



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2003/55
26 March 2003

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-ninth session
Agenda item 10

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Women and adequate housing

**Study by the Special Rapporteur on adequate housing as a component of the right
to an adequate standard of living, and on the right to non-discrimination,
Miloon Kothari, in accordance with Commission resolution 2002/49***

* In accordance with paragraph 8, section B, of General Assembly resolution 53/208, the reason for the late submission of this report is the need to reflect the latest information.

Executive summary

This study, submitted in accordance with Commission resolution 2002/49 on women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing, attempts to outline some significant issues facing women in the enjoyment of the right to adequate housing.

This critical issue affecting the lives of millions of women worldwide has been neglected for far too long. The study particularly highlights that, despite the recognition of gender equality and non-discrimination in various legislation at the international and national levels, in practice women are facing de facto discrimination in access to housing, land and civic services, which can be attributed to customs and traditions, lack of awareness or persistence of gender bias in the formulation and implementation of national policies.

A number of preliminary steps have been taken by the Governments, civil society and United Nations agencies as well as United Nations human rights mechanism to address this gap between the law and the reality. The study makes several preliminary recommendations which, taken together, also demonstrate the critical need to continue the focus of the Commission on this issue.

The Special Rapporteur therefore recommends that, in order to enable deeper analyses of the various dimensions of women and the right to adequate housing, the term of the study should be extended and complemented by the following steps: (a) States should be requested to submit further information through responding to the questionnaire prepared by the Special Rapporteur; (b) more civil society and inter-agency consultations should be organized to collect information, experiences and good practices; (c) an expert seminar should be organized to further develop a research methodology and guidelines for prevention of discrimination against women in access to housing and civic services, as well as to identify what concrete steps can be taken by relevant United Nations bodies and international financial institutions to ensure that women's right to adequate housing is firmly entrenched in the global agenda; and (d) the mandate of the study should be progressively expanded to include women's rights to land, property and inheritance.

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Introduction

1. The Commission on Human Rights, in its resolution 2002/49, requested the Special Rapporteur on adequate housing to submit, within his mandate, the present study for its consideration at the fifty-ninth session.
2. The issue of women and adequate housing has been on the agenda of the Commission and the Sub-Commission on the Promotion and Protection of Human Rights since 1997.¹ Work undertaken by various special rapporteurs, including the Special Rapporteur on violence against women, its causes and consequences, highlighted the severe impact on women arising from inadequate housing and living conditions, and in situations where their housing rights have been violated or not respected. In 2002, the Commission considered the report of the Secretary-General on women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing (E/CN.4/2002/53), submitted in accordance with its resolution 2001/34.
3. In view of the critical importance of women in issues related to adequate housing, deeper understanding of women's issues and a gender perspective in economic, social and cultural rights, including the right to adequate housing, are critical in the realization of these rights. Throughout his mandate, the Special Rapporteur has therefore placed particular focus in his reports and activities to examining the gender perspective and women's issues in adequate housing, pursuant to Commission resolution 2000/9, which specifically requested him to apply a gender perspective.
4. In his first report to the Commission (E/CN.4/2001/51), the Special Rapporteur called for a broad interpretation of the right to adequate housing, which he defined as "the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity". He further developed a framework of analysis and guidelines for States in addressing housing-related discrimination and segregation, which were presented in his second report (E/CN.4/2002/59, paras. 37-47).
5. In order to solicit information from States and civil society towards the preparation of this study, the Special Rapporteur prepared a questionnaire on women and adequate housing (available at <http://www.unhchr.ch/housing>), which was disseminated to all States and also, through the Internet, to civil society. In developing this questionnaire, he paid particular attention to the human rights principle of non-discrimination and the indivisibility of all human rights as articulated in his reports. The questionnaire was divided into two parts: the first part requested information on the general legal and policy framework; and the second part contained specific questions on the gender dimensions of various elements of the right to adequate housing, which were developed on the basis of General Comments No. 4 and No. 7 adopted by the Committee on Economic, Social and Cultural Rights (CESCR), taking into account further developments in the recognition and interpretation of the entitlements of the right to adequate housing. These elements are: (a) legal security of tenure; (b) access to public goods and services; (c) access to land, water and other natural resources; (d) affordability; (e) habitability; (f) physical accessibility; (g) location; (h) cultural adequacy; (i) freedom from dispossession, damage and destruction; (j) access to information; (k) participation; (l) resettlement, restitution, compensation, non-refoulement and return; (m) privacy and security; (n) access to remedies; and

(o) education and empowerment. It was intended that the detailed questionnaire would also become a human rights education tool that could explain the manifold entitlements that comprise women's right to adequate housing. The Special Rapporteur is grateful to those States, civil society groups and individuals who submitted information in response to this questionnaire. He further encourages all parties to continue sending him inputs and updated information.

6. The Special Rapporteur acknowledges with appreciation a number of United Nations agencies which supported him in preparing this study. In October 2002, the United Nations Human Settlements Programme (UN-Habitat), in cooperation with the Office of the High Commissioner for Human Rights (OHCHR), organized an African regional civil society consultation in October 2002 under their joint United Nations Housing Rights Programme, which brought together grass-roots women's and civil society organizations from, or covering, Eritrea, Kenya, Rwanda, Uganda, the United Republic of Tanzania, Zambia and Zimbabwe.² The Special Rapporteur also participated in an expert group meeting on gender issues in human settlements, organized by UN-Habitat in February 2003, which examined many of the issues raised in this study. Furthermore, he was grateful for the inputs and contributions provided by the United Nations Development Fund for Women (UNIFEM) and the United Nations Children's Fund (UNICEF), and looks forward to continuing to work with them in follow-up work emanating from this study.

7. A number of civil society initiatives have also contributed material for this study, including a parallel meeting on women's rights to housing and land organized in the women's tent during the World Summit on Sustainable Development and a meeting organized by the Asia-Pacific Forum on Women, Law and Development (APWLD) in Colombo at which a representative of the Special Rapporteur participated.

8. The Special Rapporteur would like to thank the relevant treaty bodies, in particular the Committee on the Elimination of Discrimination against Women (CEDAW), from which he received valuable advice and suggestions for the preparation of this study. Finally, he would like to thank the following individuals who contributed to this study: Bina Agarwal, Marjolein Benschop, Leilani Farha, Seema Misra, Deepika Naruka and Ganguly-Thukral.

9. This study covers some of the pertinent issues related to women and adequate housing, from the perspective of his mandate, based on responses and inputs received and on other available materials. This preliminary report analyses the existing legal provisions, national and international, highlights the existing gaps, and makes some preliminary recommendations. It is not intended as an exhaustive, comprehensive study, which would require more time and resources for its preparation.

I. GLOBAL RECOGNITION OF THE RIGHT OF WOMEN TO ADEQUATE HOUSING

10. Following the recognition of the right to adequate housing in article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights and other international instruments, the Special Rapporteur has adopted a working definition of the right as "the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity" (E/CN.4/2001/51, para. 8).

11. Women's right to adequate housing, as an inalienable, integral and indivisible part of all human rights, has been recognized, implicitly and explicitly, in a range of international and regional human rights instruments. The most explicit recognition of this right is contained in article 14, paragraph 2 (h) of the Convention on the Elimination of All Forms of Discrimination against Women, which refers to the right of women in rural areas to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

12. Other provisions of the Convention make it clear that the right to adequate housing is inextricably linked to land and property rights, and access to financing. Article 13 of the Convention requires States parties to take all appropriate measures to eliminate discrimination against women in areas of economic and social life, and to ensure women's equal right to bank loans, mortgages and other forms of social credit. Women's equal right to conclude contracts and administer property as well as equal treatment in court procedures is laid down in article 15. Article 16, paragraph 1 (c), stipulates that States parties shall take all appropriate measures to ensure the same rights and responsibilities during marriage and at its dissolution. Article 16, paragraph 1 (h), furthermore confirms 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.

13. Furthermore, provisions on equality and non-discrimination contained in various other international instruments provide a form of implicit recognition that women should enjoy, on equal terms with men, inter alia the rights to: housing; property; protection against unlawful interference in one's privacy, family and home; security of person; equality before, during and upon dissolution of marriage; and equal protection before the law. Relevant provisions are found in: the Universal Declaration of Human Rights (arts. 2, 16, 17 and 25); the International Convention on the Elimination of All Forms of Racial Discrimination (arts. 5 (d) (v) and (vi), 5 (e) (iii)); the International Covenant on Civil and Political Rights (arts. 2, para. 1, 3, 9, 16, 17, 23, para. 4, and 26); the International Covenant on Economic, Social and Cultural Rights (arts. 2, para. 2, 3, 11, para. 1); the Convention on the Elimination of All Forms of Discrimination against Women (arts. 1, 2 (f), 3 and 5 (a)); and the Convention on the Rights of the Child (arts. 1, 16, para. 1, and 27).

14. At the regional level, relevant provisions are found in the following instruments: the African Charter on Human and Peoples' Rights (arts. 2 and 18, paras. 2 and 3); the European Convention on Human Rights (arts. 5, 8 and 14) and its Protocol No. 1 (art. 1) and No. 8 (art. 5); the Revised European Social Charter (art. 31); the American Declaration of the Rights and Duties of Man (arts. 1, 2 and 23); the American Convention on Human Rights (arts. 1, 17, 21 and 24) and its Additional Protocol (art. 3).

15. Although not legally binding, numerous international declarations and recommendations contain specific references to issues related to women and adequate housing. The Beijing Platform for Action (A/CONF.177/20, annex II), adopted at the Fourth World Conference on Women in 1995, commits Governments to remove all obstacles for women in obtaining

affordable housing and access to land (para. 58 (m)). It furthermore requests Governments to undertake law and administrative reforms to give women equal access to economic resources and accord them the right to own and inherit property.

16. The Istanbul Declaration and the Habitat Agenda (A/CONF.147/18), adopted at the second United Nations Conference on Human Settlements in 1996, commits Governments to providing legal security of tenure and equal access to land to all people, including women and those living in poverty (para. 40 (b)). States are called upon to undertake legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property, credit, natural resources and appropriate technology. States are also called upon to support community projects, policies and programmes that aim to remove all barriers to women's access to affordable housing and property ownership, economic resources, infrastructure and social services and ensure the full participation of women in all decision-making processes (para. 78 (e)). Furthermore, States are requested to promote mechanisms for the protection of women who risk losing their homes upon the death of their husbands (para. 78 (g)).

17. The Declaration on Cities and Other Human Settlements in the New Millennium (General Assembly resolution S-25/2), adopted at the special session of the General Assembly in 2001 to review the implementation of the Habitat Agenda, reaffirms the goal of gender equality in human settlements development. Some of the further actions listed in this Declaration include: the promotion of gender equality as an effective way to combat poverty (para. 44); the promotion of changes in attitudes, structures, policies, laws and practices that form obstacles to gender equality (para. 32); the promotion of greater security of tenure for the poor and vulnerable and of continued legislative, administrative and social reforms to give women "full and equal access to economic resources" and the "right to security of tenure and to enter into contractual agreements" (paras. 45 and 49).

18. The Millennium Declaration (General Assembly resolution 55/2) lists gender equality as one of the fundamental values essential to international relations (para. 6). One of the Millennium Development Goals (MDGs) concerns the promotion of gender equality and the empowerment of women. Read together with international targets on improving access to safe drinking water and the lives of slum dwellers, MDGs provide an important framework for the realization of women's right to adequate housing.³ In this context, paragraph 67 (b) of the Plan of Implementation adopted by the World Summit on Sustainable Development (A/CONF.199/20, annex) is particularly significant as it recognized the importance of women's right to land, including the right to inheritance, and participation in decision-making, in order to achieve the sustainable development of Africa and the realization of relevant MDGs.

19. Global protection mechanisms exist to guarantee the rights of women, such as the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. This Protocol needs to be ratified by more States parties to the Convention. The Special Rapporteur also notes with interest the ongoing work under the African Union to review and adopt a draft additional protocol to the African Charter on Human and Peoples' Rights on the rights of women in Africa. The current draft, as adopted on 16 November 2001, recognizes women's right to adequate housing. To further strengthen this provision, the Special Rapporteur recommends that deliberations on the draft additional protocol should also take into account the

existing norms and standards contained in international instruments and elaborated by General Comments No. 4 and No. 7 of CESCR, as well as agreed commitments from the outcomes of the aforementioned global conferences. He sent a letter to the Chairperson of the Commission of the African Union in this regard and looks forward to further contributing to this initiative.

II. GENDER DIMENSIONS OF THE RIGHT TO ADEQUATE HOUSING

20. If the right to adequate housing is recognized as a human right for all human beings irrespective of gender, race or ethnicity, why is there a need for a separate examination of women's right to housing? The Special Rapporteur appreciates the fact that women often bear the primary responsibility for sustaining and maintaining homes and the need to ensure that their critical role is recognized and their rights advanced. Accordingly, national Governments and the international community need to ensure that the strategies and objectives envisioned in numerous legal instruments are realized and that women are accorded substantive rather than illusory rights as they pertain to housing.

21. Despite numerous resolutions and the strategies implemented both nationally and internationally, as highlighted above, women continue to suffer from discriminatory treatment in all areas seminal to the attainment of adequate housing. Equal access to credit and finance, equal rights in respect of inheritance of land and property and the elimination of gender-biased customs and traditions that deny women their rights to their natal and marital homes are critical issues that must be addressed. Moreover, laws and policies must be articulated and implemented in ways that recognize the specific constraints and vulnerabilities of women in relation to the right to adequate housing. The attainment of legal security of tenure is also of critical importance to women; without it they are disproportionately affected by forced evictions and resettlement schemes, slum clearance, domestic violence, civil conflict, discriminatory inheritance laws, development projects and globalization policies that circumscribe access to productive land and natural resources.

22. Any understanding of women's right to adequate housing also needs to take into account the complex nature of the relationship women share with the natural environment, the cultural mores that govern societal behaviour and therefore women's role in society, as it governs their access to and control over land, resources and decision-making. This would require the examination of laws relating to land, property and succession and laws relating to access to natural resources, including forest and conservation laws.

23. The lives of the majority of the world's women are intrinsically linked to those of their families and their children. Any understanding of women and adequate housing must take into account the context and housing and living conditions of the community and the family in which they live. The rights of the groups and communities in which they live need careful attention, as breakdown of community networks, for example as a result of forced evictions, can affect women in particular. The impact of inadequate housing and living conditions and homelessness on children therefore becomes equally important for their mothers.

24. Women are not a homogeneous group. Nor is the concept of gender static, as it varies in different cultural, geographical and historical contexts, and is contingent upon factors such as

age, class and ethnic group. Also, women's position in society is not static. It shifts in response to and also affects changes in the economic, social, political, cultural and environmental situation of the community. This diversity is often visible in intergenerational differences. However, the processes of globalization have increased the pace of change to such an extent that significant changes are felt within generations.

25. Generally, inadequate housing and living conditions such as overcrowding, indoor pollution, precarious housing, lack of water, sanitation and electricity and inadequate building materials affect women in particular as they tend to spend more time at home than men. It is obvious that women living in extreme poverty face much greater risk of becoming homeless or living in inadequate housing conditions. The feminization of poverty has a particular impact on women's ability to acquire and maintain land, housing and other amenities and to sustain their livelihoods. Furthermore, across the world, a form of discrimination and marginalization is emerging, not because of race, class or gender, but because of poverty. In such situations, poor women often face double discrimination.

26. Special attention is required for some groups/categories of women who are more vulnerable than others, at higher risk of becoming homeless or suffering from the consequences of inadequate housing and living conditions.

27. Victims of domestic violence. In most countries, whether developed or developing, domestic violence is a key cause of women's homelessness and presents a real threat to women's security of person and security of tenure. Many women continue to live in violent situations because they face homelessness if they resist domestic violence.

28. Widowed, divorced or separated women. In large parts of South Asia and Africa, these women are often thrown out of the house in which they had lived with their husbands. While in some countries this practice is not considered illegal, in others such evictions occur even if laws exist that prohibit them. When women try to claim their rights over the land or house, they are sometimes threatened or physically abused and beaten. Such women usually find themselves in shelter inferior to that which they have been forced out of, and end up in urban slums. In order to prevent this, the rights of married women must be better protected so that following the death of or divorce from her husband, a woman cannot simply be thrown out. If legal provisions exist that protect these rights, awareness of these rights must be raised.

29. Women-headed households. Women-headed households are among the poorest in most countries and the most in need of housing assistance. Women with children may face discrimination when applying for accommodation based on assumptions about their inability to meet financial obligations owing to the absence of a male partner. In urban slums across the world, these women are the most vulnerable, including to sexual exploitation. Women-headed households and single women have insufficient access to resources and credit owing to their status.

30. Women victims of forced evictions. Women bear the brunt of evictions, especially when they involve the use of force. When communities are forcibly evicted and moved to places with no source of livelihood, men tend to migrate and leave women to fend for the family. Evictions often lead people to live in distant places and in inadequate conditions, without security of

tenure, basic services, access to schools, health services and employment. As a result of forced evictions women are left in more difficult situations than before in caring for their families. Particular groups of women, such as widows, often face eviction from their homes if their husbands have died from HIV/AIDS.

31. Indigenous and tribal women. There is a need to examine policies and laws on indigenous groups and their particular impact on indigenous women. Conservation laws that remove indigenous groups from their traditional environment may lead to the deterioration of their standard of living and the breakdown of indigenous cultures and relationships that can have a particular effect on indigenous women. Very few laws address cross-sectional discrimination, and indigenous women may risk facing double discrimination in access to housing and civic services.

32. Women with disabilities. The United Nations estimates that over 600 million people, or approximately 10 per cent of the world's population, have some form of disability. While all persons with disabilities must be accorded full and sustainable access to adequate housing resources, there is a need to study the particular needs of women with disabilities so that they can be reflected in housing legislation and policies in an appropriate manner so as not to prevent any discrimination or marginalization.

33. Women in conflict/post-conflict situations. Ethnic and armed conflicts and resulting displacement have different impacts on men and women, and can exacerbate already existing discrimination against women. Destruction of their homes, family structure and community leave women particularly vulnerable. During reintegration and resettlement one of the greatest needs of the displaced population (and also of ex-combatants and their families) is that of access to land and housing. In some instances, the reconstruction phase can provide women with an opportunity to claim and enforce their rights to land, housing and property. However, in many instances women who attempt to return to their lands and houses or to settle in new places are confronted with discriminatory and disadvantageous scenarios, owing not only to customary laws and traditions but also to lack of documents and titles.

34. States need to protect these women through specific legal and policy initiatives. Existing laws and policies should be reviewed and revised, where necessary, to recognize the special condition of particular groups of women and to provide them with adequate immediate protection. The Special Rapporteur is of the view that future studies should examine in more detail the particular situation of these and other groups of women that require special attention, including elderly women, women living under occupation, women from minority groups and women living in extreme poverty.

III. NATIONAL LEGAL PROVISIONS

35. The disadvantageous position of women in relation to the enjoyment of the right to adequate housing may be caused directly by discriminatory laws, but results more often from the way laws, however gender neutral and non-discriminatory they may be, are applied to women. An analysis of national legal frameworks and how they are implemented is therefore critical to the understanding of the situation of women's housing rights.

36. This section looks at constitutions and legislation found in some countries in order to determine the extent to which women's right to adequate housing is recognized and protected. The actual implementation of women's right to housing is then analysed, including access to justice and obstacles to implementation and the effect on vulnerable groups. It must be noted, however, that the geographical coverage and analysis contained in this section are limited and only intended to highlight some of the pertinent issues, as they are mostly based on information submitted to the Special Rapporteur and are drawn from the outcomes of the East African regional civil society consultation organized for him by UN-Habitat.

37. It is pertinent to note that in the overwhelming number of responses received to the women and housing questionnaire, and in testimonies and case studies presented during regional consultations, no distinction was made between women's rights to housing, land, property and inheritance. The respondents felt that there is an inextricable link between these issues. The analysis presented below, therefore, also includes examples of the shortcomings, in terms of formulation and implementation, of legislation and policy measures to protect women's rights to land and property.

A. Constitutional recognition

38. The right to adequate housing is recognized in a number of constitutions across the world.⁴ Even where there is no specific provisions for the right to adequate housing in constitutions, many constitutions around the world, for example those of Australia, Bangladesh, Canada, India, Nepal, Tajikistan, Uganda and the United Republic of Tanzania, recognize the right to own and dispose of property. Most constitutions specifically prohibit discrimination on grounds of gender, but in some countries such as Botswana, Kenya, Lesotho, Zambia and Zimbabwe, the equality clause in the constitution is qualified to allow consideration of culture or customary law, which can act against the interest of women. Uganda is one of the few countries in Africa whose constitution specifically prohibits discrimination even under customary law. In Bangladesh equality between men and women is guaranteed in the public sphere, but is not specified for the private and personal sphere, including on matters related to personal properties.

B. National and local laws

39. Women's access to and control over housing, land and property is determined in part by, and interrelated with, a range of laws enacted at the national and local level. These include land ownership laws, acquisition laws, title registration laws, slum clearance laws, matrimonial and inheritance laws, laws relating to domestic violence, customary and religious laws, environmental laws and urban regulations which determine the extent to which women's right to adequate housing is protected. Many of these laws overlap and complicate women's access to housing or land rights.

40. In many instances, laws relating to land and urban regulations are gender neutral and give equal right to men and women regarding the sale, purchase and transfer of property. Some land laws, such as those of Uganda and Tanzania, are more progressive than others. In Uganda, the consent of the spouse is required before property can be transferred. Whereas in Tanzania, the law provides for joint ownership. On the other hand, in some countries, for example Lesotho and Swaziland, laws exist which specifically discriminate against women. Section 16 of the

Deeds Registration Act of Swaziland specifically excludes registration of title to land in the name of women married in community of property. In Lesotho married women are still regarded as legal minors under the protection of their husbands and cannot enter into contracts without their assistance, which negatively affects women's access to land, despite the fact that some women earn their own incomes and are entitled to housing benefits in their own right.

41. Even where the civil matrimonial and inheritance laws do not discriminate against women, it is not always the case for customary and religious laws. Only in a few countries in East Africa, for example, is there a specific right to a matrimonial home, the right to maintenance or the right to property upon divorce or separation, or the right to evict the abuser in cases of domestic violence. Religious laws usually allow women to inherit, but always a lesser share than men.

C. Applicability of laws and obstacles to implementation

42. Although legislative changes generally provide for equal access to housing and land for men and women, traditional and cultural structures, patriarchal attitudes, lack of knowledge about housing and land rights and economic constraints have effectively barred many women from acquiring housing and land in both urban and rural areas. Most of the laws are gender neutral and do not recognize the special circumstances of women. Traditional values prevail even amongst judges and administrative officials, who interpret statutory law according to customary law, often depriving women of the benefits they should enjoy under statutory law.

Gender-neutral law does not always recognize the special circumstances of women

43. Often, laws do not recognize the special circumstances of women and thus discriminate against them. Even policies made for the supposed benefit of women, such as allocating land for them, can fail if they expect women to provide collateral or large sums of money up front. For example in Zambia, under the land policy 10 per cent of all advertised land should be given to women. The effectiveness of this is undermined by the requirement for collateral, indicated by the non-refundable fee of K100,000 that is usually requested up front from those applying for freehold land. Many women cannot afford this amount and are therefore precluded from benefiting from the policy.

44. When laws provide criteria for ownership, even when women qualify titles are often given to men. This has serious implications for women in case of divorce or widowhood.⁵ Laws providing for joint titles to land often ignore the practical reality that women rarely acquire title and face homelessness when husbands sell the house or property without informing them.⁶ Even when joint titles are given to women they find it difficult to gain control over the asset, or to bequeath the land or house as they wish, or claim their share in case of marital conflict. Most countries that recognize and address gender discrimination or racial discrimination can fail to recognize intersecting forms of discrimination, such as when gender and racial discrimination act together to produce specific forms of discrimination.⁷

Predominance of customary, traditional or social norms and attitudes

45. Even if legislation does not discriminate between men and women nor limit women's capacity to acquire freehold land in their own right, in practice one of the major constraints facing women, both married and unmarried, are social norms and attitudes about the roles of men and women, and customary and traditional rules that discriminate against women. Bias against women's ownership of property based on social norms and attitudes cuts across developed and developing countries. Even in some countries with economies in transition, where gender-neutral laws have existed for more than three decades, tradition and patriarchal systems can still control women's access to housing or land.

46. In a significant number of African and Asian countries, customary rules govern women's ownership of property. According to customary rules, any property acquired by the family must often be registered in the name of the husband alone. For example, even if a woman builds a house herself, tradition can dictate that it belongs to her husband. Without a wife's name on the title deed, a husband is often legally allowed to mortgage the property without her knowledge or consent. Many women and children are rendered homeless in these circumstances, despite having contributed, directly or indirectly, to the acquisition of the land or house. These customary rules deny women the access to land and housing when they are divorced, separated or widowed. Often the right to continue to live in a matrimonial home upon divorce or the death of the husband is conditional upon chastity and other criteria.

47. There are numerous examples from across the world of how customary laws prevail even when there are contradicting statutory laws. In Africa customary laws are usually not codified but nevertheless govern land ownership and transfers. The rules are often shifted to suit the patriarchal system and enforced rigidly against women. Under customary law women often cannot own land at their husband's homes and are thus not able to make any claims on the matrimonial home. Upon divorce or death they are left with nothing to show for their work.⁸ Statutory law often stipulates that bride prices are no longer required for a marriage to be legal and provide for the division of matrimonial assets upon divorce. But customary law, under which a divorced woman loses her access to land and her parents would be required to repay the bride price, can still prevail.⁹

48. In developed countries women also face discrimination based on gender, marital and social status, or ethnicity. Landlords or property managers may refuse to rent to teenage mothers or low-income or minority women. For example, in many provinces of Canada, this situation is exacerbated by the withdrawal of social programmes, such as social security and welfare assistance. There are also examples from countries with economies in transition where the lower social and cultural position of women has survived despite long-standing gender-neutral laws.

Bias in the judiciary and the public administration

49. One of the reasons why women do not benefit from legislation on house and land ownership that does not seem to discriminate against them is that its implementation and interpretation are in the hands of the judiciary and the public administration, which are the parts

of the society that uphold social norms and attitudes and traditional values. Women often face bias from judicial and administrative officials who do not believe that women should have equal or individual rights and control over housing, land and property.

50. In some societies, many government officials share the prevailing social biases and often obstruct the implementation of laws favouring women. Governments often transfer public land mostly to men: it is assumed that men are the primary cultivators and breadwinners and women are the helpers and dependents. Patriarchal biases regarding women's appropriate roles and capabilities have influenced even matriarchal societies. Government officials do not allot land to women, even in regions where matriarchy prevails, because they believe that women could not go to the offices to fill out the required papers. While formal law appears to contain no evidence of gender discrimination, gender-biased attitudes can be dominant in land administration and legal administrative systems, making it extremely difficult for women to fulfil their rights under the formal law.¹⁰

Women cannot afford legal remedies, which are costly and time consuming

51. Pursuing legal remedies requires money and time and for women to interact with a system that they are not familiar with. The cost and bureaucratic hurdles of accessing justice stops many from pursuing housing and property claims. In one report, a widow was quoted as saying that to go to court she has to pay, which is a waste of money she needs for school fees.¹¹ Lawyers specializing in women's housing and property rights say that it is time consuming to go to court to pursue one's rights. Women are constrained by their manifold daily responsibilities and are often not able to go to court.

Lack of access to credit

52. Usually, informal settlements receive no government or local authority subsidies. Women have even more trouble securing funds than men. In many cases, access to credit for women is conditional upon their husband's consent. Moreover, women can lack collateral, as they tend not to own land or other tangible forms of security to secure a loan. Even in developed countries such as Canada, access to financing may be constrained for a person with a low income, or without formal employment, or a previous credit rating (for example, a stay-at-home parent who has never been employed outside the home). These factors may cause inequitable access to credit for women, since women are more likely to have low income and are more likely to stay at home as primary caregivers for children. Other low-income groups may also experience reduced access to financing based on income-related criteria.

Lack of awareness of legal rights

53. Although laws cannot ensure that every individual is able to access his/her right to housing, they continue to be a very important tool. If people know their legal rights, they can take the next step of fighting for them - individually or collectively. Even though lack or loss of housing affects women adversely, as they tend to spend more time at home and are often the primary users of housing, their knowledge of their rights is inadequate. This lack of awareness renders them even more powerless in the face of gender-insensitive practices and customs. The

evidence from almost all countries suggests that often women are not aware of their rights under the constitution or various laws. Civil society groups have reported how women's access to housing improved with sustained efforts on establishing legal awareness.

Legal security of tenure for women is dependent on a male relative

54. In almost all countries, whether developed or developing, the replies to the questionnaire revealed that legal security of tenure for women is entirely dependent on the men they are associated with. Female-headed households and women in general are far less secure than men. Very few women own land. A separated or divorced woman with no land and a family to care for often ends up in an urban slum, where her security of tenure is at best questionable.

Impact of globalization policies on women

55. The particular impact of globalization policies on women needs careful study and monitoring. Many facets of globalization, such as trade liberalization and privatization, affect men and women. However, women tend to be the first to feel the impacts of globalization, for example when the cost of water is increased as a result of the privatization of water services. In many countries, women and men do not enjoy equal access to basic services such as water, sanitation and electricity. Female-headed households have less access than males, and if these services are privatized then problems can increase. Greater attention needs to be paid to the discrimination women face as consequences of globalization, and to the policies and measures needed to alleviate it.¹²

IV. TOWARDS GREATER PROTECTION OF WOMEN'S RIGHT TO ADEQUATE HOUSING

A. Role of treaty bodies

56. Various treaty bodies established to monitor States parties' compliance with international human rights instruments have specifically examined the situation of women in relation to housing, land and other resources essential for their right to an adequate standard of living.¹³ CESCR General Comments No. 4 on the right to adequate housing and No. 7 on forced evictions emphasized the universal applicability of the right, and referred to the fact that women, among others, suffer disproportionately from the practice of forced evictions.

57. CEDAW General Recommendation No. 21 on equality in marriage and family relations states "[w]hen a woman cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband's or a male relative's concurrence or guarantee, she is denied legal autonomy. Any such restriction prevents her from holding property as the sole owner Such restrictions seriously limit the woman's ability to provide for herself and her dependants" (para. 7). The Committee confirms that the right to own, manage, enjoy and dispose of property is essential to women's right to enjoy financial independence, and, in many countries, is critical to women's ability to earn a livelihood and provide adequate housing and nutrition for themselves and their families. On the distribution of property upon the dissolution of a marriage or the death of a family relative, the Committee states: "... any law or custom that grants men a right to a greater share of property at the end of a marriage or de facto relationship, or on the

death of a relative, is discriminatory and will have a serious impact on a woman's practical ability to divorce her husband, to support herself or her family and to live in dignity as an independent person" (paras. 26 and 27).

58. General Comment No. 28 of the Human Rights Committee on the equality of rights between men and women (article 3 of the International Covenant on Civil and Political Rights) states "[a]rticle 3 implies that all human beings should enjoy the rights provided for in the Covenant, on an equal basis and in their totality. The full effect of this provision is impaired whenever any person is denied the full and equal enjoyment of any right. Consequently States should ensure to men and women equally the enjoyment of all rights provided for in the Covenant" (para. 2). This means, according to the Committee, that States parties are required to take steps to remove obstacles to the equal enjoyment of such rights, to educate the population and State officials, and to adjust domestic legislation. In addition to protective measures, States parties need to adopt positive measures "so as to achieve the effective and equal empowerment of women". The Committee notes that inequality in the enjoyment of rights by women is often deeply embedded in tradition, culture and religion. It emphasizes that "States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's rights to equality before the law and to equal enjoyment of all Covenant rights" (paras. 3 and 5).

59. The Committee notes that the right of everyone to be recognized everywhere as a person before the law implies "that the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground. It also implies that women may not be treated as objects to be given together with the property of the deceased husband to his family" (para. 19).

60. The Committee also emphasizes that States must ensure that the matrimonial regime contains equal rights and obligations for both spouses, among others with regard to the ownership or administration of property, "whether common property or property in the sole ownership of either spouse". Upon the dissolution of marriage, the decisions with regard to property distribution should be the same for men and women, and "women should also have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses". The Committee considers polygamy an inadmissible discrimination against women, as it is incompatible with the principle of equality of treatment (paras. 24-26).

61. In August 2002, the Special Rapporteur had a dialogue with CEDAW to seek its members' advice for his preparation of this study and to explore cooperation in mutual areas of interest. The dialogue covered a wide range of issues, including the impacts of globalization and privatization on women's access to housing and essential civic services such as water and sanitation, domestic violence, forced eviction, affirmative action and special measures for women. The Committee highlighted women's inheritance rights and related customs and practices as requiring particular attention, and the importance of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women as a protection mechanism.

62. In dialogues with other treaty bodies, particularly CESCR, the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of the Child, the

Special Rapporteur has referred to the importance of women and the right to adequate housing. He also participated in the day of general discussion during the twenty-eighth session of CESCR, which focused on the equal right of men and women to the enjoyment of all economic, social and cultural rights. He would like to stress that a more comprehensive treatment of women's right to adequate housing than is available in CESCR General Comment Nos. 4 and 7, is necessary. He will work with CESCR and other treaty bodies towards this end.

B. Linkages with mandates of other special rapporteurs

63. Various special rapporteurs and independent experts have addressed, directly and indirectly, the issue of women and adequate housing. For example, the Special Rapporteur on violence against women has found that women's poverty, together with a lack of alternative housing options, make it difficult for women to leave violent family situations, and reaffirmed that forced relocation and forced eviction from home and land have a disproportionately severe impact on women (see E/CN.4/2000/68/Add.5). As mandated by the Commission, the Special Rapporteur will continue to explore linkages with her mandate and others, including the right to food, indigenous people, the right to health, the right to water, extreme poverty, migrants, internal displacement and human rights defenders, in further exploring common issues of concern related to women and adequate housing.

C. Role of United Nations agencies

64. The Special Rapporteur welcomes the keen interest evinced among several United Nations agencies on the issue of women and adequate housing. They have played an important role in assisting States and civil society to improve the living and housing conditions of women in general, and to promote and protect their right to adequate housing in particular.¹⁴ During his mandate, he has had numerous consultations with relevant United Nations agencies. Most recently, in August 2002, he held consultations in New York with, among others, UNIFEM, UNICEF and the Division for the Advancement of Women of the Department of Economic and Social Affairs, as well as the Special Adviser to the Secretary-General on Gender Issues and Advancement of Women, which focused on the issue of women and adequate housing.

65. He particularly appreciates the support for his mandate of UN-Habitat, which provided him with information and analysis. UN-Habitat also provided him with opportunities for in-depth discussion such as at the regional civil society consultation on women and adequate housing in October 2002 and the expert group meeting on gender and women's issues in human settlements held in February 2003, in which he participated. The Habitat Agenda, which includes women's rights to secure tenure, credit, housing and inheritance, continues to be the main reference for the work of UN-Habitat. Both the UN-Habitat Global Campaign for Secure Tenure and the joint UN-Habitat/OHCHR United Nations Housing Rights Programme include women's housing rights and women's equal secure tenure as a cross-cutting focus. While these activities are very important and underline the commitment of UN-Habitat to women's right to adequate housing, the Special Rapporteur encourages UN-Habitat to ensure that this right remains an explicit focus in the implementation phase of both the Campaign and the Housing Rights Programme. In addition, the work on meeting target 11 of Millennium Development

Goal 8 should also explicitly include women's housing rights. There are also many lessons to be learned from the work carried out by UN-Habitat in Afghanistan and Iraq regarding the protection of women's right to housing.¹⁵

66. UNIFEM promotes enabling institutional, legal and regulatory environments for women's equal ownership of and access to economic resources and assets such as land, finance and property. UNIFEM supports and advocates for increasing the skills, technical capacity and commitment within Governments to develop gender-sensitive indicators. An important strategy in this area has been taking a rights-based approach to economic issues, focusing on women's right to property, credit, social protection and other economic and social rights. Of particular interest is UNIFEM's recent work, including the development of a research agenda, on women's access to water and the impact of privatization policies and trade liberalization agreements such as the General Agreement on Trade in Services (GATS) on the enjoyment of the right to water by women, which in turn can have critical importance for their right to adequate housing. In November 2002, UNIFEM also organized a national consultation on women's right to land in Tajikistan. In the general context of his mandate, and particularly for the continuing work on women and adequate housing, the Special Rapporteur looks forward to close cooperation with UNIFEM on these and other issues of common concern.

67. UNICEF has developed rights-based approaches to its programmes. Recently, UNICEF has been focusing its attention on universal access to water and sanitation, as both a fundamental need and a human right.¹⁶ Improvement of access to water and sanitation is a crucial element in the reduction of under-5 mortality and morbidity, particularly in poor urban areas. Access to water also means that the considerable amount of time women and children spend fetching water could be spent more effectively on other tasks, improving their economic productivity, a key component in poverty alleviation efforts. UNICEF also strives to focus on the children, including the girl child, street children and orphans, living in vulnerable situations in poor urban areas. In 2001, the Special Rapporteur contributed to the UNICEF Innocenti Research Centre publication Poverty and Exclusion among Urban Children.¹⁷

68. UNHCR facilitates access to adequate housing for refugees, especially women and women-headed households which constitute a major vulnerable group. Resettlement is a fundamental element of the work of the Office of the United Nations High Commissioner for Refugees (UNHCR) and within this the primary focus remains gender mainstreaming. In 1996, UNHCR launched the Rwanda Women's Initiative (RWI), which supports the efforts of women to rebuild their houses and empowers them to take control of their households. Prior to the genocide, Rwandan women did not have the right to inherit property, a major obstacle in a country where over 90 per cent of the population depend on subsistence agriculture for their livelihood. Recognizing the difficulties female heads of household encountered as they returned and attempted to reclaim their land, the Government of Rwanda took steps to change the law on this issue. UNHCR, the Ministry of Gender and Women in Development and RWI-funded local organizations were actively involved in the drafting of this legislation, and RWI supported its passage by promoting public awareness and providing forums for consultation with women at the grass-roots level on the law. RWI has also provided forums for women parliamentarians to meet and exchange experiences, critical not only to building a political presence of women in the country, but also to passing important laws on gender equality.

D. Role of civil society

69. The Special Rapporteur is mindful of the critical role civil society plays in the promotion and protection of women's right to adequate housing. There are a number of examples from all parts of the world of collaborative efforts between local governments and civil society to improve housing conditions for those who are inadequately housed. In a number of these efforts women play a key role in decision-making and are the main beneficiaries.

70. Various initiatives have been taken to integrate community participation in the local management of social policies, giving the urban poor an opportunity to develop social inclusion strategies. These usually involve women taking lead roles in decision-making and implementation. Furthermore, networks and campaigns have been developed by civil society groups to influence policy makers on issues relating to the housing rights of the urban and rural poor, with a special focus on the needs of women. In Kenya, civil society groups and networks such as Operation Firimbi, Mungaano Wanavijiji and the Human Rights Task Force coordinate public protests, obtain legal assistance, and take actions to influence policy makers' decisions on land grabbing. The Huairou Commission, the network of grass-roots women's organizations on human settlements, has initiated "local-to-local dialogues" and organized various hearings and other important activities.

71. Civil society organizations also play an important role in providing legal assistance or aid to women to protect or restore housing rights. FAWOS (Fachstelle für Wohnungssicherung, Centre for Secure Tenancy), in Vienna offers a standardized procedure and rapid, efficient help to persons facing eviction. Among them, women-headed households are in a higher risk group. Measures to help clients retain their dwellings include: counselling on legal aspects; information on available financial support and client entitlement to benefits; household planning; short-term, intensive social work and ad hoc financial support. In Tanzania, an NGO network called the Gender Land Task Force was very successful in raising awareness among parliamentarians and government officials and in lobbying for the inclusion of women's rights issues in the new land laws of Tanzania.

72. Some civil society groups also support women's access to ownership of land or facilitate access to basic amenities. In India, the Deccan Development Society (DDS) in Andhra Pradesh is working with poor women's collectives in some 75 villages. DDS has helped women from landless families establish claims on land through purchase and lease using various government schemes. In Kenya, Action Aid Kenya (AAK), working with the Tharaka community of Mwingi district, has put women at the forefront of water management. In this case it was collectively agreed that since women and girls were charged with the responsibility of fetching water, they should be the ultimate owners of the water project. This led to the birth of the Tharaka Women Water Users Association. Implementation of the project was completed in 2001 and communities now get potable water within 2 kilometres.

73. An example of partnership between civil society and local government was the initiative to rebuild houses after the earthquake that hit Marathwada region in India in September 1993. Together with local women's organizations in 300 villages across 2 districts, the Government initiated a large-scale information, dialogue and monitoring campaign that empowered local people to own and lead the process of rebuilding their homes and communities. Once the

Government had transferred the power to implement and monitor the repair and strengthening programme to village-based women's organizations, powerful changes started to happen. The Special Rapporteur also studied similar initiatives during his mission to Peru in March 2003, where community women, with assistance from civil society, local authorities and with catalytic international assistance from UNDP, worked on building houses and community roads that improved their security and living conditions. The Special Rapporteur stresses the importance of documenting such good practices and urges both States and civil society to submit such information to him for study and wide dissemination.

V. CONCLUSION AND RECOMMENDATIONS

74. This report has demonstrated the existence of a considerable difference between the recognition of women's right to housing in international and national laws, and the reality of large-scale denial in their implementation or non-implementation. This critical issue affecting the lives of millions of women worldwide has been neglected for far too long. The Special Rapporteur thus welcomes this opportunity to contribute to global recognition of these rights and their implementation. A number of preliminary steps have been taken in this regard as reflected in this report and outlined in the recommendations. These recommendations, taken together, also demonstrate the critical need to continue the focus of the Commission on this issue. To enable deeper analyses of the many dimensions of women and the right to adequate housing, the Special Rapporteur requests the Commission to extend the term of the study.

75. The Special Rapporteur urges States to pay particular attention to the need to bridge the gap between legal and policy recognition of women's right to adequate housing and implementation. Particular attention should be given to the needs of vulnerable groups as outlined in section II of this report.

76. The Special Rapporteur recommends that the Commission urge States parties to the Convention on the Elimination of All Forms of Discrimination against Women to ratify the Optional Protocol to the Convention, and also consider adopting the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights, which would further strengthen the protection of women's right to adequate housing.

77. We need to identify more clearly why policy decisions/choices are not being made by States to overcome the obstacles. Many of the responses to the questionnaire have enumerated existing constitutional provisions and legal developments in support of women's right to housing. He is of the view, however, that States must transcend this approach and exercise more diligence such that the answers reflect the obstacles faced and the steps being taken by States to bridge the enormous gap between the recognition and the realization of women's right to housing and related rights. He would therefore like to request more detailed and diligent responses to the questionnaire from States, as well as information on good practice in this regard, to enable him to make a more comprehensive analysis, to identify practical solutions and to compile and disseminate good practices.

78. The Special Rapporteur has found the regional consultations a tremendous source of information as to the gravity of the problem and valiant attempts being made by civil society actors, including affected women themselves, in tackling the denial of the right to housing. He therefore requests the Commission to recommend to OHCHR and UN-Habitat to hold additional regional consultations with civil society in different regions of the world - and also to widen the consultations to include representatives from government departments and United Nations agencies.

79. The Special Rapporteur has found useful the ongoing work of United Nations agencies, in particular UN-Habitat and UNIFEM. Given the gravity of the problem, however, the Commission should request United Nations agencies to intensify their work in this critical area. The Special Rapporteur requests OHCHR to hold further inter-agency consultations on this subject.

80. As the Special Rapporteur has stressed in his annual reports to the Commission, it is essential that a rigorous research agenda emerge on the right to adequate housing. This report and the review of existing work by civil society and United Nations agencies demonstrate that valuable research and documentation work is under way on this subject. It is important, however, to bring the different streams of research agendas together and to evolve a common methodology that will assume the primacy of women's right to housing as a working basis. There is also a need to further study the impact of global policies on women and adequate housing. The Commission, therefore, may wish to ask OHCHR, in collaboration with UNIFEM and UN-Habitat, to organize an expert seminar with the purpose of (a) developing a research methodology; (b) developing draft guidelines for States on women (discrimination) and the right to adequate housing; and (c) identifying concrete steps that relevant United Nations bodies (treaty bodies, functional commissions of the Economic and Social Council, agencies, etc.) and international financial institutions can take to ensure that women's right to adequate housing, is firmly entrenched on the global agenda.

81. From all the information available to the Special Rapporteur, including testimonies and responses to the questionnaires received as well as outcomes of consultations with treaty bodies and United Nations agencies, it is clear that the right to adequate housing for women cannot be divorced from issues (laws, policies, reality on the ground) relating to land, property and inheritance. This recognition of the indivisibility of rights and experience of daily reality has, in fact, been recognized in past Commission resolutions. The Special Rapporteur would, therefore, like to request the Commission to expand the mandate of the study to include progressively the questions of women's rights to land, property and inheritance.

Notes

¹ Recent relevant resolutions include 2000/13, 2001/34 and 2002/49 of the Commission on Human Rights; 1997/19, 1998/15 and 1999/15 of the Sub-Commission on the Promotion and Protection of Human Rights; and 42/1 of the Commission on the Status of Women.

² The report of the consultation will be issued by UN-Habitat in 2003 on its web site <http://www.unhabitat.org/programmes/genderpolicy>.

³ See E/CN.4/2003/5, sect. III.C, for a discussion on MDGs and on developing rights-based indicators.

⁴ See UN-Habitat/OHCHR, *Housing Rights Legislation: Review of International and National Legal Instruments*, Nairobi, 2002.

⁵ In Zimbabwe, to qualify for the resettlement programme a master farmer certificate and a secondary education are required. But in practice the selection criteria focus on household heads and thus excluded women who were not considered heads of household. In Tajikistan, control of financial and physical capital, typically held by men, limits the full participation of women in legal co-ownership arrangements.

⁶ In South Africa, many women who are beneficiaries of the government subsidy do not acquire title for houses and are left destitute when their husbands or partners, who have acquired sole title, sell the properties, often without their knowledge or consent.

⁷ For example, Australia's Racial Discrimination Act and the Sex Discrimination Act are distinctly separate legislative instruments and do not adequately address discrimination that has its basis in both gender and race.

⁸ Most of the land in Uganda (70 per cent) is owned and governed by customary law which is not codified. Since the majority of Ugandan women live in rural areas, women's access to and control of the matrimonial home is undoubtedly lacking. In many rural areas in Uganda the women live at the mercy of their husbands, fathers, brothers and other male relatives. They can be removed from the land any time, even if they have nowhere to go.

⁹ For example, the Law of Marriage Act 1971 of Tanzania.

¹⁰ According to information submitted by UNIFEM, in Tajikistan, very few individual dekan (small private sector) farms are registered in women's names. Similarly, only 4 to 7 per cent of these enterprises are headed by women. When women do obtain dekan farms, it is usually because they have some official connections. Women's land claims are often rejected on insufficient grounds and lower quality and poorer land is given to women rather than to men.

¹¹ Communication from Human Rights Watch to the Special Rapporteur containing the preliminary conclusion of an HRW mission on women and property rights in Kenya in October 2002.

¹² See the article by the Special Rapporteur, “Privatizing human rights: the impact of globalization on adequate housing, water and sanitation”, in *Social Watch Report 2003: The Citizens’ Report on the Quality of Life in the World*, available at <http://www.socialwatch.org>.

¹³ See E/CN.4/2002/53, sect. V. For a further review of concluding observations and the recognition of women’s right to housing therein, see <http://www.unhchr.ch/housing>.

¹⁴ Some of their activities have been listed in E/CN.4/2002/53, sects. II-IV.

¹⁵ See <http://www.unhabitat.org>.

¹⁶ See <http://www.unicef.org/programme/wes/weshm.htm>.

¹⁷ Available at <http://www.unicef-icdc.org/publications>.
