HIV/AIDS and other sexually transmitted disease are central to the rights of women and adolescent girls to sexual health. Adolescent girls and women in many countries lack adequate access to information and services necessary to ensure sexual health. As a consequence of unequal power relations based on gender, women and adolescent girls are often unable to refuse sex or insist on safe and responsible sex practices. Harmful traditional practices, such as female genital mutilation, polygamy, as well as marital rape, may also expose girls and women to the risk of contracting HIV/AIDS and other sexually transmitted diseases. Women in prostitution are also particularly vulnerable to these diseases. States parties should ensure, without prejudice and discrimination, the right to sexual health information, education and services for all women and girls, including those who have been trafficked, even if they are not legally resident in the country. In particular, States parties should ensure the rights of female and male adolescents to sexual and reproductive health education by properly trained personnel in specially designed programmes that respect their rights to privacy and confidentiality.*¹²⁶

The International Guidelines on HIV/AIDS and Human Rights also provide that:

States should take measures to reduce the vulnerability, stigmatization and discrimination that surround HIV and promote a supportive and enabling environment by addressing underlying prejudices and inequalities within societies and a social environment conducive to positive behaviour change. An essential part of this enabling environment involves the empowerment of women, youth and other vulnerable

*groups to deal with HIV by taking measures to improve their social and legal status, involving them in the design and implementation of programmes and assisting them to mobilize their communities... Special programmes and measures should be designed to increase access. In many countries, community-based organizations and NGOs have already begun the process of creating a supportive and enabling environment in their response to the HIV epidemic. Governments must recognize these efforts and lend moral, legal, financial and political support to strengthen them.*¹²⁷

G. THE RIGHT TO PHYSICAL INTEGRITY

As we have seen, many women throughout the world are trapped in abusive relationships and cannot protect themselves from HIV infection or seek treatment. Violence against women is too often tolerated by cultural and social attitudes, and perpetuated by political and economic practices that disfavor women and contravene basic principles of gender equality. Violence against women is increasingly recognized for what it is: a major global human rights crisis, and one that has grave health ramifications for women. As the (former) United Nations Commission on Human Rights noted:

*Violence against women and girls, including rape, female genital mutilation, incest, early and forced marriage, violence related to commercial sexual exploitation, including trafficking, as well as economic exploitation and other forms of sexual violence, increases their vulnerability to HIV/AIDS, that HIV infection further increases women's vulnerability to violence, and that violence against women contributes to the conditions fostering the spread of HIV/AIDS.*¹²⁸

Violence against women violates a number of human rights protections. In fact, human rights standards take a zero-tolerance approach to-

wards violence against women, which cannot be condoned on any grounds. The right to security of person is guaranteed by Article 3 of the **Universal Declaration of Human Rights**. In this article, it is combined with the right to life and liberty: “Everyone has the right to life, liberty and security of person.”¹²⁹ Additional human rights legal standards and interpretations have also been applied to protect women from violence, including Articles 6, 7, 9 and 17 of the **International Covenant on Civil and Political Rights** on the right to life; to freedom from torture and cruel, inhuman and degrading treatment; to security of the person; and to privacy (respectively).¹³⁰ The **International Covenant on Economic, Social and Cultural Rights** also enshrines the right to the highest attainable standard of health in its Article 12.¹³¹ The CEDAW Committee has further recognized that gender-based violence violates the right to life; (b) the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; (c) the right to equal protection according to humanitarian norms in time of international or internal armed conflict; (d) the right to liberty and security of person; (e) the right to equal protection under the law; (f) the right to equality in the family; (g) the right to the highest standard attainable of physical and mental health; and (h) the right to just and favorable conditions of work.¹³²

The United Nations Committee on the Elimination of All Forms of Discrimination against Women has recognized that “Gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.” This understanding, of gender-based violence as a form of discrimination, is widely held. The United Nations Committee on Economic, Social and Cultural

Rights, for example, has also held that “Gender-based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality. States parties must take appropriate measures to eliminate violence against men and women and act with due diligence to prevent, investigate, mediate, punish and redress acts of violence against them by private actors.”¹³³

Moreover, human rights bodies have recognized the connection between violations of physical integrity, or violence, and other rights. The (former) United Nations Commission on Human Rights has noted that “the lack of adequate housing can make women more vulnerable to various forms of violence, including domestic violence, and in particular that the lack of housing alternatives may limit many women’s ability to leave violent situations.”¹³⁴

In addition, the CEDAW Committee underscores:

*Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women’s health at risk and impair their ability to participate in family life and public life on a basis of equality.*¹³⁵



*Kaltoum Adam Imam with one of her five children collects millet in a land rented by a community leader in Saluma Area, near El Fasher (North Darfur).
UN Photo/Albert Gonzalez Farran*



CHAPTER 3

ENFORCEMENT: MAKING RIGHTS REAL FOR WOMEN

HUMAN RIGHTS UNDERLINE MAJOR national and international development objectives, including the UN Millennium Development Goals (MDGs).¹³⁶ All UN Member States have pledged to adopt measures for the achievement of the MDGs, which include promoting gender equality and empowering women (Goal 3) and combating HIV (Goal 6). Securing women's land and property rights are an implicit part of achieving these goals, as well as the goal of eradicating extreme poverty.

States are responsible for respecting, protecting and fulfilling the rights of all persons within their jurisdiction, and must do so on the basis of equality and non-discrimination. These obligations are critical for women; they are essential to ending the violence, insecurity and poverty that women currently face. As leading international agencies have championed in their responses to HIV, "International human rights instruments can give structure and direction to activists' efforts."¹³⁷

Our government signed the CEDAW in 1993 and ratified it in 1995 but to this day it has not been implemented.

— Rural Women's Movement Member,
KwaZulu-Natal, South Africa

But what do these obligations mean? We can think of these duties of States to be in three levels:

- The first level is that of respecting women's rights. The **obligation to respect** women's housing, land and property rights ensures that States do not act in ways that result in violations of women's rights. For example, this obligation ensures that States do not create discriminatory legal frameworks that result in women's disinheritance and dispossession of their property and assets. It also ensures that States do not themselves carry out violations of women's rights, such as forced evictions. States must avoid measures that hinder or prevent the enjoyment of women's housing, land and property rights.
- The second level involves protecting women's rights. The **obligation to protect** ensures that States effectively protect women from human rights violations at the hands of private or third-party actors. In other words, the obligation to protect says States must ensure that non-state actors are prohibited from carrying out violations of women's housing, land and property rights. This means that States must put in place a system of protection that prohibits, for example, corporations, landlords, and even family members, from violating these rights. States, therefore, must prevent third parties from interfering with the enjoyment of women's housing, land and property rights.

- The third level has to do with the actual fulfillment of women's rights. The **obligation to fulfill** requires States to take proactive and concrete steps to realize women's housing, land and property rights. This means that States must provide both material and non-material support to women, so as to ensure that women are able to realize their rights. The obligation to fulfill consists of obligations to provide, facilitate and inform. This means that States must take positive (active) measures that enable and assist women to enjoy their rights, that States must ensure women are able to secure these rights when they are unable, for reasons beyond their control, to realize the right themselves by the means at their disposal. It also requires States to educate women about their human rights.
- States also have a duty to ensure that they prioritize the fulfillment of the rights of those segments of society who suffer the most discrimination, a provision that is certainly relevant to women affected by HIV and AIDS, who suffer discrimination and disadvantage not only because they are women, but also because of their HIV status.
- Fighting discrimination against women requires States to meet their obligations at all levels. For example, under the **Convention on the Elimination**

*In Focus: India*¹³⁸

Article 14 of the Constitution of India specifies "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 Constitution also bans "discrimination on grounds of religion, race, caste, sex or place of birth."¹³⁹ Nonetheless, women are many times dispossessed of their property, despite the fact that the 1956 Hindu Succession Act granted women the right to inherit property.¹⁴⁰ The Eighth Five-Year Plan (1992-1997) adopted by the Government of India established fundamental prerequisites for improving the lives of women. This plan obliged the State to revise inheritance norms to enable women to inherit property from their natal family. Additionally, the State urged local governments to allocate to women 40% of excess land (land obtained by the State from families possessing more than the permissible allocation). The strategy also provided that 60% of excess allocated land should be given to families with the land title in both spouses' names. Later, the Ninth Five-Year Plan (1997-2002) focused on women's empowerment, and the Tenth Five-Year Plan (2002-2007) proposed explicit guidelines and programs to help empower women. The Eleventh Five-Year Plan (2007-2012) took this focus one step further: "For the first time in the history of Indian planning there is an attempt to move beyond empowerment and recognize women as agents of sustained socio-economic growth and change. The Eleventh Five-Year Plan acknowledges women's agencies and tries to ensure that their needs, rights and contribution are reflected in every section of the Plan document. Gender is, therefore, a cross cutting theme ..."¹⁴¹ The Eleventh Plan proposes a five-fold agenda for gender equity. This includes economic empowerment; social empowerment; political empowerment; strengthening mechanisms for effective implementation of women-related legislations; and augmenting delivery mechanisms for mainstreaming gender.

of All Forms of Discrimination against Women, States Parties agree to take a series of measures to combat discrimination against women.¹⁴² These obligations include:

- i) *To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;*
- ii) *To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;*
- iii) *To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;*
- iv) *To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;*
- v) *To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;*
- vi) *To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; and,*
- vii) *To repeal all national penal provisions which constitute discrimination against women.*¹⁴³

Only when governments are held accountable to enforce those rights to which they have committed will they actually do so. The next five sections provide a basic framework realizing and enforcing women's rights. In order to do so, it is important for advocates to work at various levels to ensure that women's human rights are respected, protected

and fulfilled. As was noted above, in order for women's equality to be achieved, rights must be protected in both law and practice. Creating equality for women requires working *both* to strengthen the legal standards which protect women's rights, and to transform biased cultural norms and practices which discriminate against women.

A. RIGHT TO A REMEDY

We know that all human rights must be respected, protected and fulfilled, and that States have concrete obligations with which they must comply – so what happens when a State does not comply with its obligations? When that happens, a human rights violation has taken place, and the State is responsible.

My understanding of justice is the solution to every problem. I must consult with lawyers or to the Municipal Hall to provide the best solution to my problem. That's my understanding of justice. I will approach the authorities, the organizations that help people. The government will be responsible to the injustices they did because they did not keep their promises to the people.

— GWEC Members, Northville, Philippines

States can either violate human rights because of things that they do, or because of things that they fail to do. In either case, the fact that a human rights violation has taken place remains the same. For every human rights violation, victims are entitled to an appropriate remedy, or a correction of the violation. The Right to a Remedy¹⁴⁴ is enshrined in Article 2(3) of the **International Covenant on Civil and Political Rights**, which states:

Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;*
- (c) To ensure that the competent authorities shall enforce such remedies when granted.¹⁴⁵*

As noted earlier, Article 2 of the **Convention on the Elimination of All Forms of Discrimination against Women** also protects the right to a remedy. The Convention calls on all States Parties “To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.”¹⁴⁶

Remedies ensure that victims of human rights violations are able to seek and achieve justice; they ensure that victims are able to secure their rights, and that wrongdoers are also held accountable for their actions. For example, a woman who has been stripped of her housing and land upon the death of a spouse is entitled to a remedy which ensures that the discrimination she faced is reversed. Such women are entitled to reclaim their property, or to adequate compensation if repossession is impossible.

Everyone who has suffered a human rights violation is entitled to reparations which may include restitution, compensation, rehabilitation,

satisfaction, and guarantees of non-repetition. As was noted previously, the (former) United Nations Commission on Human Rights has observed that “the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing.”¹⁴⁷ According to the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, “Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families.”¹⁴⁸ In addition, victims are entitled to (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; and, (c) Access to relevant information concerning violations and reparation mechanisms.¹⁴⁹

FIGHTING FORCED EVICTIONS IN THE PHILIPPINES:

Grassroots Women’s Empowerment Centre (GWEC)¹⁵⁰ organized community members that were threatened with eviction to negotiate with governments for relocation or other solutions. GWEC worked with the Philippines National Railway lines, threatened with eviction due to railway expansion. Through the women’s sustained pressure and negotiations with government, several communities now have received alternative land and new, secure homes — their remedy to the eviction.

Remedies apply at the level of the individual, but they can also apply more broadly. For an individual woman who loses her property, having her property restored solves her immediate problem, but it does not resolve the broader violation of property grabbing. States must ensure justice on an individual basis, as well as ensure that its laws, policies and programs work to prevent violations across the board.

B. UNDERSTANDING THE ISSUES AND ORGANIZING A COLLECTIVE RESPONSE

In order to seek a remedy to a human rights violation, the issues and the stakeholders involved must be understood. Community mapping (please see

text box) places grassroots women in the center of information collection by empowering them to undertake critical evaluations of the state of their communities. Through participatory processes often involving the entire community, women assess their communities. They consider their vulnerabilities and resources in relation to different issues such as vulnerability to disaster, HIV prevalence, and access to and ownership of land and housing.

Organizations and communities can use mapping as a vehicle for organizing as well as a basis for advocacy. Mapping provides an opportunity to uncover the issues that women are facing. Women identify issues in security of tenure, but also the reasons for it, which then help to understand potential solutions or remedies.

COMMUNITY MAPPING: A TOOL FOR ENGAGEMENT:¹⁵¹

A community mapping is a participatory process¹⁵² whereby community members assess the situation in their communities and document the knowledge of their fellow community members. These mappings involve members of an organization going through a community in a structured activity format, talking to its members, learning about the needs and resources, documenting the findings, and then reporting the results. Community mappings frequently bring profound issues to the forefront in the work of an organization and in the consciousness of a community, such as land and housing evictions in the context of HIV.

MAPPING TOWARDS COMMUNITY EMPOWERMENT:

A community mapping was undertaken by the Land Access Movement of South Africa (LAMOSA)¹⁵³ in collaboration with the Huairou Commission under the Women's Land Link Africa Initiative. The mapping was carried out in the rural areas of Modderspruit, Majakneng, GaMoeka, and Maboloka, as a way for participants and community members to envision new ways to deal with their problems, have their voices heard, raise expectations, and inspire hope that future resolutions of land reform issues could be resolved. The mapping also helped them identify several long-term goals and impacts, which included: obtaining title deeds to property to reduce tensions and confusion; formalizing a process to enable negotiations between stakeholders; establishing a local advice office tied to the reform process; and recognizing women's rights as tenants and landowners, and including women on land title deeds.

MAPPING AND TAKING ACTION:

Mapping allows for the development of relevant strategies as solutions. Through mapping, Slum Women's Initiative for Development (SWID)¹⁵⁴ and other grassroots leaders identified an overwhelming amount of corruption in land distribution and widespread denial of women's rights to land. This finding motivated SWID to establish a women's savings club and rotating loan schemes so that grassroots women could make housing mortgage payments and establish credit with banks. Many women can now purchase land and access land titles, develop their land, and reduce their economic dependence on men. The organization places priority on capacity-building and raising awareness of women's land rights.

Other forms of participatory mapping have been carried out by GROOTS Peru, a coalition of grassroots women's groups including CONAMOVIDI (a network of women's popular kitchens), La Central de Bancos Comunales del Augustino y Santa Anita (a network of communal banks), Red de Mujeres de Lima Este, Mujeres Unidas para un Pueblo Mejor and Servicios Educativos del Augustino (SEA), which helped to identify risks and vulnerabilities in communities around Lima. For example, in one community, women spoke of how the paths leading to the community, situated on a hillside, are impassable in the rainy season and are prone to flooding.

C. CHALLENGING VIOLATING LAWS

Many countries have ratified international human rights treaties and adopted progressive Constitutions that recognize women's rights. However, in many cases, national legislation has not yet caught up with international human

rights standards, and violating legal provisions remain in force. For human rights treaties and Constitutional provisions to have meaning, cases must often be brought before the Courts in order to enforce women's rights and challenge violating laws. The case below highlights an example in Nepal.

*In Focus: Nepal*¹⁵⁵

Since the promulgation of the Constitution of Nepal in 1990 and subsequent ratification of the Convention on the Elimination of All Forms of Discrimination against Women in 1991, the Nepali Constitution has not only protected against discrimination on the basis of sex but has allowed for special provisions for the protection and advancement of women and children.

Nevertheless, formal and substantive discrimination against women continues, particularly in the areas of women's property rights and women's status within the family. In the 1995 case of *Dhungana v Nepal*, a movement led by non-governmental organizations and women's rights groups pushed for the elimination of discrimination against women in matters of inheritance. They did this through a challenge in the Supreme Court of Nepal against the National Civil Code, which contained an inheritance

provision that discriminated against women on the basis of sex and marital status. Under this law, a daughter was entitled to inherit from her father only if she remained unmarried at the age of 35. A married woman was entitled to inherit from her husband only after 15 years of marriage, and only after she had attained the age of 30 years. A widow who remarried was required to return to her in-laws any property she had received from her deceased husband. She was also expected to return any share received from her natal family upon marriage. Divorced women were not entitled to inherit at all.

The Supreme Court ruled it discriminatory that the National Civil Code required a woman remain unmarried until the age of 35 in order to inherit from her father, but declined to invalidate the code. Instead, the Court directed the Government to, within one year, introduce legislation amending the laws related to property rights pursuant to the Constitution's equality provision.

Following the Supreme Court's decision, some changes have been made to Nepal's gender-biased laws. The 11th Amendment to the Civil Code enacted several changes relating to women's rights and status, including rights in marriage and inheritance. However, although the Amendment recognizes daughters as equal heirs with sons, it continues to discriminate against women on the basis of marital status, upholding the requirement that daughters return their shares upon marriage.

In Focus: INTERIGHTS

INTERIGHTS (International Centre for the Legal Protection of Human Rights)¹⁵⁶ has brought a seminal case before the African Commission on Human and People's Rights, in *Echaria v. Kenya*, concerning women's property rights at divorce. There is currently no legislation governing matrimonial property in Kenya, and this case seeks to build jurisprudence in regards to women's property rights. It challenges the discriminative precedent set by the domestic judgment in *Echaria v Echaria*.

*Echaria v Echaria*¹⁵⁷ involved a property dispute between a former diplomat and his wife, which arose over a 100-acre tea plantation. The lower court granted Mrs. Echaria an equal share in the acreage, as the court found that there was sufficient evidence that Mrs. Echaria had made a substantial indirect contribution to the family fortune. The Supreme Court ultimately reversed this decision, determining that non-monetary contributions cannot be considered when splitting matrimonial property, since it found that Mrs. Echaria had only contributed 25% of the total value of the estate. The Court determined that she was only entitled to a quarter of the property.

This case effectively set a precedent for discriminating against women, as women are often not able to contribute in monetary terms to marital property. INTERIGHTS hopes that the challenges in the African Commission will change this precedent so that women's non-monetary contributions will be recognized as supporting women's rights to equal shares of marital property.

D. LAW REFORM TO PROTECT WOMEN'S RIGHTS

Law reform is often needed to ensure that women's rights have protection under the law. Law reform can consist of passing new laws, amending old laws to ensure greater protection for women's rights, or striking old laws from the books that discriminate against or otherwise disadvantage women. Having an adequate legal framework which protects and upholds women's rights and women's equality is critical to achieving justice and communicating a standard of gender equality throughout a society. Law reform is necessary to strengthen women's entitlements and to make their claims enforceable in and out of the courts.

Many countries have engaged in law reform to protect women's property rights through land reform. For example, in Uganda, a wife's consent is now legally required to undertake transactions on jointly occupied land. However, women are often excluded as beneficiaries of traditional agrarian land reform. For various reasons often related to a failure to account for gender-based realities of land ownership and access, land reform legislation has failed to ensure women's equal access to land and representation in land making bodies. Notwithstanding the increasing number and proportion of female-headed households, land reform often targets "heads of households" that are often assumed to be men, excluding women.

It is important to keep in mind that even where good laws are in place, women are often unaware of their existence, or have little access to the justice system. Laws are often left unenforced. Land, housing, and property rights of women, especially women in poor

communities around the world, continue to be violated. Advocates acknowledge that:

*In sub-Saharan Africa, relatively few countries have legislation in place designed to assure women's access to land and property. The few countries that do have legislation include Burkina Faso, Malawi, Mozambique, Niger, Rwanda, South Africa, Tanzania, Uganda and Zimbabwe. And of course, knowledge of the law, money to gain access to it, and courage to cope with the inevitable backlash from the family and wider community are required too.*¹⁵⁸

This is because, as international advocates have highlighted: "Law reform does not occur easily, particularly in matters concerning women's rights. Entrenched cultural attitudes may hinder it."¹⁵⁹

Although we cannot count on law alone to change society, the law can and should play the role of a leader and an educator by showing people the way forward. In that sense, if the law is carefully studied, dynamically interpreted and imaginatively applied, it can provide a basis for social action and a political platform for change.

— Bart Rwezaura, "Protecting the Rights of the Girl Child in Commonwealth Jurisdictions"

Still, law reform is critical to advancing women's equality. Advocates recognize that "although we cannot count on law alone to change society, the law can and should play the role of a leader and an educator by showing people the way forward. In that sense, if the law is carefully studied, dynamically interpreted and imaginatively applied, it can provide a basis for social action

and a political platform for change.”¹⁶⁰ This is the view of the Global Coalition on Women and AIDS, which recognizes that:

*The law can be a powerful tool for protecting women and girls and reducing their risk of HIV infection, yet the law is just one step. It is equally important to challenge social norms which undermine women’s rights, and expand legal services for women. Greater efforts to make laws work for women – particularly in the areas of gender based violence and property and inheritance – could dramatically strengthen the AIDS response.*¹⁶¹

The process of engaging in law reform itself can spark a social dialogue, which can bring about change. As Dr. Nafis Sadik, Executive Director of the United Nations Population Fund (UNFPA) explains, “Legislation on its own may have only limited impact, but the very process of legislative examination and reform, together with related advocacy efforts, is an essential step towards lasting change.”¹⁶²

In June, 2010, the United Nations Development Programme launched the Global Commission on HIV and the Law to address these connections between legislation and HIV responses. The Commission is responsible for analyzing

the impact of laws and law enforcement on the lives of people living with HIV; sparking public dialogue about right-based legal responses to HIV; and providing recommendations for action. The Commission has called attention to the need to address discriminatory laws that further stigmatize and disadvantage women affected by HIV:

For example, while the number of countries with laws to protect people living with HIV from discrimination has increased since 2003, one third of countries still lack HIV-specific legal protections. In many countries, legal frameworks that further entrench structural inequalities persist. Moreover, the degree to which existing anti-discrimination laws are enforced is unclear, and in some countries favourable legal frameworks are being undermined by the criminalisation of HIV transmission and exposure, sex work, adult consensual same-sex sexual relations, and drug use.

The Commission has noted that “[w]here the law has guaranteed equal inheritance and property for women and girls, it has helped to mitigate the social and economic burden caused by HIV and AIDS.”¹⁶³

The [South African] Black Admin Act of 1927 regarded a black woman as a minor, which is why it is so difficult for a lot of men to change their attitudes about gender issues – still regard women as minors.

— Rural Women’s Movement Member,
KwaZulu-Natal, South Africa

In Focus: Canadian HIV/AIDS Legal Network

Canadian HIV/AIDS Legal Network¹⁶⁴ researches and analyzes the role that the law plays in perpetuating women's poverty, lack of access to health care and social services, lack of rights awareness, vulnerability to violence, and exposure to stigma and discrimination. In close collaboration with women's groups, the Network develops and advocates for legal and policy frameworks that respect, protect and fulfill women's human rights, with the ultimate goal of reducing the disproportionate impact of HIV on women and girls.

The Network has developed a tool to assist human rights advocates and policy makers in reforming and creating laws to meet the legal challenges posed by the HIV epidemic. The tool is intended to promote legal reform that guarantees women's equality, prevents and remedies abuses, and enhances women's economic, sexual and reproductive autonomy. To develop it, the Canadian HIV/AIDS Legal Network undertook comprehensive consultations with representatives of women's legal clinics, AIDS service organizations, organizations of people living with HIV, research and policy institutions, and human rights organizations. The resulting two-volume "legislative resources" focuses on the linkages between the epidemic and violations of women's rights in the areas of sexual and domestic violence and family and property issues. It draws together international human rights law and illustrative examples from various jurisdictions as the basis for a legal framework to respect, protect and fulfill women's rights in the context of HIV. It features modules in eight key areas, each of which presents a detailed framework of legal provisions, accompanied by supporting notes and commentaries that are based on international and regional human rights conventions. The legislative resource is not intended for any one country; rather, it is designed to be adaptable to the needs of countries in sub-Saharan Africa and beyond.¹⁶⁵

E. ENFORCEMENT OF PROTECTIVE LAWS

Law alone is not enough to ensure women's equality. Even the most perfect laws on paper must still be put into practice and then adequately enforced. Therefore, much remains to be done to ensure that women's equal rights to housing, land, and property are guaranteed in both law and practice.

In terms of the adequate enforcement of protective laws, as we have noted above, the **Convention on the Elimination of All Forms of**

Discrimination against Women in Article 2(c) says that States must "ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination."¹⁶⁶ That means States have an obligation to ensure that there are enough courts and institutions in the country to protect women from discrimination, and that these courts and institutions are accessible and fair for women. In order to meet these obligations, States need to ensure women are able to effectively and independently access: (a) a fair hearing before

a competent, impartial and independent court or tribunal; and (b) legal help or counsel, and where necessary, financial aid to pay for that legal assistance. These should be ensured to women regardless of their financial, educational or other background. Women should also be protected against retaliation for bringing a claim.

Is money important to achieve justice? Because the trend here is only those who have money win the case even though they did wrong.

— GWEC Members,
Northville, Philippines

The ideal approach would be to implement the CEDAW and ensure that whoever discriminates against a woman on the basis of her color, religious belief, gender, sex, etc. will be punished.

— Rural Women's Movement Member,
KwaZulu-Natal, South Africa

VARIOUS PRACTICES ENFORCING PROTECTIVE LAWS:

Using the Police to Enforce Women's Rights to Property¹⁶⁷

In Zambia, the government has established a special "Victims Support Unit" within the ranks of the police. This Unit helps to protect women against property grabbing by in-laws after the death of a husband. Cases of property grabbing are reported to the Unit, which follows up primarily through

intervention and mediation. If the property is not returned voluntarily, the Unit itself collects the stolen property and returns it to the widow. In-laws who refuse to return the stolen property may be subject to criminal penalties.¹⁶⁸

Community Watchdog Groups:

Grassroots women within GROOTS Kenya,¹⁶⁹ who led community mapping projects and initiated community dialogues, took the lead to build intervention mechanisms within their communities to curb the level of property dispossession and asset grabbing through collective groups of community members that they call *Watchdog Groups*. This model has now spread and is being implemented by a number of community-based groups throughout Africa.

Watchdog Groups are comprised of concerned individuals within a grassroots community setting who have combined their will, expertise, and time towards the protection of women and orphans from property grabbing and disinheritance. These groups provide relevant information to disinherited women and children concerning what documents are important in pursuit of their property. They also inform them of the appropriate channels for intervention depending on the nature of the case. In addition, these groups often contribute their own small monies to intervene on behalf of poor widows and orphaned girls who cannot afford finances required in the process of accessing disinherited property. Watchdog Groups also connect widows and girls who require legal advice to paralegals, where they are present.

Watchdog Groups serve as a platform for grassroots women to access governance institutions, to influence legal structures, and to advocate against resource-stripping and the dispossession

of women's land and property. Most importantly, Watchdog Groups have broken the silence on disinheritance and have intervened significantly to decrease evictions and property grabbing. Community Watchdog Groups rely on the support of paralegals, elders, and provincial administrators for informed legal counsel and engaging protections through cultural and customary processes. The successes or failures of Watchdog Groups are contingent on the strength of the alliances these groups form with community members, local authorities, government officials, and administrators.

Community Dialogues:

Through the support of women's groups and community dialogue, Ntengwe for Community Development¹⁷⁰ carried out an ongoing land, property and inheritance project at the grassroots level to provide direction in the implementation of land rights and property and inheritance rights for women and girls. Watchdog Groups have been set up with 15 women in each group. Women meet monthly to share challenges and lessons learned. During this monthly meeting, community women receive counseling on issues relating to property grabbing and how to resolve situations where women lack identification documents such as birth certificates and/or national identity cards for themselves and their children. Trained community paralegals are actively involved in helping to resolve and mediate these issues.

Training Paralegals in the Community:

Seke Rural Home Based Care¹⁷¹ works to train women in the use of basic inheritance laws so that they can utilize legal processes in protecting land and property rights. Seke partnered with the Zimbabwe Women Lawyers Association (ZWLA), an organization which is made up solely of women

lawyers. Forty-eight women were selected to undergo training. The year-long paralegal course contains 10 modules. This allows time for assimilation, practicing and monitoring in between the modules. To date, notable successes include women successfully seeking advice from the paralegals, resulting in the resolution of land disputes. The paralegals have successfully reversed and stopped evictions and have helped women survivors of domestic violence seek and obtain justice. Paralegals also benefit from information-sharing meetings in which they discuss progress updates.

Utilizing Local to Local

Dialogue to Enforce Laws:

Grassroots women engage with local officials on matters of land and housing through a process of Local to Local Dialogues, as developed and promoted by members of the Huairou Commission.¹⁷² Local to Local Dialogues are locally designed strategies where grassroots women's groups initiate and engage in discussions with local authorities to negotiate a range of development issues to influence policies, plans and programs to address women's priorities. Dialogues have advanced grassroots women's abilities to negotiate with local leaders to increase women's access to resources such as land, housing and basic services and have increased access to social services such as health care and education. Local to Local dialogues are an effective tool to enhance local governance and participation of grassroots women in local decision-making by stimulating dialogue with local authorities, relevant government departments, municipalities, NGOs, development partners, the private sector and the media. The Huairou Commission, its member organizations and UN Habitat have coordinated efforts to document, support and replicate this tool around the world.

The Maasai Women Development Organization (MWEDO),¹⁷³ a Huairou Commission member, successfully utilized Local to Local Dialogues in Simanjiro and Longido districts to engage local leaders and empower Maasai women. With little power over land and property and lack of sufficient information, women's voices in Maasai communities are silenced on the topic of land rights, and they are often unable to make decisions or choices about control over land. The dialogues cultivate a deeper understanding of the issues of access to and control over land that women face within the pastoralist Maasai community. MWEDO leaders also engage community women in political processes. As a result, local authorities facilitated the granting of land to Maasai women through the Village Land Act. Local leaders granted land tenure letters to over 250 women in Longido, effectively guaranteeing their control over land. Traditional authorities also agreed to enforce new community agreements, such as abandoning traditional customs and practices that deny Maasai women's public participation and access to property.

Utilizing Laws for Community Improvements and Secure Tenure:

Mujeres Unidas/Estrategia¹⁷⁴ has been engaged in a process of piloting grassroots engagement in land-regularization processes through work with communities to take advantage of a variety of government programs.

Communities in five districts (14 informal settlements) have been trained in 24 workshops focused on informing community members on land and housing rights, and specifically laws in Peru that promote land tenancy. The workshops, focused on women, also provided advice on leadership skills and advocacy, to ensure that the women, after knowing their rights, are able to claim them.

The workshops also focused on identifying community issues around housing and land, and then sharing these issues with local authorities in a number of public events held in each community. These events gave the communities an opportunity to engage with local leaders on identified issues and needs.

Each community is linked to a national process of securing title through disaster-risk mitigation. The community identifies its risk-resilience needs – for example, resistant walls – and works with the National Institute of Civil Defense (INDECI) to address these needs (INDECI provides advice and guidance to communities). Then the community is supported to approach the Commission for the Formalization of Informal Property (COFOPRI) to officially gain title to their lands.

F. TRANSFORMING CUSTOMS AND TRADITIONS THAT DISCRIMINATE AGAINST WOMEN AND STRENGTHENING POSITIVE ASPECTS OF CULTURE

Cultural attitudes that impede the enforcement of laws protecting women's rights and equality must change. The United Nations Human Rights Committee has unequivocally stated that:

Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes. ... States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights. States parties should furnish appropriate information on those aspects of tradition, history, cultural practices and religious attitudes which jeopardize, or may jeopardize, compliance with article 3, and indicate what

*measures they have taken or intend to take to overcome such factors.*¹⁷⁵

Harmful customary norms and traditional practices often prevent the enforcement of laws that could protect women. Conflict between customary and statutory laws sometimes poses this problem. In many countries, written laws are non-discriminatory. However, what is applied is customary law, which may be severely limiting for women. In some cases, discriminatory customary laws have been challenged on the basis of statutory law.¹⁷⁶

As for our culture, we inherited this culture from our parents. It is really necessary for us women to attend seminars – I found out about my rights ... We don't have to stay at home; we need to get out of our shells. Gradually, if we can educate our women here, we can change our culture.

— GWEC Member,
Lambakin Community, Philippines

Women married under customary law are potentially vulnerable because of the gender discrimination women face in traditional systems. For example, in many countries, customary marriages are automatically considered to be *out of* “community of property” (recognizing that all marital property is shared by spouses). When this happens, not only does the husband retain all property acquired before and during the marriage, he also gains control over the property of his wife. The failure to address gender discrimination in customary law has implications for implementation of international human rights instruments.

It is critical to work to transform customs and traditions that perpetuate discrimination against women. It is also an obligation under international human rights law. Under the **Convention on the Elimination of All Forms of Discrimination Against Women**, for example, States Parties must (under Article 2(f)), “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”¹⁷⁷ Here, the (former) United Nations Commission on Human Rights has also urged States to “support the transformation of customs and traditions that discriminate against women and deny women security of tenure and equal ownership of, access to and control over land and equal rights to own property and to adequate housing.”¹⁷⁸

Women should be encouraged to assess which customary law or its parts are discriminatory to women.

— Rural Women’s Movement Member,
KwaZulu-Natal, South Africa

Changing cultural attitudes can be hard, but far from impossible. Social norms do and can change. In order to make change happen, it’s important for women to know their rights, and for communities to become more aware of the fact that without significant improvement in the realization of women’s housing, land, and property rights, including legal protections against gender discrimination, gains in other areas such as HIV reduction, poverty reduction, and economic development will not be achieved.

In Focus: Customary Law

Women's movements have a critical role to play in ensuring that the law is coherent and accessible to women whose rights are violated. However, local women's groups often lack the capacity to do so. Customary law is an aspect of daily governance that is rooted in their contexts. Women are therefore often motivated to become involved when the question of customary law reform arises.

For example, the South African Law Commission (SALC) started investigating reforms to customary law in 1996. The Centre for Applied Legal Studies (CALC), together with the Rural Women's Movement, engaged in this process, including conducting research, providing a written submission, and doing advocacy. The resultant Recognition of Customary Marriages Act was made operational only two years after its enactment in November 2000.¹⁷⁹ The Act and the participatory process that catalyzed it have brought about changes in local attitudes and beliefs about the roles of women in marriage.

Promoting the Good Aspects of Customary Law

The Rural Women's Movement (RWM)¹⁸⁰ in KwaZuluNatal Province, South Africa, has engaged in advocacy to ensure that the voices of the province's poor rural women are heard. In particular, the RWM worked on issues related to the Communal Land Rights Bill of 2004 and the Traditional Leadership and Governance Framework Bill of 2003. RWM translated these two bills from English into the Zulu language. The RWM then held a series of consultative workshops, inviting thousands of rural community women to hear about the issues within the acts, to voice their opinions and concerns, and to make suggestions for input into the Bills. When the Communal Land Rights Bill was being heard in Parliament, the RWM organised smaller groups of community women to travel to the capital to directly intervene on behalf of the women in their own communities. This method was effective in ensuring that rural women's voices were heard at the highest level.

Women participants brought experiences from their communities to bear on the problem. By identifying the positive and negative aspects of

custom, these women highlighted which parts of the law required change, effectively influencing the drafting of the bill and the codification of custom.

In Focus: Kenya Legal and Ethical Issues Network on HIV & AIDS¹⁸¹

Since 2009, the Kenya Legal and Ethical Issues Network on HIV & AIDS (KELIN)¹⁸² has utilized the customary legal system in Homabay and Kisumu Counties to facilitate access to justice for widows and their children by ensuring that they enjoy their right to inherit and own property. This has been achieved through a series of community dialogue forums and trainings for elders, widows and children of the widows. As of 1 December 2011, 66 cases out of the 114 have been successfully resolved, while 48 are still ongoing.¹⁸³

Each case takes an average of three months to be resolved. KELIN, in partnership with the communities, has been able to facilitate the construction of 11 semi-permanent houses for the most vulnerable widows. The constructions have helped to raise awareness about the project and about widows' right to inherit and have helped to strengthen the bond between the widows and their in-laws.

The project has been able to demonstrate that the use of cultural structures as a form of Alternative Dispute Resolution (ADR) is faster, more efficient, less expensive and less adversarial in comparison to the formal systems. ADR ensures a more sensitized community on human rights issues, and therefore, as well as being a tool to restore justice, it also involves educating the community, which deters future violations. KELIN has since launched a tool on how to work with cultural structures to facilitate access to justice.¹⁸⁴ The tool can be utilized to address other cultural practices that expose women and girls to higher risk of HIV infection. This approach of using alternative dispute resolution methods is now recognized at Article 159 (c) of the Kenyan Constitution.¹⁸⁵

G. HUMAN RIGHTS EDUCATION

Human rights education plays an essential role in helping women know and claim their rights. It also encourages people to adopt values that may alter practices and attitudes that are harmful to women. For people working for women's housing, land and inheritance rights, it is important to understand the key rights noted in this document, including the rights of women to equality; to non-discrimination; to live free from gender-based violence and harassment; to health; and to housing, land and property. Promoting legal education about local laws that protect these rights is also essential.

Stakeholders at multiple levels can support human rights education. This includes governments, which have a responsibility to do so, as well as non-governmental organizations and human rights defenders. Law reform should be accompanied by human rights training for lawyers and judges. Legal literacy campaigns can be geared towards helping women and men understand their rights and the laws safeguarding them. Human rights education is for everyone, including children, rich

and poor people, women and men, and people of all ethnic, religious, and linguistic backgrounds.

Human rights education is also part of the broader right to education recognized under international law. The **Universal Declaration of Human Rights** affirms in paragraph 1 that "everyone has the right to education" and notes in paragraph 2 that "education shall be directed to the full development of the human personality and to the strengthening

To correct this violation what we need to do is to know our laws in depth and to engage in advocacy and dialogue with the authorities to get their support.

— Mujeres Unidas Member,
Vista Alegre, Peru

of respect for human rights and fundamental freedoms."¹⁸⁶ The International Covenant on Economic, Social and Cultural Rights also recognizes "the right of everyone to education."¹⁸⁷ Furthermore, the **Vienna Declaration and Programme of Action**, adopted in 1993 by the

World Conference on Human Rights, positions the right to education both as a right inherent in the dignity of the human person and as a means of promoting and ensuring respect for all human rights. It calls upon “all States and institutions to include human rights, humanitarian law, democracy and rule of law as subjects in the curricula of all learning institutions,” noting that, “human rights education should include peace, democracy, development and social justice, as set forth in international and regional human rights instruments, in order to achieve common understanding and awareness with a view to strengthening universal commitment to human rights.”¹⁸⁸

Recognizing this, the (former) United Nations Commission on Human Rights has encouraged “Governments, specialized agencies and other organizations of the United Nations system, international agencies and non-governmental organizations to provide judges, lawyers, political and other public officials, community leaders and other concerned persons, as appropriate, with 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.”¹⁸⁹

EXAMPLES OF PRACTICAL EDUCATION PROCESSES:

*Creating Human Rights Awareness One Step at a Time in Botswana*¹⁹⁰

In its work with communities, health workers, government officials, NGOs, and businesses, the Botswana Network on Law, Ethics, and HIV/AIDS (BONELA) observed a lack of awareness about what human rights are, and how to respect and promote these rights in people’s everyday lives. There was a lack of training materials on human rights that suited the local context, and human rights were

often misunderstood as a foreign or “Western” concept that was not applicable to Botswana.

In response to this, and in order to demystify the human rights approach to HIV for local activists and government officials, BONELA produced a user-friendly manual for action on HIV and human rights.¹⁹¹ The manual has catalyzed local and national workshops and seminars on HIV and human rights, leading to much greater awareness of human rights issues and, in some cases, legal and policy change.

Integrating Rights with Health Education in Kenya

The Christian Health Association of Kenya (CHAK) has a membership of 435 health facilities spread throughout Kenya, of which 25 are hospitals. Its mandate is to facilitate the role of the Church in health care and healing. CHAK and the Kenya Episcopal Conference health facilities jointly provide approximately forty percent of the health services in Kenya. CHAK has an HIV/AIDS department and, through its member health facilities, provides a broad range of HIV services including PMTCT, VCT, palliative home-based care, management of opportunistic infections, and anti-retroviral treatment. CHAK provides comprehensive HIV care and support in twenty member hospitals, and PMTCT services in seventy health facilities.

Integration of Legal Support: LAHI and OSIEA are supporting a CHAK project aimed at the empowerment of people living with HIV/AIDS by integrating legal services and rights awareness within ten of its health facilities. CHAK is training health providers and point people living with HIV/AIDS to incorporate human rights sessions in their community outreach activities and support group meetings. FIDA (Federation of Women Lawyers)-Kenya and other legal NGOs are partnering with CHAK to take on cases coming out of this project

that reflect systemic abuse of rights and cannot be resolved informally. Complementing this legal support, CHAK is initiating economic empowerment programs for people living with HIV/AIDS in several of its sites.

Between March 2007 and May 2008, the project was initially piloted in three sites, and then rolled out to integrate legal support into ten of the CHAK hospitals providing comprehensive HIV care and treatment. The project targeted PLWHA, community members, church leaders, and policy makers. It also aimed to 'facilitate rights-based approaches, participatory methods, capacity strengthening, and improved gender and power relations.' Two comprehensive training curricula were developed and used (one to train health care workers, one to train PLHA). CHAK is currently scaling-up the project up from ten to fifteen sites.

Using the Court to Educate on Human Rights in Nepal

In order to mitigate the impact of unequal property and inheritance rights, the UNDP Regional Programme on HIV in Asia and the Pacific, in partnership with UN Women and UNAIDS, initiated a program to increase women's access to land and property in the context of HIV. The Asia Pacific Court of Women was organized in 2007 at the International Congress on AIDS in Asia and the Pacific. Jointly hosted with UNAIDS, AWHRC, ICRW, UN Women, Lawyers Collective and Forum on the Women Law and Development in Nepal, it included a jury comprised of two Supreme Court judges from Sri Lanka and Nepal and five expert witnesses. They heard 22 women from 11 countries across Asia Pacific share their stories of disinheritance and property grabbing due to their HIV status. Ultimately, the Court called for a simultaneous process of legal reform, as well as a

process of social transformation necessary for society, men and women alike, to understand that property rights are essential for women and in addressing and mitigating the impact of HIV. This began a process spearheaded by UNDP together with the International Association of Women Judges, to sensitize judges on issues related to property and HIV in Nepal.

Publications such as this one can be widely shared in an effort to educate everyone about women's housing, land, and property rights, but other strategies can be effective as well. For example, people have used radio and media to spread human rights messaging. Music, poetry and theater are also effective tools to help educate communities about human rights.

H. WOMEN'S PARTICIPATION IN NATIONAL LAWS, POLICIES & PROGRAMS

Women are not only entitled to equality in law and in practice; they are also entitled to participate in political and legislative development and implementation without discrimination. For example, when laws about women's housing, land, property and inheritance rights are being created and drafted, women need to be consulted and involved so that their needs, perspectives and desires can be considered and incorporated. Women must be directly engaged in an effective and meaningful way.

Political participation is essential to addressing the gender dimensions of HIV. However, various factors impede women's ability to engage in the political arena. Gender norms, time constraints within their daily schedules, and the stigma associated with women's political participation are among the obstacles women may face. Even when women are willing and able to overcome

these hurdles, they may experience discrimination that excludes them from the political process. The publication, *Transforming the National AIDS Response: Advancing Women's Leadership and Participation*, co-sponsored by the United Nations Development Fund for Women (now UN Women), notes:

Even as women actively strive to lead or even participate in civil society or governmental structures, significant barriers limit their capacity and reach . . . The main barriers to women's leadership and participation in the AIDS response cited by women interviewed were: Cultural factors including gender norms – 79%; the stigma of HIV and AIDS – 58%; lack of access to resources and economic disempowerment – 58%; lack of access to information and knowledge – 46%; the burden of care-giving and women's multiple responsibilities in the home – 46%; illiteracy – 46%; lack of self-esteem – 25%.¹⁹²

The preamble to the **Convention on the Elimination of All Forms of Discrimination against Women** recalls that “discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal

terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity.”¹⁹³ Article 7 of the Convention stipulates that, “States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: . . . to participate in the formulation of government policy and the implementation thereof.”¹⁹⁴ In interpreting this provision, the United Nations Committee on the Elimination of All Forms of Discrimination against Women has held the view that:

In order to achieve broad representation in public life, women must have full equality in the exercise of political and economic power; they must be fully and equally involved in decision-making at all levels, both nationally and internationally, so that they may make their contribution to the goals of equality, development and the achievement of peace. A gender perspective is critical if these goals are to be met and if true democracy is to be assured. For these reasons, it is essential to involve women in public life to take advantage of their contribution, to assure their interests are protected and to fulfill the guarantee that the enjoyment of human rights is for all people regardless of gender. Women's full participation is essential not only for their empowerment but also for the advancement of society as a whole.¹⁹⁵

Women cannot be left out of the national framework for housing. We need to be able to claim our rights for the good of ourselves and also for the good of our communities. This is an important part of human rights.

— Mujeres Unidas Member,
Vista Alegre Community, Peru

EXAMPLES OF PARTICIPATION:

*Participating in Constitutional Development in Uganda*¹⁹⁶

In Uganda, women found that there were structures in legislative functioning that they could use to their advantage. A Constitutional Commission was established to collect comments for incorporation into the draft Constitution. Seminars on women's issues in each of the 760 sub counties in Uganda were organized collectively by the Ministry of Women in Development and NGOs. Women organized themselves around these seminars, producing far more inputs into the process than any other social group. Women worked cooperatively, and submissions by women's organizations became streamlined, with few differences between rural or urban women, educated and non-educated, rich or poor women's groups. Women's groups also made headway by linking with other social interest groups, such as youth and rural organizations. Regular meetings, a strong delegation to the Constituent Assembly (the body overseeing the review of the Constitution) and a fully established "desk" coordinating activities during the review made for an effective intervention process and resulted in: strong gains for women's equality in the new Constitution of Uganda, including recognition of women in society; and a promotion of women's fundamental human rights with specific prohibition of discrimination based on sex or gender considerations. They also made gains in providing unique opportunities for women in Parliament, affirmatively established by the Constitution.

*Huirou Commission and GROOTS Home Based Care Alliance*¹⁹⁷

The Home Based Care Alliance is a movement of home-based caregivers organizing for recognition and self-representation at the local, national and international levels, for the essential services, care

and resources they provide their communities. The Alliance, organized by Huirou Commission member network GROOTS International, forms the central grassroots constituency of the Commission's AIDS Campaign, with advocacy priorities emerging from its members.

The Alliance builds the capacity of women leaders by sharing experiences, strategies and techniques. It shares this information with policy makers, to whom it also gives relevant data and information on community priorities with respect to HIV and AIDS. Additionally, the Alliance has assumed leadership roles on government-mandated committees. The Alliance is advocating for transparency and accountability in HIV and AIDS programming so they can monitor and evaluate resources and services for the AIDS response in their communities.

In November 2010, the UK Consortium on AIDS and International Development hosted an international conference on HIV Care and Support, looking to develop a roadmap for stakeholders to utilize in policy development, and highlighting the vital importance of caregivers. Such a forum provides an opportunity for real inputs and engagement, bringing together all stakeholders, including NGOs, caregivers, funders, the Global Fund to Fight AIDS, Tuberculosis and Malaria, as well as UNAIDS.

In response, the Huirou Commission organized focus groups with HBCA members from Cameroon, Ethiopia, Uganda, Kenya, Malawi, Zimbabwe, Zambia, and South Africa. Focus group participants discussed the issues that home-based caregivers perceive as most important to them, with a view toward bringing these concerns to the conference. A core group of grassroots leaders represented the Alliance at the conference. The meeting resulted in concrete recommendations being integrated into the final policy roadmap, including issues of monitoring and evaluation, multifaceted programming, and targeting of participatory planning.

In addition to this grassroots consultation, the Caregivers Action Network (which is facilitated by Huairou Commission, VSO International, HelpAge and Cordaid) convened a pre-meeting of caregivers and NGOs working on care and support in communities. The purpose of the pre-meeting was to create a unified agenda to bring into the high-level conference.

Raising the Voices of Women Affected by HIV in Kenya¹⁹⁸

In Kenya, poor communities in urban slums and in rural areas comprise a large portion of those affected by HIV, and within those areas women and girls disproportionately shoulder the burden of caring for the sick and the orphans. GROOTS Kenya, a movement of women self-help groups and community-based organizations, and Huairou Commission member, works to strengthen the role of grassroots women in community development by serving as a platform for women and grassroots groups to come together and share experiences and best practices. One of the major goals is to ensure that women participate in the design and implementation of strategic programs that address their priorities and those of their communities.

One of the most critical lessons from this work and others like it is that the population most affected by HIV must be a primary partner for decision-making, priority setting, and monitoring of effective delivery of services and information. Governance and accountability are key elements to ensure programs are effectively reaching their target populations. The women caring for the sick and the orphans are the first set of actors that deal with the HIV pandemic and yet they are not often consulted. GROOTS Kenya and the Home-Based Care Alliance seek to change that pattern by ensuring that grassroots women are

directly involved in the process of making the decisions that affect them. The National AIDS Control Council (NACC) is now including grassroots women caregivers in their consultative meetings at the local and national levels, and some NACC officials are endorsing organized home-based caregivers as primary partners in local program implementation.

South African National AIDS Council Women's Sector

The South African National AIDS Council (SANAC) is the body responsible for overseeing South Africa's national response to HIV and AIDS. Its actions are informed by its 2007-2011 National Strategic Plan on HIV, AIDS, and Sexually Transmitted Infections. SANAC consults organized sectoral groups to ensure that the voices of particular populations are heard as it carries out its mandate. Among them is the Women's Sector.

When SANAC embarked on the process of formulating its 2007-2011 plan, the Department of Health provided spaces for "sector summits" where various organizations could give their input into the plan. At the Women's Summit, participants provided recommendations, elected a group of sectoral representatives to SANAC, and designated a reference group of women to support SANAC's new Women's Sector. This process empowered women to contribute to the planning process and provided valuable inputs for the improvement of the plan by incorporating women's perspectives.

The Women's Sector continues to be involved in the plan's implementation. It also advises the SANAC policy-making process "in regards to the realities of women's lives and benefits for women."¹⁹⁹ The Sector aims to build a critical mass of different groups of women to inform SANAC's activities.



*Magdalena Salsinha, holding coffee beans, has been picking coffee since she was 15 years old. Now 55, she lives near Ermera, Timor-Leste, and is married with six children.
UN Photo/Martine Perret*

CHAPTER 4

HOW TO USE HUMAN RIGHTS

WHEN WE KNOW AND UNDERSTAND our human rights and are able to effectively work for them, we are able to recognize when they are being violated and make arguments against such violations. Throughout this manual, we have identified many organizations addressing HIV and human rights.

To protect our rights we need to organize ourselves and make mobilizations against the government, so that they listen to us. We need to claim our human rights in a loud way!

— Mujeres Unidas Member,
Los Rosales, Peru

Some organizations explicitly refer to human rights law in carrying out their work. Others operate effectively by simply invoking the principles embodied in the law. Regardless, all of them are carrying out human rights work. In this chapter, we will provide some strategies for directly applying human rights as a **TOOL FOR CHANGE**. The goal of this chapter is to present specific tactics that can be employed by those working for the realization of women's property and inheritance rights in the context of HIV.

We've identified eight main human rights strategies that you can think about using. These are:

1. Fact-Finding and Documentation
2. Human Rights Training and Capacity Building
3. Strategic Organizing
4. Strategic Litigation
5. Petitioning National Human Rights Commissions
6. Law Reform
7. Media Campaigns
8. International Advocacy

Each of these advocacy strategies is discussed below in more detail.

1. FACT-FINDING AND DOCUMENTATION

Human rights fact-finding and documentation are crucial to our accurate understanding of violations of women's housing, land, and property rights. In order to design creative solutions to violations of these human rights, there needs to be reliable information that helps to understand the causes, manifestations and consequences of violations. Within the human rights context, fact-finding and documentation go well beyond the simple collection of information, serving rather as spring-boards for action and advocacy. Based on the knowledge gained through fact-finding activities, advocates are better prepared to place pressure on relevant actors, pinpoint target issues, identify key partners, and develop tailored strategies aimed at ensuring the realization of women's

rights. As part of the larger goal of women's rights advocacy, fact-finding is indispensable. The bottom line is, learn as much as you can about the reality for women when it comes to realization of their housing, land, and property rights. The best way to find out about the situation for women is simply to ask them, and then document what you learn, and then share with others.

My understanding of human rights is it comes from an individual like me, and from that individual, it will grow if we reached out to other women and if we are together we can solve any problem that we encounter.

— GWEC Member,
Northville, Bulacan, Philippines

2. HUMAN RIGHTS TRAINING AND CAPACITY BUILDING

Now that you have educated yourself about women's human rights – educate others! Bring international human rights instruments that protect women's rights to the attention of national and local governments, and in particular ministries concerned with housing, women, urban/rural affairs, planning and the environment. Bring them to the attention of political parties, and urge recognition of women's rights in political platforms. Bring these rights to the attention of your traditional leaders, the media, your schools, your workplaces, your places of worship, or any other place where you can reach out to others

The women gain access to justice with mobilizations on the streets, demanding our rights.

— Mujeres Unidas Member,
Rosales du Pro, Peru

in your life. Most importantly, support women to advocate for their own rights through human rights training and capacity building. Demand your own rights, and demand that the rights of others be upheld too.

3. STRATEGIC ORGANIZING

Get together! Organize with others who also want to make a change, and connect with women facing violations of their human rights. Women around the world know that when they are organized and together in claiming their rights, and do so loudly, through mobilizations/demonstrations and use of media, change happens. Particularly if they do so with other organizations, they find that they are better able to successfully enforce their rights. So, link with human rights advocates and work to ensure gender integration in ongoing international human rights campaigns. Work with each other and support each other's work. Women's rights advocates are continually pushing for greater levels of transparency and accountability, as well as stronger mechanisms to protect women's rights. Advocates are always strongest when working together.

Human rights for me is helping others, helping our colleagues in our organization. ... We can work hard to ensure no one takes them away.

— GWEC Member,
Lamabakin Community, Philippines

4. STRATEGIC LITIGATION

Strategic litigation involves taking the State, or other actors responsible for human rights violations, to court. According to the Centre on Housing Rights and Evictions (COHRE), strategic litigation is an "effective mechanism for advoca-

cy on women's housing and land rights and can be used in a number of ways to enforce State obligations under international human rights law. Successful litigation supports the premise of legally protected rights enshrined in international law and enforceable at the national level."²⁰⁰ Litigation is a particularly powerful tool in the context of countries that have ratified international human rights conventions and have progressive constitutions, but still have discriminatory and violating legislation that has not caught up. Litigation can have several objectives, including:

- To create legal or policy change;
- To seek clarification or stabilization of the law;
- To create a foundation for future litigation and establish a basis for government reform; and
- To translate legal possibility into reality, particularly where rights are nominally guaranteed, but are either not protected or enforced.²⁰¹

Litigation is most successful when paired with community mobilization and media advocacy.

5. PETITIONING NATIONAL HUMAN RIGHTS COMMISSIONS

Many countries have national human rights commissions, many of which consider cases. Often, these are institutions established under constitutional provisions, or under national human rights legislation. Many times, these are independent and autonomous government institutions. As national human rights commissions almost always look at issues of discrimination, women can use these spaces to raise awareness of women's housing, land, and property rights, and to seek justice in cases where these rights have been violated.

6. LAW REFORM

In countries which have inadequate or discriminatory legal standards protecting women's housing, land, and property rights, law reform is a critical strategy for change. Law reform can take place through legislative advocacy and lobbying. Place pressure on governments to repeal laws that discriminate against women and adopt new laws which protect women's housing, land, property and inheritance rights, including incorporating substantive women's rights into law and policy. Demand policy, legislative and constitutional reform which provides for gender equality, and seize the opportunity when new laws are being drafted to engage your elected representatives and let them know that you want women to benefit. It's critical for advocates at the national level to encourage their government representatives to adapt more gender-sensitive policies and legislation in matters relating to housing, land, and property, measuring the adequacy of national legislation against internationally established human rights norms. Using the tools within this manual, you can work to lobby your government to repeal laws that discriminate against women and adopt new laws which protect women's rights, including incorporating substantive protections into law and policy. Remember, creating good laws for women in just a first step – it's also important to ensure that those laws are properly enforced!

Justice means we have the right to express ourselves, we can approach anyone especially those people who are knowledgeable about the laws, lawyers, if necessary. If we achieve the justice we wanted, only then we can say that we achieve our freedom.

— GWEC Member,
Northville, Bulacan, Philippines

7. MEDIA CAMPAIGNS

Media campaigns can be particularly useful on their own, and can also be used in conjunction with other strategies, including litigation and lobbying to raise awareness about women's rights. Reach out to your local television or radio stations. Write to your local newspaper. Teach people about the rights they have and how they can be protected. Disseminate international legal documents that protect, promote, and enforce women's rights, like the ones contained in this manual. Consider translating some of them into local languages. Prepare pamphlets, leaflets, booklets, brochures, postcards and posters explaining key aspects of women's rights in simple terms. But most of all, raise your voice in support of women's rights – your voice will make a difference!

8. INTERNATIONAL ADVOCACY

Advocacy using these regional and international mechanisms go hand-in-hand with country advocacy as regional and international recommendations mean little without enforcement at the national level. Additionally, domestic remedies generally have to be exhausted (including the raising of regional and international claims) before complaints can be taken to regional or international bodies.

On an individual and collective basis, international advocacy can be very effective, particularly when done well and with much visibility. "Naming and shaming" is a classic tactic of human rights advocates, where violators are publically named and attention is drawn to shame them to compliance with international human rights standards and interpretations.

SPECIAL PROCEDURES: A WAY TO BRING COMPLAINTS

"Special procedures" is the general name given to the mechanisms of the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. These Special Procedures are supported by the Office of the High Commissioner for Human Rights based in Geneva. Special procedures involve either an individual (called "Special Rapporteur," "Special Representative of the Secretary-General" or "Independent Expert") or a working group usually composed of five members (one from each region). These persons serve in their personal capacity, and do not receive remuneration. As they are independent, they are impartial and unbiased.

Special procedures examine, monitor, advise and publicly report on human rights situations in specific countries or territories, known as country mandates, or on major issue of human rights violations worldwide, known as thematic mandates. These thematic mandates include a focus on Adequate Housing, Health, Education and other rights. Special Procedures respond to individual complaints; conduct studies; conduct country missions to investigate alleged human rights abuses; provide advice on technical cooperation at the country level; and engage in human rights awareness-raising.

As part of this Special Procedures mechanism, individuals or groups may submit direct complaints about ongoing violations of human rights by a Member State. The complaint is received and if deemed admissible, reviewed by a Working Group on Situations, which then makes recommendations to the Council to take action against the State.

The United Nations has a complex system for overseeing and protecting human rights, and you can also take advantage of that system. Let's take a look at what that system has to offer:

First, the United Nations Human Rights Council is an organ of the General Assembly and based in Geneva, Switzerland. Its mandate includes promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner, and addressing situations of violations of human rights, including gross and systematic violations, and making recommendations. The Council also serves as a venue for dialogue on human rights and for promoting human rights obligations taken on by States. The Council has assumed the mechanisms of the former Commission on Human Rights, including Special Rapporteurs, Special Representatives, Independent Experts, and the Sub-Commission on the Promotion and Protection of Human Rights. The Council also has a complaint procedure and a Universal Period Review (UPR) procedure. The Council's UPR procedure is a unique process that involves a review of the human rights records of all 192 United Nations Member States once every four years.

In addition to the Council and its mechanisms, there are also various United Nations treaty bodies, many of which we have already mentioned throughout this manual. Each treaty body oversees the implementation of a treaty, and each Committee engages in a periodic review of all States Parties to the treaty and in issuing General Comments (sometimes called General Recommendations) on thematic and procedural issues relevant to each treaty:

- The United Nations Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council as the supervisory body of the **International Covenant on**

Economic, Social and Cultural Rights (ICESCR). There is currently an Optional Protocol to the Covenant, creating an individual complaints procedure, which is open for ratification but which has not yet entered into force. This Committee monitors country progress on the ICESCR by examining periodic reports submitted by governments, and advocacy organizations can submit "shadow reports" (sometimes called alternative reports or parallel reports) to the Committee for their consideration.

- The United Nations Human Rights Committee is the body that monitors implementation of the **International Covenant on Civil and Political Rights** and its optional protocols. The First Optional Protocol to the Covenant provides for an individual complaints procedure for persons who claim that their rights established by the Covenant have been violated. This Committee then essentially has two mandates: to monitor country progress on the Covenant by examining periodic reports submitted by governments; and to examine individual complaints of human rights violations under the Optional Protocol to treaty. Like the United Nations Committee on Economic, Social and Cultural Rights, the United Nations Human Rights Committee also accepts shadow reports from non-governmental organizations.
- The United Nations Committee on the Elimination of Discrimination against Women monitors implementation of the **Convention on the Elimination of All Forms of Discrimination against Women**. The Optional Protocol to the Convention authorizes the Committee on Elimination of All Forms of Discrimination against Women to receive and examine communications from individuals claiming to be victims of a breach of one of the provisions of the Convention by a State Party. Interestingly, the CEDAW Committee has three man-

dates: to monitor country progress on CEDAW by examining periodic reports submitted by governments; to examine individual complaints of violations of women's rights under the Optional Protocol to CEDAW; and to conduct missions to state parties in the context of concerns about systematic or grave violations of treaty rights. As with the other Committees, it too accepts shadow reports from non-governmental organizations to help inform its country review process.

- The **International Convention on the Elimination of All Forms of Racial Discrimination** recognizes and protects housing rights of persons, including women, belonging to marginalized, racial and ethnic groups. The United Nations Committee on the Elimination of Racial Discrimination monitors implementation of the Convention by examining periodic reports submitted by governments. Besides commenting on country reports, the Committee monitors

state compliance through an early-warning procedure and the examination of inter-state complaints and individual complaints (the Convention provides for the option of a complaints mechanism available under Article 14). This Committee also accepts shadow reports from non-governmental organizations to help inform its country review process.

- The **Convention on the Rights of the Child** was adopted in recognition of the specific needs of children and to highlight the human rights of all children. The Convention recognizes the right to an adequate standard of living for all children irrespective of sex. The United Nations Committee on the Rights of the Child monitors implementation of the Convention on the Rights of the Child and monitors country progress by examining periodic reports submitted by governments. The Committee on the Rights of the Child also accepts shadow reports from non-governmental organizations to help inform its country review process.

THE LAST WORD FROM GRASSROOTS WOMEN

- Make gender equality a central objective of law reform and all efforts to realize women's property and inheritance rights in the context of HIV.
- Develop an understanding of human rights and laws that are supportive of women's rights.
- Educate your community about human rights and the law.
- Organize to use human rights as a platform for local and national advocacy (e.g., through community mapping, mobilizations), as well as international advocacy.
- Understand procedures that may protect women's rights and prevent violations (e.g., learning how to draft a legal will), as well as the remedies available to women whose rights have been violated (e.g., bringing property and inheritance cases to court or using local alternative dispute resolution mechanisms).
- Increase community education to reduce stigma against people living with and affected by HIV.
- Identify aspects of customary law that discriminate against women, and work to reform those harmful aspects of the law.
- Seek representation and positions with decision-making bodies to ensure that women's voices are heard and respected in the development of laws and policies that affect them.
- Engage with men and boys to address the gender dimensions of HIV and women's property rights, including sharing knowledge with husbands (individually or collectively through community meetings) and working with organizations of men and boys (particularly those working for gender equality).



*A Sudanese woman attends the closing ceremony of United Nations Volunteer Day in Sudan.
UN Photo/Fred Noy*

APPENDIX

RELEVANT INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

United Nations Commission on Human Rights Resolution 2000/13: Women's Equal Ownership, Access to and Control over Land and the Equal Rights to Own Property and to Adequate Housing
<http://ww2.unhabitat.org/programmes/landtenure/13.asp>

United Nations Commission on Human Rights Resolution 2001/34: Women's Equal Ownership, Access to and Control over Land and the Equal Rights to Own Property and to Adequate Housing
<http://ww2.unhabitat.org/programmes/landtenure/34.asp>

United Nations Commission on Human Rights Resolution 2003/22: Women's Equal Ownership, Access to and Control over Land and the Equal Rights to Own Property and to Adequate Housing
<http://ww2.unhabitat.org/programmes/landtenure/22.asp>

United Nations Commission on Human Rights Resolution 2004/21: Adequate Housing as a Component of the Right to an Adequate Standard of Living
http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2004-21.doc

United Nations Commission on Human Rights Resolution 2004/28: Prohibition of Forced Eviction
http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2004-28.doc

United Nations Commission on Human Rights Resolution 2005/25: Women's Equal Ownership, Access to and Control Over Land and the Equal Rights to Own Property and to Adequate Housing
http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2005-25.doc

United Nations United Nations Commission on the Status of Women Resolution 42/1 (1998): Human Rights and Land Rights Discrimination
http://www.unhabitat.org/downloads/docs/1379_68753_WR12.htm

International Covenant on Civil and Political Rights [Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force 23 March 1976]
<http://www2.ohchr.org/english/law/ccpr.htm>

General Comment No. 28 of the United Nations Human Rights Committee (2000) on Equality of rights between men and women (Article 3)
<http://www.unhcr.ch/tbs/doc.nsf/0/13b02776122d4838802568b900360e80>

International Covenant on Economic, Social and Cultural Rights [Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force 3 January 1976]

<http://www2.ohchr.org/english/law/cescr.htm>

General Comment 4 of the United Nations Committee on Economic, Social and Cultural Rights (1991) on The right to adequate housing (Art. 11 (1))

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/469f4d91a9378221c12563ed0053547e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument)

General Comment 7 of the United Nations Committee on Economic, Social and Cultural Rights (1997) on Forced evictions (Art. 11 (1))

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/959f71e476284596802564c3005d8d50?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/959f71e476284596802564c3005d8d50?Opendocument)

General Comment 16 of the United Nations Committee on Economic, Social and Cultural Rights (2005) on The equal right of men and women to the enjoyment of all economic, social and cultural rights (Article 3)

<http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/C.12/2005/4&Lang=E>

Convention on the Elimination of All Forms of Discrimination against Women [G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46; entered into force Sept. 3, 1981]

<http://www2.ohchr.org/english/law/cedaw.htm>

General Recommendation 15 of the United Nations Committee on the Elimination of All Forms of Discrimination against Women (1990) on Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome (AIDS)

<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom15>

General Recommendation 21 of the United Nations Committee on the Elimination of All Forms of Discrimination against Women (1994) on Equality in marriage and family relations

<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>

General Recommendation 24 of the United Nations Committee on the Elimination of All Forms of Discrimination against Women (1999) on Women and Health

<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>

United Nations Declaration on the Elimination of Violence against Women [G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993)]

<http://www.un.org/documents/ga/res/48/a48r104.htm>

Cairo Program of Action on Population and Development (1994)

http://www.unfpa.org/webdav/site/global/shared/documents/publications/2004/icpd_eng.pdf

ENDNOTES

1. Since 2008, advocates working on these issues have taken advantage of the UN Commission on the Status of Women as an opportunity to gather together and strategize on how best to strengthen their work on this important topic.
2. Huairou Commission, Open Society Foundations and the UNDP HIV/AIDS Group took the lead in planning for this manual. Substantive content for the manual was developed with the assistance of the Centre on Housing Rights and Evictions (COHRE).
3. The WLLA is a partnership platform of major partners, such as COHRE and SIDA and grassroots groups that are members of Huairou Commission. For more information please see: <http://wllaweb.org>, or www.huairou.org/land-housing/womens-land-link-africa-wlla.
4. Please see WIN's website at: <http://winafrica.org>.
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9. Shelley Clark, "Early Marriage and HIV Risks in Sub-Saharan Africa," *Studies in Family Planning*, Volume 35, Issue 3, pp. 149-160, 2004.
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13. UNICEF, "Gender Equality – The Big Picture," See: http://www.unicef.org/gender/index_bigpicture.html. Last accessed 18 May 2010.

14. ICRW, "Reducing Women's and Girls' Vulnerability to HIV/AIDS by Strengthening their Property and Inheritance Rights," Information Bulletin, May 2006.
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32. This paragraph is based on Tamar Ezer, "Lessons from Africa: Combating the Twin Epidemics of Domestic Violence and HIV/AIDS" in *HIV/AIDS Policy & Law Review*, V. 13, No. 2/3, at 58.
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35. UNAIDS, "UNAIDS Action Framework: Addressing Women, Girls, Gender Equality and HIV," Aug. 2009.
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38. An international agreement, especially dealing with a specific matter. (www.dictionary.com).
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43. International Covenant on Civil and Political Rights, 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 23 March 1976. The International Covenant on Civil and Political Rights guarantees equality of persons before the courts (Article 14), prohibits arbitrary or unlawful interference with one's privacy, family, or home (Article 17), addresses equality of spousal rights during marriage and at its dissolution (Article 23), and confirms equal protection of the law for all without discrimination (Article 26).
44. Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force 3 January 1976. The International Covenant on Economic, Social and Cultural Rights further underscores the principle of non-discrimination with regard to sex and recognizes the equal right of women and men to the enjoyment of all economic, social and cultural rights including the right to adequate housing (Articles 3 and 11).
45. Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force 3 September 1981.

46. Article 14 (2) of CEDAW obligates States Parties “to eliminate discrimination against women in rural areas and to ensure to such women the right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply.” See: Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force 3 September 1981.
47. Human rights can also come from *customary international law*, which is law that has emerged out of practice, or custom, of States. It must be accepted by all as a common practice. Such law is binding upon States due to widespread acceptance and practice. This is for a number of human rights conventions as well, which often means that even if a State is not a signatory to a treaty or convention, it can still be obliged to follow its provisions. States have obligations to ensure their citizens are realizing their human rights, making them nationally effective.
48. Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 26 (1994).
49. Human Rights Committee, General Comment 28, Equality of rights between men and women (article 3), UN Doc. CCPR/C/21/Rev.1/Add.10 (2000).
50. Committee on Economic, Social and Cultural Rights, General Comment 4, The right to adequate housing (Sixth session, 1991), UN Doc. E/1992/23, annex III at 114 (1991), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003).
51. Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions, and the right to adequate housing (Sixteenth session, 1997), UN Doc. E/1998/22, annex IV at 113 (1997), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.6 at 45 (2003).
52. Committee on Economic, Social and Cultural Rights, General Comment 12, Right to adequate food (Twentieth session, 1999), U.N. Doc. E/C.12/1999/5 (1999), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 62 (2003).
53. Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation 21, Equality in marriage and family relations (Thirteenth session, 1992), U.N. Doc. A/49/38 at 1 (1994), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 250 (2003).
54. Report of the UN Special Rapporteur on Violence Against Women, “Integration of the Human Rights of Women and the Gender Perspective,” UN Doc. E/CN.4/2000/68 (29 February 2000).
55. A Resolution, while not legally binding, indicates a political willingness on the part of the government that has voted for it, to support and work towards the achievements of its contents.
56. United Nations Commission on Human Rights Resolution 2003/22, “Women’s equal ownership, access to and control over land and the equal rights to own property and to adequate housing,” UN Doc. E/CN.4/2003/22.
57. *Ibid*, Para. 10.
58. United Nations Commission on the Status of Women Resolution 42/1, “Human Rights and Land Rights Discrimination,” UN Doc. E/CN.6/1998/12.
59. United Nations Declaration of Commitment on HIV/AIDS, UN General Assembly, Special Session on HIV/AIDS, 25-27 June 2001.
60. *Ibid*, Para.58.
61. African [Banjul] Charter on Human and Peoples’ Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

62. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000); *reprinted in* 1 Afr. Hum. Rts. L.J. 40, entered into force Nov. 25, 2005.
63. *Ibid*, Article 2.
64. *Ibid*, Article 21.
65. League of Arab States, Revised Arab Charter on Human Rights, May 22, 2004, *reprinted in* 12 Int'l Hum. Rts. Rep. 893 (2005).
66. Charter of Fundamental Rights of the European Union, 2000 O.J. (C 364) 1 (Dec. 7, 2000).
67. European Social Charter (revised), (ETS No. 163), entered into force January 7, 1999.
68. American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123 entered into force July 18, 1978, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).
69. Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 33 I.L.M. 1534 (1994), entered into force March 5, 1995.
70. United Nations Commission on Human Rights Resolution, "Women's Equal Ownership, Access to and Control over Land and the Equal Rights to Own Property and to Adequate Housing," UN Doc. E/CN.4/RES/2000/13, 2000.
71. International Covenant on Civil and Political Rights, 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 23 March 1976.
72. For example, the CEDAW Committee has recognized that "Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men." See: United Nations Committee on the Elimination of All Forms of Discrimination against Women, (1992), "Violence Against Women," General Recommendation 19, adopted by the Committee at its eleventh session (1992).
73. United Nations Office of Special Advisor on Gender Issues and Advancement of Women, *Gender Mainstreaming: Strategy for Promoting Gender Equality*, August 2001.
74. UNAIDS, "Operational Plan for UNAIDS Action Framework: addressing women, girls, gender equality and HIV," available at http://www.unaids.org/en/media/unaids/contentassets/dataimport/pub/report/2009/jc1794_action_framework_gender_equality_en.pdf.
75. International Covenant on Civil and Political Rights, 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 23 March 1976.
76. International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force 3 January 1976.
77. International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force 3 January 1976. While not a binding instrument, the "Montréal Principles on Women's Economic, Social and Cultural Rights" are another useful resource for advocates. The Montréal Principles were adopted at a meeting of experts held in December of 2002 in Montréal, Canada. See: "Montréal Principles on Women's Economic, Social and Cultural Rights" *Human Rights Quarterly*, 26, pp. 760-780, 2004.
78. Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).
79. International Covenant on Civil and Political Rights, 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 23 March 1976.
80. International Covenant on Civil and Political Rights, 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 23 March 1976.

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82. Case information provided by FIDA-Kenya.
83. *Mary Rono vs Jane Rono*, Civil Appeal No. 66 of 2002 (Court of Appeal at Eldoret, Kenya).
84. International Covenant on Civil and Political Rights, 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 23 March 1976.
85. United Nations Human Rights Committee, "Equality of Rights between Men and Women," General Comment 28, adopted by the Committee at its sixty-eighth session, on 29 March 2000.
86. United Nations Human Rights Committee, "Equality of Rights between Men and Women," General Comment 28, adopted by the Committee at its sixty-eighth session, on 29 March 2000.
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88. Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force 3 September 1981.
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90. United Nations Development Programme (UNDP), "Property Rights in Zambia: An Issue Paper Presented for the Commission on Legal Empowerment of the Poor."
91. Case information provided by the Centre on Housing Rights and Evictions (COHRE). Reprinted with permission.
92. Uganda, Constitutional Court, *Law Advocacy for Women in Uganda v The Attorney General*, (Constitutional Petitions Nos. 13/05/ & 05/06 UGCC 1 (2007)).
93. Uganda, Constitutional Court, *Law Advocacy for Women in Uganda v The Attorney General*, (Constitutional Petitions Nos. 13/05/ & 05/06 UGCC 1 (2007)).
94. Eldis, "Does informal housing land delivery work for urban poor people?," 2009.
95. USAID, "Land Tenure, Property Rights and HIV/AIDS: Approaches for Reducing Infection and Enhancing Economic Security."
96. UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations*, 1994
97. The Centre on Housing Rights and Evictions (COHRE), *Shelter from the Storm: Women's Housing Rights and the Struggle against HIV/AIDS in Sub-Saharan Africa*, Geneva: 2009.
98. Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force 3 September 1981.
99. United Nations Committee on the Elimination of All Forms of Discrimination against Women, (1994), "Equality of Rights between Men and Women," General Recommendation 22, adopted by the Committee at its thirteenth session (1994).
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105. For example see *Monica Zolo vs Quaniso Kumwenda Mzuzu District Registry Civil appeal Number 21 of 2008*.
106. *Mzuzu District Registry; Civil cause no.96 of 2008*.
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108. *South African Human Rights Commission and Women's Legal Centre v. Pres. Of the Republic of South Africa and the Ministry for Justice and Constitutional Affairs, Case No. 50/03 of the Constitutional Court of South Africa*.
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110. *International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force 3 January 1976*.
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124. *United Nations Committee on Economic, Social and Cultural Rights, "The Right to the Highest Attainable Standard of Health," General Comment 14, adopted by the Committee at its twenty-second session, on 11 August 2000*.

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126. United Nations Committee on the Elimination of All Forms of Discrimination against Women, "Women and Health," General Recommendation 24, adopted by the Committee at its twentieth session, 1999.
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128. United Nations Commission on Human Rights, "Elimination of Violence against Women," Resolution 2004/46, 56th Meeting, April 2004, at para. 9.
129. Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).
130. International Covenant on Civil and Political Rights, 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 23 March 1976.
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134. United Nations Commission on Human Rights, "Women's Equal Ownership, Access to and Control over Land and the Equal Rights to Own Property and to Adequate Housing," Commission on Human Rights resolution 2005/25, UN Doc. E/CN.4/RES/2005/25, 2005.
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136. Information about the MDGs is available at <http://www.undp.org/mdg/basics.shtml>.
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139. *Constitution of India*, adopted 26 Nov. 1949, effective 26 Jan. 1950, as amended through 20 Jan. 2006 (93rd amendment), Art. 14.
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141. Government of India, Planning Commission, "The Eleventh Five Year Plan (2007-2012): Inclusive Growth," Volume 1, 2008.
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144. Additional International legal and normative provisions recognizing the right to a remedy for victims of violations of international human rights and humanitarian law are contained in numerous international instruments, in particular in: Article 8 of the Universal Declaration of Human Rights; Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and Article 39 of the Convention on the Rights of the Child.
145. International Covenant on Civil and Political Rights, 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 23 March 1976. See also the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, adopted at an International expert meeting on Women's and Girls' Right to a Remedy and Reparation, held in Nairobi from 19-21 March 2007.
146. Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force 3 September 1981.
147. United Nations Commission on Human Rights, "Forced evictions," Commission on Human Rights resolution 1993/77, UN Doc. E/CN.4/RES/1993/77, 1993.
148. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005).
149. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005).
150. GWEC is an activist organization of approximately 10,000 families in various slum areas based in Caloocan City, Philippines. It was set up in the face of a massive government relocation project that would displace families living along both sides of the Philippine railway (70% of whom are women and children). Government-regulated relocation sites typically lack basic services such as potable water and electricity, and classrooms tend to be overcrowded and expensive. Furthermore, unfinished homes without secure locks or electricity put women at a higher risk of home invasion, robbery and sexual assault. GWEC feared this would soon be the plight for the newly displaced families. GWEC is a Huairou Commission member. The women of GWEC are quoted throughout this document.
151. Further Information on Community Mapping may be found on www.huairou.org/grassroots-solutions.
152. *Participatory* refers to the involvement of those not normally included in decision-making or research, such as women.
153. The Land Access Movement of South Africa (LAMOS) is a community based organization advocating for land and agrarian rights. Found in 1991 by people forcibly evicted during the Apartheid regime, it works with dispossessed community to collectively combat poverty, inequality and oppression through people-centered development. It is a member of the Huairou Commission.
154. Slum Women Initiative for Development (SWID), founded in 2003, is a registered Ugandan NGO and a grassroots women's initiative group, with 250 members. They operate on a multi-level approach, including such activities as women's savings club, rotating loans scheme between workshops for women in leadership roles, civil literacy courses, business management and environmental conservation techniques. It is a member of the Huairou Commission.
155. Case information provided by the Centre on Housing Rights and Evictions (COHRE). Reprinted with permission.

156. INTERIGHTS defends and promotes human rights and freedoms worldwide through the use of international and comparative law. See: www.interights.org.
157. Peter Mburu *Echaria v Priscilla Njeri Echaria* [2007] eKLR. H.C.C.C. NO. 4684 of 1987(O.S.). (Kenya, High Court of Appeal).
158. Caroline Sweetman, "How Title Deeds Make Sex Safer: Women's Property Rights in an Era of HIV," From Poverty to Power Background Paper, Oxfam: 2008.
159. Lorenzo Cotula, "Gender and Law – Women's Rights in Agriculture," Food and Agricultural Organization of the United Nations (FAO), Rome: 2002.
160. Bart Rwezaura, "Protecting the Rights of the Girl Child in Commonwealth Jurisdictions" in A Brynes; J Connors & L Bik (eds.), *Advancing the Human Rights of Women: Using International Human Rights Standards in Domestic Litigation*, 1997.
161. Global Coalition on Women and AIDS, *Keeping the Promise, An Agenda for Action on Women and AIDS*, 2006.
162. Dr. Nafis Sadik, Executive Director of UNFPA, "Working Towards Gender Equality in Marriage," in *Early Marriage: Child Spouses*, UNICEF, Innocenti Digest, Mar. 2001.
163. "Global Commission on HIV and the Law: Information Note," available at hivlawcommission.org.
164. The Canadian HIV/AIDS Legal Network promotes the human rights of people living with and vulnerable to HIV and AIDS, in Canada and internationally, through research, legal and policy analysis, education, and community mobilization. The Legal Network is Canada's leading advocacy organization working on the legal and human rights issues raised by HIV. See: www.aidslaw.ca.
165. Respect, Protect and Fulfil: Legislating for Women's Rights in the Context of HIV/AIDS, See: <http://www.aidslaw.ca/EN/womensrights/english.htm>.
166. Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force 3 September 1981.
167. Centre on Housing Rights and Evictions, *Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women: A Survey of Law and Practice in Sub-Saharan Africa*, 2004.
168. As referred to in COHRE, *Bringing the Right to Equality Home*, 2004, page 153.
169. GROOTS Kenya, a GROOTS International and Huairou Commission member, is a network of women self-help groups and community organizations in Kenya. It formed as a response to inadequate visibility of grassroots women in development and decision-making forums that directly impact them and their communities. GROOTS Kenya bridges this gap through initiatives that are community-centered and women-led.
170. Ntengwe for Community Development is a Huairou Commission member in Binga District in the Northwest of Zimbabwe, dedicated to improving the quality of life for children youth and women through local level interventions and communication of social issues through the arts. Its recent film, "*When the Cows Come Home*," depicts women's lack of property rights and the dire consequences this has on women and communities.
171. Seke Home Based Care, a Huairou Commission member, was founded in 2001 to improve the quality of life for those affected by HIV, the terminally and chronically ill, and orphans and vulnerable children living in rural areas around Harare. Its area covers approximately 80,000 persons and it provides home-based care to approximately 5,000 persons.
172. To find out more please see: www.huairou.org/grassroots-solutions.
173. MWEDO, operational since 1999, seeks to support and empower Maasai women within four main Maasai areas of Tanzania. It seeks to give voice to the Maasai women and access to critical services

and information. It is a long-time member of the Huairou Commission. To find out more please see: <http://www.maasaiwomentanzania.org/>.

174. Estrategia carries out successful urban upgrading and renewal programs in the poorest neighbourhoods of Lima. These programs take into consideration the perspectives of women with little income and help them organize and participate in their community's development. It is the parent of Mujeres Unidas (Women United for a Better Community), a women's network in Lima that encourages women to participate in bettering their communities and aims to increase gender sensitivity awareness.
175. United Nations Human Rights Committee, "Equality of Rights between Men and Women," General Comment 28, adopted by the Committee at its sixty-eighth session, on 29 March 2000.
176. Lorenzo Cotula, "Gender and Law – Women's Rights in Agriculture," Food and Agricultural Organization of the United Nations (FAO), Rome: 2002.
177. Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force 3 September 1981, Article 2(f). *See also id.*, Article 5(a) requiring 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."
178. United Nations Commission on Human Rights, "Women's Equal Ownership, Access to and Control over Land and the Equal Rights to Own Property and to Adequate Housing," Commission on Human Rights resolution 2005/25, UN Doc. E/CN.4/RES/2005/25, 2005.
179. The Recognition of Customary Marriages Act in South Africa, for example, has decreased women's economic vulnerability by protecting property gained during marriage. The property systems for customary unions entered into before the Act will continue to be governed by customary law. Partners to a customary union can apply to the High Court to change the property system of their marriage. The court will look after the interests of all the parties. All new marriages formed after the Act will automatically be in community of property unless the parties draw up an ante-nuptial contract.
180. A network of 500 grassroots women's organizations with 45,000 members, Rural Women's Movement was established in 2000 to advocate for women's independent land rights and use of natural resources. It is based in KwaZulu-Natal Province South Africa, a particularly patriarchal and thus challenging province in which to work on women's issues. The women of RWM are quoted throughout this document. It is a member of the Huairou Commission.
181. Information provided by Allan Maleche Coordinator KELIN and Emma Day, Volunteer Lawyer.
182. www.kelinkenya.org.
183. This experience is documented through video as is available at <http://kelinkenya.org/multimedia/video/>, <http://www.youtube.com/watch?v=BthHk3wugl4> and <http://www.youtube.com/watch?v=jooCgJ7UzrA&feature=related>.
184. <http://kelinkenya.org/wp-content/uploads/2010/10/Working-with-Cultural-Structures-A4FINAL.pdf>.
185. <http://kelinkenya.org/wp-content/uploads/2010/10/The-Constitution-of-Kenya2.pdf>.
186. Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).
187. Art. 13(1), International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force 3 January 1976.

188. Vienna Declaration, World Conference on Human Rights, Vienna, 14- 25 June 1993, U.N. Doc. A/CONF.157/24 (1993).
189. United Nations Commission on Human Rights, "Women's Equal Ownership, Access to and Control over Land and the Equal Rights to Own Property and to Adequate Housing," Commission on Human Rights resolution 2000/13, UN Doc. E/CN.4/RES/2000/13, 2000.
190. Case information provided by the Open Society Institute. Open Society Institute Public Health Program, *Health & Human Rights: Select Case Studies*, New York, 2008. Reprinted with permission.
191. See <http://www.bonela.org/>.
192. Crone, Tyler; UNIFEM and ATHENA Network; *Transforming the National AIDS Response: Advancing Women's Leadership and Participation*, See: <http://64.141.2.205/en/node/320898/347>.
193. Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* 3 September 1981.
194. Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* 3 September 1981.
195. United Nations Committee on the Elimination of All Forms of Discrimination against Women, "Article 7: Political and Public Life, General Recommendation No. 23," 1997.
196. FAO Economic and Social Development Department, *Gender and Decentralization: Promoting Women's Participation in Local Councils*, FAO Corporate Document Repository, See: <http://www.fao.org/DOCREP/003/X6090E/x6090e01.htm>.
197. Please see: www.huairou.org/aids and <http://homebasedcarealliance.wordpress.com/> for more information.
198. Case information provided by the Open Society Institute. Open Society Institute Public Health Program, *Strategies for Change: Breaking Barriers to HIV Prevention, Treatment and Care for Women*, New York, 2008. Reprinted with permission.
199. Ibid.
200. The Centre on Housing Rights and Evictions (COHRE), *Sources 5: Women and Housing Rights*, 2nd Edition, Geneva: 2008. Reprinted with permission.
201. The Centre on Housing Rights and Evictions (COHRE), *Sources 5: Women and Housing Rights*, 2nd Edition, Geneva: 2008. Reprinted with permission.

