

POLICY MAKERS GUIDE TO WOMEN'S LAND, PROPERTY AND HOUSING RIGHTS ACROSS THE WORLD

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GLOSSARY OF TERMS

Community of Property: jointly owned property during marriage which in the case of separation, divorce or death, is generally divided equally between the husband and wife. It can be absolute or partial depending on the extent of which individual private properties and profits of spouses are brought into the arrangement.

Community titling: group title arising out of strong communal land rights in preference to individual property rights.

Concession of Real Right to Use: an instrument for regularising public land in Brazil which may be used in cases of the occupation of public or private areas, in cases of housing programmes and projects of social interest.

Co-operatives: a land sharing system, where land is held in tenancy in common rather than joint tenure, with members having a right to unilaterally withdraw their land.

Compulsory joint tenure: legal default assumption that land and/or housing is held by both spouses whether through joint titling or through other marital property regimes.

Customary communal tenure: all land including communal land and family/lineage-held land belongs to the community with individuals having identifiable user rights.

Customary law: the marital property rules often governed by statutes as well as cultural norms that are often patriarchal. In some countries, the Constitution grants primacy to customary laws, and its influence is pervasive in several African and Asian countries.

De facto unions: cohabitation between unmarried couple which is not always recognised by law.

Ejido: a community and collective land tenure that emerged out of the Mexican 1917 agrarian reform.

Family tenure: family (often an extended one) collectively owns the land of family members without individual property rights.

Group land market transactions: groups of persons and families come together to participate in the land market in order to facilitate the transaction.

Intestate succession: inheritance where there is no will and the partition of estates (including community of property) is as per the law with heirs identified through inheritance degrees.

Joint titling: A specific, formal form of shared tenure where the names of both spouses are entered in the land title document so that one spouse cannot alienate the property without the consent of the other.

Joint registration: requires property of spouses be registered in both names, though this could be mandatory or optional.

Management of marital property: there are three models – joint, which requires both spouses to act

together; sole management, where the husband invariably has the exclusive management; and sole authority and equal management which gives neither spouse, acting alone, the power to manage the whole of the property.

Marital authority: power for the husband to act on behalf of his wife, for example in land transactions. Though no longer written into most civil codes, it is still a strong customary norm.

Marital property: joint spousal property under community of property regimes which generally excludes property independently acquired by a spouse before marriage. Identification of marital property is significant for the management and alienation of property and the dissolution of marriage.

Matrilineal marriages: property in inheritance is transmitted through females to the nearest matrilineal male, usually a nephew of the deceased person, and not necessarily the sons. In some Asian matrilineal systems, women can inherit.

Optional joint tenure: allow joint ownership of land or property, but do not have the legal presumption that both members of a couple have a right to land or property acquired during a marriage. Therefore, the spouse must be able to show that the couple intended that the marital property be jointly held.

Patrilineal: property in inheritance is transmitted through males directly to sons.

Separate Property: property owned by each spouse in his or her individual right gives that spouse full power to manage and dispose of his or her separate property. Generally, such separate property is property acquired by either spouse before marriage, along with property acquired by one spouse during marriage either by gift or inheritance.

Shared rental and occupancy rights: collective rental housing.

Shared tenure: broad category of rights to land and housing shared by two or more people and which can be formal or informal.

Special Concession for Use of Public Land for Housing Purposes: irregular occupants of public lands, and who qualify under this Brazilian law, may obtain possession title in their own names.

Tanazul: the customary practice of renunciation of inheritance shares by women in favor of a male member of the family, such as a brother or son, as practiced in some Muslim communities.

Testamentary succession: inheritance which is governed by wills. Some States allow absolute testamentary freedom but others require that the spouse's share be considered.

Urban Adverse Possession: any individual or a group may acquire ownership over small urban private property if they have continuously occupied the property for a minimum number of years, without legal intervention of the owner.

Usufruct rights: user and access right which do not confer ownership.

Waqf: an endowment under Islamic law, normally for religious purposes.

Zone of Special Social Interest: an instrument for land ownership regularisation in the City Statute in Brazil which allows variable rules to be applied to the use and occupation of urban land.

1. INTRODUCTION

Implementation of women's rights to land, property and housing rights remains one of the more difficult challenges facing the world today. One of the difficulties associated with developing effective laws and policies on land rights stems from the immensely complex and diverse ways by which land is accessed, and the often gaping expanse between the position of formal laws and the reality of women's lives. Member States and the international community have agreed upon a series of commitments towards the establishment of security of tenure, for example through the Millennium Development Goal (MDG) 7, Target 11 on the improvement of the living conditions of slum dwellers, and Target 10 on access to improved water and sanitation. There is further political impetus and consensus on promoting women's security of tenure through equal rights to land, property and inheritance through a host of international human rights standards, and more recently through the elaboration of Millennium Development Goal (MDG) 3 and the 2005 World Summit Outcome, where women's land, property and inheritance rights are seen as an important indicator of women's empowerment and human development.

Through the 1996 UN Habitat Agenda (paragraph 39, Chapter III), States have affirmed their commitment to the full and progressive realization of the right to adequate housing, as provided for in international instruments. Many States have constitutional guarantees and specific laws and policies aimed at promoting and safeguarding women's equal rights to land, property and housing. UN-HABITAT, though its global mandate, has been actively involved in supporting these initiatives through numerous activities. UN-HABITAT's Global Campaigns for Secure Tenure and Urban Governance have prioritised gender rights, placing women's security of tenure at the centre of the policy debate and advocacy actions, and promoting approaches to secure tenure which can benefit both women and men equally. Another example is the Global Land Tool Network (GLTN) which is a new global endeavor aimed at supporting systematic, innovative, pro-poor, affordable and gender-sensitive land tools. This network's gendered tool development framework can facilitate better implementation of women's rights.

Indeed, an increasing number of stakeholders including international, regional governmental and non-governmental organizations, including grassroots have dedicated themselves to this task. UN-HABITAT's experience, and that of its partners, demonstrate that though international standards and general aspirations with regard to enhancing women's access to land remain constant, the contexts, experiences and strategies adopted by countries varies. In-depth studies of the approaches adopted by Member States offer not only a better understandings of developments, reform and innovation within countries, but also provides examples of best practice and lessons learnt which could be potentially shared within the international community. UN-HABITAT's recent systematic studies on regional implementation of urban land and housing policies, as well as global thematic overviews, demonstrate some major trends and innovations, as well as key opportunities for sharing knowledge, strategies and tools, particularly with respect to women's security of tenure.

2. ABOUT THIS GUIDE

This guide is a summary and comparative analysis of the research series on urban land and housing policies and gender, commissioned by the Land and Tenure Section of the Shelter Branch, UN-HABITAT, and carried out by experts between 2004 and 2005 (herein after referred to as the 'UN-HABITAT research'). The research comprised of regional reviews of selected Latin American countries (Brazil, Colombia, Mexico and Nicaragua), Southern Africa (Namibia, Lesotho, Mozambique, and Zambia) and the Balkans (Bosnia and Herzegovina, Croatia, Montenegro, Serbia), as well as global overviews of shared tenure options for women, and Islamic land and property rights in the Muslim world. There is thus a focus on developing countries rather than North American and European states. Each report flows from an extensive examination of contexts, laws, policies and themes arising out of country analyses, literature reviews and a wide range of interviews with stakeholders. However, the studies were based on consultants' terms of reference and materials available on selected countries, and as such do not provide exhaustive treatment of all relevant property or gendered themes. Though emphasis is on urban land, UN-HABITAT research recognises that the urban-rural land dichotomy is false and that women's property rights must be considered in their totality.

This guide generally reflects the emphasis in the UN-HABITAT research and covers a spectrum of themes concerning women's security of tenure. These include the various contexts, women's participation, gender rights, constitutional and legal systems, the impact of customary and Islamic rights, joint titling and other tenure types, inheritance and marital property, affordable housing, land distribution, land regularisation and the role of civil society. An additional important aspect of the study is that it focuses on gender and its relationship to each of these issues. The objective of this guide is to supplement existing knowledge on land policy and practice in respect of women's rights, by bringing together various studies in an easily accessible and usable form, which can contrast and compare different approaches. It highlights pioneering and innovative concepts, reforms and development, as they impact on women's land rights, as a means to enhance shared learning among stakeholders. Through a plurality of approaches, States seek to implement women's security of tenure focusing on distinctive strategies that are particularly relevant and beneficial to women.

The guide is intended for policy makers in the field of land, property, housing and women's rights from within and outside governmental agencies, who directly or indirectly contribute to the making and implementation of land policies. This includes UN-HABITAT officials and those from other inter-governmental and regional organisations, land professionals, civil society including women, community-based organizations, human rights and development advocacy groups, gender specialists and trainers, policy analysts and academics. It is aimed at supporting stakeholder efforts and particularly women's agency in empowering themselves through security of tenure. The guide provides a series of recommendations on how to respond to identified problems and gaps, as well as effectively implement the innovative proposals with respect to women's security of tenure. The guide is not a stand-alone, but must be read alongside the original UN-HABITAT research for the full context, analysis, references and bibliography.

3. WOMEN'S LAND ISSUES IN CONTEXT

The research shows that despite greater acceptance of women's equal rights to property, land and housing as indicated in laws and policies, their effectiveness runs against significant obstacles, from patriarchal attitudes and cultural practices to a general lack of effective political will and resources. Women suffer discrimination and injustice under various guises, supporting the view that the feminisation of poverty is accelerating. War in some countries, and the prevalence of HIV/AIDS, has disproportionately affected women's land and housing rights. Women in informal settlements and slums, indigenous and black women, the elderly, the disabled, widows and refugees, are among the various categories of women who are further marginalised. Women's access to property issues cannot be seen in isolation, since they are related to high levels of land ownership concentration as well as general issues of lack of women's empowerment. The manner of ownership and control over land is indicative of how wealth, political and economic power is shared. Though there is a lack of gendered statistics, it is clear that up until recently, women have been excluded from the direct benefits of land reform programmes due to discriminatory regulations related to land distribution, titling and inheritance.

Women-headed households typically represent a high proportion of the poorest living in informal settlements worldwide, for example 26% of the population in **Brazil** and 20% in **Bosnia and Herzegovina**. Inadequate housing, poor location, scarce access to potable water as well as to electricity, public transportation, telecommunications, health and education services, all have a great impact on the daily lives of women. Consequently, there is considerable demand for popular housing programmes of social interest by women-headed households. Women who become single heads of household are particularly vulnerable: since women's access to land is often through their husbands or fathers, they may lose such access after widowhood, divorce, desertion, or male migration. Women's property rights are likely better to succeed where a woman's right to own land is seen as more than a mere economic asset, and is recognised as a cultural and societal right, such as in **Bulgaria** or **Russia**, or where property ownership is seen as a social function, as in the **Brazilian** constitution, or where collective rights to land must also be recognised, as in **Colombia**.

Commoditisation of land and the impact of globalisation through unrestricted land markets also disproportionately affect women's land and housing rights. The integration of poor urban women into the urban economy remains a big challenge. One source of the low status and economic dependence of women is their general inability to access property rights. Without direct property rights, women are only able to gain access to resources through partners. This follows patriarchal assumptions whereby the male is seen as the natural protector and head of the family and therefore the obvious title holder, whereas land titles in a woman's name is seen as individualising property. The implications of property rights for women, aside from their intrinsic importance as a gender equality issue, are often not fully highlighted. For example, there exists a direct relationship between violence against women and the need for adequate housing. Short of security of possession –whether formal or informal –a woman's right to adequate housing is under permanent threat. Similarly, the relationship between access to land, social and legal status, credit and political space has been widely discussed in literature.

One of the principles that underlie all poverty reduction strategies is ensuring gender responsiveness, because poverty has a gender dimension that should be recognised throughout the design, implementation and monitoring of poverty reduction measures. Yet, in most national Poverty Reduction Strategy Papers (PRSP), for example in **Lesotho** and **Namibia**, inadequate attention is paid to women's property rights.

Civil society groups in **Latin America** have criticised PRSPs, citing a lack of minimum standards, inadequate participation, poor disclosure of information and the undermining of national processes. While gender and land policies are increasingly evident in many countries, the link between gender empowerment, land reform and poverty does not feature prominently. Promotion of secure tenure alone, however, cannot make a significant difference to women's access to land and protection from forced eviction, and a clear message that emerges from UN-HABITAT research is that good urban governance is essential to achieving the full effectiveness and desired impact of tenure security programmes. Rather than use women as footnotes in policies or merely employ gender neutral language in laws, there is an urgent need for gender-responsive approaches to women's property rights, based on eliminating obstacles and through affirmative action recognising historical and other disadvantages.

Women are often adversely affected by racial politics which often permeate through the colonial experience. A mixture of colonial legacy and post-independence land practices has resulted in marginalisation of the urban poor across Africa, particularly women. For example, **South Africa, Namibia** and **Zimbabwe** have one set of building standards applicable to those urban areas previously reserved for settler occupation, and a different set applicable to other areas. As such, the colonial patterns of land holdings and planning rules often continue to impact a significant number of regions, even today. However, several positive developments recognise women's rights in general, and their property rights in particular, and these are discussed below. Policies, laws and codes in an increasing number of countries now explicitly recognise gender equality, including equity with regard to property rights. At the national level, several countries have set up dedicated units, or national mechanisms, to advance legislation and policies aimed at promoting equality among women and men. These units generally lobby for basic legal rights, such as equality clauses in constitutions and civil codes, and for better social services for women. At times, they have also been active on other basic equity issues like property and land rights, including joint tenure. Reducing gender inequality in respect to access to land, property and housing rights is a key cross-cutting issue that must be incorporated in all sectoral reforms.

4. WOMEN'S PARTICIPATORY RIGHTS IN LAND GOVERNANCE

A major reason for marginalisation of women's property rights has been top-down land policies representing vested interests, with limited participation opportunities for women in urban land governance to exert choices and articulate preferences. While participation of local organisations in the design and implementation of State programmes is necessary, it does not automatically reflect gender perspectives. Experience shows that community and grassroots organisations often reflect the discriminatory biases of local ways of working which are often based on gender, ethnicity/caste, religion, and class. Local organisations, even elected ones, generally consist of men, and decisions are made based on men's discussion of local issues. Women may have little, if any, input into these discussions. Even where collective forms of tenure are meant to include women, the decision-making processes are often dominated by men, in effect excluding women from the important decisions regarding land and housing. This is reflective of global statistics, which show that women only hold a small proportion of decision making positions at any levels, particularly in land governance structures.

This democratic deficit is a consequence of women's generally inferior social status, as well as an absence of opportunities. For example, women are severely under-represented in the political as well as the professional sectors. Access to training and professional qualification is difficult and, as a consequence, a majority of women are overrepresented in casual labour in the informal sector. There are however, some good examples of affirmative action. The **Balkan States of Bosnia and Herzegovina, Croatia and Serbia**, as well as Latin American States including **Costa Rica, Honduras, Mexico, Argentina and Panama**, have quotas for the political representation of women, which range between 30 and 40 percent, depending on the country. However, as UN-HABITAT research discusses at length with countrywide and regional statistics, these numbers are yet to be effective. A few countries specifically address affirmative action in land governance. A good example is **Namibia's** Communal Land Reform Act of 2002, which guarantees minimum representation for women on district level land management bodies and is applicable to areas under customary law. However, in countries such as **Mozambique and Zambia**, there is an urgent need to 'democratise' and 'gender' customary land management systems.

Removing obstacles for women in urban land management through skills training and inclusiveness is particularly vital. The importance of gender-sensitive training for land professionals, officials and women is demonstrated by reviews of the World Bank urban property rights project in **Peru**, the operations of Land Boards in **Ghana**, land registration employees in **Indonesia**, and land managers in **Vietnam**, where a direct link between gender responsiveness and success of programmes was evident. Though there are several examples of best practice with regard to pro-poor approaches, it is generally recognised that some stakeholders, particularly land professionals and officials, are resistant to gendering land governance. However, in **Brazil** since 2004, a legal rule in São Paulo requires municipal authorities to promote the training and specialisation of female labour to facilitate participation in the productive processes, self-management and community organisations of social housing programmes.

In general, land registration systems throughout the world are seen to be incapable of facilitating access to land or guarantee security of tenure for the majority of urban dwellers, particularly women. Most of the systems are based on colonial laws relating to inheritance, forms of proof, and methods of demarcation that are not suitable for present-day local conditions. As these systems, often under-resourced and over-centralised systems are not set up to collect, process or register transactions effected

in the informal land market and (frequently) customary lands, they contribute to problems rather than solutions. The result is the exclusion of a significant part of the population from tenure security. Women are more affected by housing policies, urbanisation, and the decline in living conditions. Therefore, urban planning must begin to take into account the opinions of women and their specific needs, in order to bring about sustainable and equitable urban development. Efforts to devise simpler, more appropriate and less costly forms of land administration that cater to the needs of the urban poor should also factor in the particular needs of women.

5. WOMEN'S RIGHTS TO LAND AND PROPERTY

The improvement in the lives of urban poor women is both a human right and a development concern. Women's equal rights to land, property, housing and inheritance are well established under international human rights principles, as discussed in UN-HABITAT research, and do not need elaboration here. Regional reviews also point to the ratification record of the major human rights treaties by Member States, as well as participation in regional human treaties such as the African Charter on Human and Peoples' Rights and the Inter-American Convention on Human Rights. These rights are implemented domestically and monitored internationally to varying degrees. In Southern Africa and apart from **Namibia** where international instruments are self-effecting once ratified, most countries have not domesticated international treaties for local use. In addition to their individual rights, women can also benefit from the rights to land of special groups, such as indigenous people, black communities, and those living in informal urban and rural settlements, as provided by several Latin American constitutions.

There exists a wide gap between the promise of women's property rights and their implementation. Its recognition has not been made central to most policies or programmes related to land, housing and (marital) property. While some countries do treat land as a human rights issue, others have allowed market forces or customary law to determine who has access to land. Some combine State intervention with market-driven policies. Thus inequalities in land tenure and housing rights between men and women continue to exist in flagrant violation of international obligations. Three additional handicaps are identified by UN-HABITAT research. First, the general rights are not adequately elaborated through national laws and policies which could convert aspirations into practical remedies. Second, the means to achieve or monitor security of tenure (security of possession, availability of services and infrastructure, maintenance possibilities, public programmes and policies, investments) have yet to be fully developed through detailed rules or programmes. Thirdly, the rights of women, particularly with regard to property rights, appear to be contingent on customary practices without recognising the latter's evolving nature.

In most countries, women can only access land and property rights by virtue of their roles as wives, daughters or sisters, as mere secondary rights, and these rights are contingent on family and lineage structures, the strength of customary norms and practices, observed and enforced legislation, and active organization on the part of women. For example, several Muslim and other countries have given qualified endorsement to the Convention on the Elimination of Discrimination against Women, where they object to the gender equality provisions on the basis of religious or customary practices, as discussed below. Augmenting the reporting and monitoring procedures on women's rights in international treaties and conventions can be useful tools for monitoring implementation. For example, the Inter-American Commission on Human Rights in 2001 struck down a **Guatemalan** law which gave exclusive rights for marital property administration to women. There are several positive examples of the influence of human rights monitoring bodies, as well as the role of the UN Special Rapporteur on Adequate Housing. However, it is the explicit recognition of these rights and commitment of State agencies, the interpretation and activism by national courts as well as the effectiveness of civil society that can bridge the gap between theory and practice. Rights to adequate housing are dealt with further below.

6. CONSTITUTIONAL PRINCIPLES ON WOMEN'S LAND RIGHTS

Equal rights of women and men to land, property and housing under international law have been recognised by several constitutions throughout the world. The right to property is conceived in the national constitutions either as a personal absolute right or as a priority for State action, falling short of an enforceable right. Over the past 30 years, many Latin American constitutions have conferred equal rights to their citizens, regardless of sex, race or social condition, though their treatment of land, property and housing rights vary. They generally do not guarantee a universal right to land to all persons as they do with the right to property. Some countries such as **Colombia, Brazil, Peru** and **Venezuela** maintain that property implies duties and that it has a social function. **Mexico**, however, which was the first country in the world to attribute a social function to property in its 1917 Constitution, later introduced a series of amendments that represented a considerable retrogression.

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

The formal codification of rights, even if constitutionally enshrined, does not guarantee effectiveness as far as women are concerned. Social and economic contexts such as famine in **Ethiopia**, civil war in **Somalia** and war in Angola, refugee inflows into **Serbia**, attitudes towards minorities such as the Roma in the **Balkans**, property grabbing to the detriment of HIV/AIDS widows and orphans in **Zimbabwe**, natural disasters as in **Indonesia**, as well as political nepotism and corruption worldwide, all contribute to undermine constitutional promises where they exist. It is argued that rather than formal equality in access to land, specific affirmative measures at the implementation level are needed to rectify the discriminatory practices of the past as well as present-day obstacles for the majority of women. These measures must be targeted towards women's specific experiences, needs and priorities. If they are to make a meaningful instead of merely formal (constitutional) impact, declared principles must generate gender-responsive laws and regulations, awareness and empowerment, and will require supportive judicial enforcement.

7. ACCESSING LAND THROUGH LEGAL RIGHTS

There is considerable diversity in the legal systems across the world. For example, in Southern Africa two distinct regimes - customary and statutory – are competing and they are inspired by no less than three different colonial systems. In addition to the continuing application of African customary law, which is a feature of all countries in the region, three main settler legal systems operate in Southern Africa: Roman-Dutch law (**Botswana, Lesotho, Namibia, South Africa, Swaziland and Zimbabwe**); Portuguese colonial law (**Angola and Mozambique**); and English law (**Malawi and Zambia**). In general, the form of the settler legal system does not seem to exert much direct influence over land and housing policies. What differences exist in respective approaches, however, may be attributable to underlying legal systemic differences, particularly in relation to marital property and inheritance issues. **Asian** legal systems, too, reflect this diversity owing to their specific historical and colonial backgrounds, the State ideologies and the impact of religious and customary norms. An example of the legal pluralism is **Indonesia**, where the *adat* law combines indigenous customary, Islamic, Dutch colonial and modern practices.

Throughout the Muslim world, the interpretations of Islamic law and levels of secularisation are not the same though they impact on women’s property rights, with **Saudi Arabia, Turkey and Tunisia** representing contrasting studies. All Latin American countries share the legacy of a civil law system, be it Roman or Napoleonic, although some also recognise a number of ‘pre-Columbian’ or indigenous elements in their legal systems. The **Latin American** civil codes distinguish between property and possession. In the civil law tradition, ownership is a ‘real right’ and is granted specific recognition. It is a basic, fundamental right at the root of the property rights system. Possession can be separated from ownership, can be accessed in different ways and can carry its own set of different rights. Among other rights to property typically included in civil codes are right of use, easements, right of way and prescription. In the **Balkans**, for example, property legislation in **Croatia** does not contain explicit discriminatory provisions against women, leaving it open to interpretation which could be discriminatory. There are also gaps in laws such as those regulating leases.

Where constitutions generally recognise women’s rights, most property, family and inheritance rights are regulated under civil codes. Marital property rights law is not always clear, turning out to be a combination of legislation from former colonial and local customary rules and practices, as evident in much of **Southern Africa**. There is no single legal field which covers all aspects of women’s security of tenure. **Islamic** laws relating to women’s property rights are drawn from a variety of fields such as family law (marriage/dower, inheritance, guardianship), property law (gifts, endowments/trust (*waqf*), sale and hire) and economic law (right to work, income), as well as public law. Family law is rarely considered as part of land and housing legislation or of titling and registration laws and programmes, and yet family law has the greatest impact on women’s rights to use or own property. In many cases, Islamic family law presumes joint ownership of marital property, but the registration law does not require joint registration of this property.

Land, property and housing law is often the site of intense political debate and lobbying by social movements, human rights organisations and women’s groups, particularly in relation to access to marital property and inheritance. Apart from gender-discriminatory norms, there are also critical gaps. For example, housing legislation frequently makes no specific reference to women as a disadvantaged class of people. A number of campaigns, from **Brazil and India** to **Uganda and Tanzania**, have resulted in

legal reforms, as discussed further below. However, success can be relative, as seen in the case of **Uganda**, where recent land legislation falls short of compulsory joint tenure but provides some protection for women. Under this law, women have some security of tenure (not registered ownership) over family land only. Law reforms are particularly difficult to achieve where they are seen as secularisation of indigenous or religious norms. For example, in **Kenya** in the year 2000, Muslim women protested against a proposed civil rights bill which would have given equal inheritance shares to sons and daughters, on the basis that such a change would amount to a breach of Islamic law.

Among the issues in legislations and regulations is the legal status of women. For example, in **Lesotho** women are still regarded as legal minors. Women's property rights in some conservative Muslim societies are contingent on the concepts of male guardianship. However, **Mozambique** and **Malawi** are examples of countries with laws which now entitle women to property rights, while the recent **Moroccan** civil code removes several gender-discriminatory clauses. However, where laws are supposedly gender neutral, the practice has been gender-discriminatory. For example, due to an absence of any specific reference to women's land rights in **Zambia's** Lands Act, the objective of the legislation – conversion of women's customary land rights to leasehold – remains frustrated, since customary chiefs have been given wide discretionary powers which are often exercised through patriarchal attitudes.

Urban poor women are likely to be less aware of their rights and of procedures than their male counterparts, and to find legal rules complex, costly and time-consuming to adjudicate. Few countries have a well-funded public defender's office, or offer free or subsidised legal advice and assistance, or have a system of public interest litigation as in **India**. It falls to para-legals and legal aid organisations, as discussed below, to offer legal counsel for women attempting to have their property rights recognised and to set legal precedents. Poor women fare badly before formal courts as well as informal customary decision-making mechanisms in general. **Uganda** has granted judicial capacity to local councils at the village, parish, and sub-county levels in an attempt to encourage inexpensive, expedient, and culturally appropriate justice. However, women often choose to go to magistrates rather than the local councils, because they want officials from the formal legal system to be involved.

The contested nature of land rights in practice leads to a critical role for courts in the interpretation of laws and resolution of disputes. In several countries such as **Ghana** and **Serbia**, the courts determine which property acquired during a marriage can be described as 'jointly acquired'. However, in countries where the constitution still allows the application of customary law in inheritance matters, such as **Lesotho** and **Zambia**, High Court decisions have upheld gender discrimination. The **Zimbabwe** Supreme Court has ruled that '(under) African law and custom, property acquired during a marriage becomes the husband's property whether acquired by him or his wife'. However, there are examples such as the **Tanzanian** High Court judgement invalidating customary norms preventing women from selling land. Where judges are dealing with highly valued urban lands, as in **Kenya**, women are likely to be severely disadvantaged since the dominant judicial interpretation of the law recognising registration often extinguishes all non-registered rights. There is a long overdue need for gender mainstreaming of judges and officials dealing with women's property issues, as well as the development of more gender-responsive decision-making processes which are inclusive, transparent and not corrupt.

8. THE IMPACT OF CUSTOMARY LAWS

While specific legislation, regulations and procedures increasingly acknowledge women's rights to land, cultural attitudes and customary laws often resist recognising women as full and equal claimants under the law. As seen above, the primacy of customary laws over even constitutional provisions often undermines movement towards equal property rights. However, the role of customary norms in land issues represents a conundrum. While a number of customary norms are patriarchal in nature, wholesale dismissal of custom cannot only be alienating, but also misses a wide range of practices which do have positive implications for women's living conditions. Moreover, the mere substitution of statutory rules for customary land rights has failed to improve women's security of tenure, since custom still provides legitimacy and influences general opinion and decision-makers. Therefore, several women's groups point to the diversity of cultural practices and challenge the stereotyping of custom as necessarily static, unchanging or incapable of gender responsiveness. The property conceptions of indigenous people or specific groups such as the Afro-Brazilians are being increasingly recognised.

Under many customary practices, perceptions or assignment of women's roles in society have largely contributed to their inferior influence on family matters. At almost every stage in women's lives, they are under the guardianship of a male person – be it their fathers, brothers, uncles, husbands or sons, as in **Burkina Faso**. In many countries with both formal and customary law, formal law provides women with rights that are not yet recognised by social or customary norms. **South African** land reform legislation is gender neutral and non-discriminatory on its face, but customary practice undermines the legislative intent. In **Samoa**, custom prevents the implementation of legislation which provides the husband the option of naming a wife as a joint owner. In **Pakistan**, women can formally own land but generally custom may limit their rights to use or dispose of it. In **Swaziland**, women's property rights depend on whether or not women have opted out of customary law through civil marriages. In **Ethiopia**, customary and formal law contradict one another, although the most recent laws have moved women's rights to land and property forward.

9. NEGOTIATING ISLAMIC PROPERTY RIGHTS

It is commonly assumed that Muslim women are frustrated in their pursuit of property rights because those rights are limited under the Islamic legal system, that they lack agency in the face of oppressive family and social structures, and fail forcefully to articulate gender rights. However, UN-HABITAT research points to several strategies within the Islamic framework which can offer innovative and enhanced women's land, property and housing rights. Many governments in the Muslim world have repeatedly objected to the gender 'equality' provisions in international human rights treaties and United Nations resolutions on equal property rights. This is based on their emphasis on compulsory Islamic inheritance rules which give women lesser shares, in most cases half of what is granted to similarly placed males. However, nothing under Islamic law prohibits women from having equal access or even equal property rights through an integrated and compensatory property regime. Under the integrated Islamic approach to women's property rights, a woman's reduced inheritance rights are theoretically expected to be compensated for through alternative means of wealth generation, despite resistance from patriarchal cultural attitudes.

Compensating for reduced inheritance shares can take place in a variety of ways, which include a woman's equal access to purchase through earnings, endowments, gifts and special supplements such as savings (from lack of financial obligations within the family), dower and maintenance. Throughout history, whether married or not, Muslim women have enjoyed autonomous legal identities and separate property rights. Under Islamic law, they retain control over their pre-marital property and finances through marriage, and where applicable beyond into divorce and widowhood. The Muslim woman has no restrictions on the property she can purchase out of her earnings, or on the gifts she may receive from her natal family or her husband's family or enjoy as a beneficiary of a trust/endowment (*waqf*). In all these respects, she is entitled to equal treatment with male members of the family. However, Muslim women's access to property is best understood through the dynamics of custom, family, kinship and the construction of property itself. Conservative interpretations of Islamic law and customary or traditional structures or practices often combine to diminish or altogether extinguish women's rights to property. A prime example is the recourse to, or the customary practice of, renunciation (*tanazul*) of even the reduced female inheritance share in favor of a male member of the family, such as a brother or son.

Islamic legal principles generally co-exist and overlap with social constructions of race, gender, family, kinship and through customary norms as well as State secular laws. Islamic law makes its influence felt in a variety of ways owing to the plurality of methodologies for interpreting general principles. Islamic laws co-exist with a host of other legal cultures through a multiplicity of relationships and are a contested zone, particularly with regard to women's property rights. Legal reform is taking place in many parts of the Muslim world; for example under the **Turkish** civil code of 2001, the husband is no longer deemed head of household and a community of property regime is introduced with equal shares for the spouses. The new civil code in **Morocco** completely excludes from its provisions the requirement of a woman's obedience towards her husband, and authorizes joint ownership of property within marriage.

10. INHERITANCE LAWS AND PRACTICE

Inheritance is often treated as peripheral to, or semi-detached from, general debates and policy formation concerning security of tenure, land rights, land reform or regularisation. However, inheritance is one of the commonest ways of women acquiring land or access to land. Since women have not generally been able to purchase property, nor usually benefit from land reforms, in most cases a woman could become a landowner by inheriting land from her husband or companion on his death. There are two scenarios in which inheritance questions arise. Testamentary succession is governed by wills, while intestate succession occurs where the State carries out the partition of estates (including community of property) in the absence of a will. Issues related to succession and inheritance are regulated through the civil codes of most Latin American countries, with the exception of **Costa Rica** and **Cuba**, where these have been laid down in family codes. In Latin American countries such as **Panama**, **Honduras**, **Mexico** and **Costa Rica**, absolute testamentary freedom leaves the surviving spouse defenceless in a marriage under a separate property regime.

However, in most other countries including **Bolivia**, **Brazil**, **Columbia**, the **Dominican Republic**, **Nicaragua**, **Paraguay**, **Peru** and **Venezuela**, the spouse's share must be considered. In the case of intestate succession, which is governed by agrarian laws and civil codes, the spouse becomes a legitimate successor in most Latin American countries. However, in practice, inheritance mostly favours men due to cultural factors and because many women have been forced to migrate in search of new work opportunities. In the case of **Mexico**, and although the civil code provides for legitimate succession (which includes spouses as well as female and male concubines), women's rights depend on the concurrence of other relatives, their closeness to the deceased and perceptions of their needs. Women rarely inherit from their father, except if there are no male heirs, or if an expanse of land is very large. Under compulsory **Islamic** law, only one third of an estate can be bequeathed, with the remaining subject to compulsory fixed inheritance rules which generally grant women half of that which is granted to males in a similar position.

In the Balkans, **Serbian** and **Montenegrin** inheritance laws identify the surviving spouse and his/her children as the heirs of the first inheritance degree who inherit in equal parts per person. The laws also protect the spouse through a lifetime right to use the deceased's real property, or a part thereof if such request is justified by the spouse's difficult living conditions. Where there is no will, the law designates the following as heirs: the deceased person's descendants, the spouse, the parents, the deceased person's brothers and sisters and their descendants, grandparents and their descendants. The surviving spouse or descendants can retain the rights over the goods used in the household that were acquired from their activity. Similarly, in **Bosnia and Herzegovina**, descendants are entitled to shares in an estate according to degrees of inheritance. The first degree includes the descendants and spouse of the deceased person, who inherit in equal parts. The offspring (both sons and daughters) inherit in equal parts, as do widows and widowers.

Most of **Southern Africa** has a dual legal system whereby inheritance is governed by both statutory and customary laws. In a number of countries, such as **Lesotho**, **Zambia** and **Zimbabwe**, the constitution still allows the application of customary law in inheritance matters and courts have upheld discriminatory practice. Under customary law and with only a few exceptions, inheritance is determined by rules of male primogeniture, whereby the oldest son is the heir (the oldest son of the senior wife, in case of polygamy). The heir is almost always a male relative rather than a female. However, the effect of the

inheritance and succession statutes in the region is to vary the provisions under customary law. In some customary laws, for instance among some tribes in **Zambia**, women are entitled to a reasonable share of marital property. In practice, women in **Southern Africa** have a very limited right to inherit; they often only have a secondary right to use the property of the deceased husband or father.

Male preference is the rule regardless of matrilineal or patri-lineal principles, although as in **Malawi** a widow's share will be different depending on whether she belongs to a matrilineal or patri-lineal system. In patri-lineal societies, property passes directly to sons, while in matrilineal societies property normally passes (through women) to the nearest matrilineal male, usually a nephew of the deceased person. In **Asian** matrilineal societies, and in contrast to **Southern African** custom, land has customarily been allocated to adult women, and inherited land is often passed down to daughters as in **Malaysia**, or to both sons and daughters as in **Laos**. In some Asian matrilineal societies, such as Java in **Indonesia**, women do inherit land from their birth family, even if they have moved elsewhere.

In **Lesotho**, the draft White Paper on Land does not support the radical abolition of customary law, but instead favours the conversion of customary law rights to common law rights. Under this system, only those who are able to show that they have moved away from customary law are able to bequeath property to daughters in a will. In **Botswana**, inheritance depends on the choice of marriage regime, and the Administration of Estates Act 1979 allows men to exclude their wives from the will if the marriage is out of community of property. There are proposals to strengthen some customary principles, for example in **Lesotho**, whereby decisions about who should get rights on land, including through inheritance, would be determined by who would make the most proactive use of the land. Therefore, women do not inherit property but acquire a right to use it. The **Zimbabwean** Deceased Persons Family Maintenance gives usufruct rights to the widow and children, but not ownership.

The rights of widows, including those in a polygamous marriage, are complex. In **Zambia**, **South Africa** and **Zimbabwe**, each widow is entitled with children absolutely (i.e. to the exclusion of other beneficiaries) to her homestead property (property in the house or room she occupies) and the common property (used by all family members) is to be shared between the widows. However, problems arise in the case of common property. The **Lesotho** Land Act of 1997 allows widows to stay in the matrimonial home provided they do not remarry, which gives the widow usufruct rights and not ownership rights. Widows' inheritance rights are also subject to certain conditions. Widows' property rights are often conditional not only on good relations with the family of the deceased, but also compliance with certain customary rituals. For example in **Swaziland**, these rituals include traditional mourning rites and the 'levirate' or widow inheritance. Property grabbing of widows of HIV/AIDS-affected husbands is a particularly acute problem in Southern Africa, although dispossessing widows of property has been made a criminal offence in most of the region.

11. MARITAL PROPERTY RIGHTS

Socio-economic and cultural norms as well as power dynamics underpinning marriage often combine to define marital property relations. Where married women are considered to be under the guardianship of their husbands, the control, if not ownership, of marital property also vests in the husband or his family members. These issues are more fully discussed below under 'Joint titling for women' and are important insofar as they help identify any marital properties that can be accessed by women. Women's property rights can emanate either from a legal doctrine known as 'community of property' or from the spouses' separate properties known as 'separation of property'. In general, the spouses can together decide which marital property regime they want to adopt (which determines how the property will be divided if and when necessary), at the time of wedding, or at any time during marriage, by means of a legal and written declaration. However, in practice, customary norms and family politics can be the decisive factors.

Under community of property, all property acquired during marriage is considered marital property, and in the case of separation or divorce, all property is divided equally between husband and wife. Upon the death of one spouse, the surviving spouse is also entitled to the other half of the marital property. This stands in stark contrast to the legal doctrine of 'separation of property'. Under this doctrine the property owned by each spouse in his or her individual right gives that spouse full ownership and power to manage and dispose of his or her separate property. Generally, such separate property is property acquired by either spouse before marriage, along with property acquired by one spouse during marriage either by gift or inheritance.

In marriages out of community of property, each party's debts and assets are kept separate, and on dissolution each takes their portion. Separate property is not marital property unless statutory legislation imposes absolute or universal community of property. This is where all property, possessed before marriage and acquired during marriage, is brought into the community of property. The law provides the spouses with the opportunity to arrange their marital relations on their existing and future property by contract. In the absence of such a declaration, the default marital property regime that applies in most Latin American countries is partial community of property. In **Costa Rica, El Salvador, Honduras and Nicaragua**, the default regime is separation of property.

However, whatever the neat legal categorisation, in practice and in most parts of the world marital property regimes still do not provide for equal rights for both spouses, leaving women at a disadvantage upon divorce, separation or desertion. For example, even where the woman buys a house or property, or brings in gifts or inheritance from outside, it is often registered in the name of the husband. Women's separate property can also be rendered insignificant by custom. In much of **Central and South Asia**, daughters traditionally receive gifts at the time of marriage (or dowry is paid to the husband's family), while sons inherit a house and land. This often proves to be detrimental to women, since the value of houses and land increases whereas the value of, say, carpets and blankets does not. After her marriage is dissolved, a woman may take her smaller property but is not entitled to the larger property acquired during marriage. Therefore, women can inherit property but are less likely to inherit marital land or housing.

In Latin America, issues related to marriage and marital property are regulated through the civil codes of most countries, with the exception of **Costa Rica and Cuba**, where these have been laid down in the

family codes. Even though **Brazil** has no explicit legal provision for equal marital property rights, the 2002 civil code deals with family rights, inheritance rights, possession and property rights in a gender-responsive manner, recognising the equality of the rights and duties of both spouses. In **Southern Africa**, marital property rights law is not always clear, as legislation from the former colonial rulers typically combines with local customary rules and practices. Legislation that guarantees equal rights to property and to land is not sufficient to ensure the recognition of women's rights, as marital property is almost invariably titled in the name of the male head of household only. If the property is in the husband's name he can unilaterally dispose of it, leaving the women in an unprotected position.

In **Balkan** States such as **Croatia** and **Bosnia and Herzegovina**, property legislation does not contain obviously discriminatory provisions against women. It implicitly guarantees equal property rights for men and women, but as with the housing legislation some unclear provisions and ill-defined procedures effectively put women at a disadvantage and give wide discretion to the courts to interpret what is marital property. There is generally a problem in calculating the women's contribution to common property because most women's contribution is in reproductive labour, which is not quantified.

In **Southern Africa**, many women are married under some form of customary law. The marital property rules under custom – though they may vary between matrilineal and patri-lineal marriages – are similar to the rules for those married out of community of property. In **Botswana**, a couple married under customary law can actually choose to be exempt from customary rules in order to have community of property. The **Mozambican** Family Law of 2004 recognises customary law marriages and non-formal unions and women married under custom can claim marital property. In marriages under community of property, all the belongings and debts of the spouses are combined into a joint estate. In **Namibia**, the Married Persons Equality Act 1996 was passed to enable women married under the community of property regime to register property in their own names. In **Lesotho**, the Married Persons Equality Bill, which seeks repeal of discriminatory provisions that hamper women's property rights, has been pending enactment since 2000.

Women experience difficulties in accessing marital property, especially upon dissolution of marriage, and often solely depend on the good will of their former husbands. Even where a customary law court has awarded property settlements to women, the High and Supreme courts have overturned such judgments. In the **Balkans**, though the law now explicitly provides for equal rights between spouses, in practice divorce lawsuits and division of property take a long time. This makes it difficult for the spouse who had to abandon the common property, as s/he faces many years of additional expenses and uncertainty. In **African** and **Islamic** communities where polygamy is practiced – and in particular where marriages are *de facto* or illegal – the sorting out of marital property can be particularly complex, contentious, and detrimental to women.

12. JOINT TITLING FOR WOMEN

Individual purchase of property often remains a mere aspiration for most women who cannot afford to buy land or housing or negotiate the male-dominated, over-heated land markets. The gendered division of labour combines with patriarchal social and family structures, lack of access to credit or to legal advice as well as a range of other factors to deny most women ownership of property. Women's savings through labour are often appropriated by males, and their land purchases are often made in the husband's name (if married), or, by male members of their natal families (if unmarried). The direct implication of property in the males' names is that women's access to property is often contingent on good relations with them and that women need not, under the law, be consulted when the property is sold. However, the majority of land is not titled or registered. For all its benefits, though, the drive towards titling could undermine women's access to land. The risks include, extinction of other property rights apart from ownership, formalisation of land leading to an increase in land values which frustrates other user rights, as well as costly adjudication.

Under general practice, land was normally acquired by, or allocated to, the head of the family who would invariably be male. This was based on the almost universal assumption that if the male has individual title, the land would belong to the family. When land distribution took place in **Cambodia** in the 1980s, communal ownership was replaced by private land, and this had a negative impact on women. While traditionally men and women had equal rights to land, when registration of the private rights to land occurred, the land was usually registered in the name of the husband only. In response to this obvious gender discrimination, women's movements have called for the expansion of joint titling, which now has support from international donors. Joint property titles are now commonly recognised in the legislation of many countries and could apply both to combined personal property as well as the State allocation of lands. The presumption is that if two individuals live together, their land is jointly owned and alienation of such property requires the approval of both.

The specific, formal form of shared tenure is referred to as 'joint tenure'. Under joint tenure arrangements land and/or housing is held by both spouses (or by both members of a couple living in consensual union), whether through joint titling or through those marital property regimes which ensure, or provide for, the possibility for both spouses to have equal rights over marital property. This can be compulsory, where there is a presumption in law that when a couple is married, the family or 'community' created by that marriage has a right as a whole unit to the property that is brought into that community. Compulsory joint tenure usually provides women within a marriage or consensual union with the most secure rights to land. Various forms of compulsory joint tenure exist in a number of countries such as **Belgium, Bulgaria, France, Italy, the Netherlands, Spain and Switzerland**, as well as **Croatia, Serbia, Ukraine and Russia**.

In Asia, variations of compulsory joint tenure are found in **Azerbaijan**, some states in **India, Indonesia, Japan, Kyrgyzstan, Laos, the Philippines and Vietnam**. In Latin American countries, including **Guatemala, Nicaragua and Peru**, the default regime is compulsory community of property, but gift, inheritance, or whatever is brought into the union can be held as separate property. In Africa, **Burkina Faso, Ethiopia, Senegal, Tanzania and Zambia** have adopted compulsory joint tenure approaches. However, joint ownership by married couples is not common. In **Zambia** for instance, only 12 percent of housing units transferred were held in joint ownership by couples. In **Zimbabwe**, 98 percent of the resettlement area permits of farming and grazing land are held by husbands and the remainder by wives

– and women married under customary law cannot hold property jointly with their husbands.

The law and practice with respect to compulsory joint tenure varies across countries. For example, in **Tanzania**, the land law provides for compulsory joint tenure on marital land for all spouses. While the country does not recognise freehold ownership, section 161 of the Tanzanian Land Act seems to presume co-occupancy rights for spouses on the land they occupy together. Compulsory joint tenure excludes 'separate property'. A few countries impose universal community of property, where all property is community property with no separate property. In **El Salvador**, for example, all property and rents from property, brought into the marriage or acquired during marriage, are by law, owned jointly. In the **Netherlands**, all property is jointly owned, but each spouse has the right to administer and dispose of the assets that have been brought into the marriage.

Many countries have adopted a regime of non-compulsory, or optional joint tenure. They allow joint ownership of land or property, but do not have the legal presumption that both members of a couple (married or not) have a right to land or property acquired during marriage. Therefore, a spouse must be able to show that the couple intended that the marital property be jointly held. This often leaves most women at a serious disadvantage upon divorce or the husband's death. Without the support of a mandatory joint tenure law, in many cases women within a marriage will not be able to own land, because customary laws, or religious laws, subordinate women to men in the household and vest property rights in the man only. However, joint titling often faces the same difficulties and constraints in extending property rights to women that conventional (titling only one household head) titling programmes do. For example, in **West Bengal**, India, even when a wife's name is included in land reform documentation, she often is not informed of the fact, or of her property right to the land, or of her inclusion as a joint owner, due to cultural patriarchal structures and attitudes. However, the design of a titling project can have a significant effect on whether or not women are titled under a programme. Under the **South African** People's Housing Process (PHP), a large number of women-headed households were able to register because living with dependents was the qualifying criteria.

Countries have been modifying what is regarded as the elements required to be considered a head of household, in an effort to include women. This is the case, for example in **Bolivia, Colombia, Honduras, Peru** and **Venezuela**. In 2001, **Brazil** altered the traditional male land ownership practice and started issuing joint titles in accordance with the 1988 Constitution. However, as with many joint titling initiatives, no statistics are available on how many women have been allocated such land and how many women share a joint title with their spouse. In **Vietnam**, the 2003 land legislation requires that the Land Use Right Certificates bear the names of both husband and wife but the physical certificates had room for only one name, leading to only 3 percent of land certificates with both names listed. In **Nicaragua**, joint titling and registration is required for all land allocated under the agrarian reform. In practice, however, these provisions have been difficult to enforce, even after extensive education campaigns.

Joint titling as a gender equity tool is a relatively recent phenomenon and only limited studies are available. While there is considerable theoretical evidence that women would benefit from participation in joint titling programmes, little information is available on the impact of these programmes for women. In any case, compulsory registration of joint titling is particularly difficult for low-income consensual unions, who are unable to obtain the required documentation. A response has been the issuance of co-ownership (as opposed to joint) titles in several countries, including **Peru** and **St. Lucia**. In the **Philippines**, property acquired in consensual unions is covered under the national co-ownership and joint ownership laws, and the consent of both parties is required for any transaction with or without registration. While joint tenure is actively promoted, other forms of tenure also have a beneficial impact on women and need further study.

13. FLEXIBLE TENURE OPTIONS FOR WOMEN

The dominant approach to property rights prevailing in many developing countries has been the focus on individual property rights. However, a wide range of legal options can be considered, ranging from some form of leasehold to rent control and collective occupation, as seen in the Latin American context. This is reflected in General Comment No. 4 (1991) adopted by the UN Committee on Economic, Social and Cultural Rights which states that ‘tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property’. UN-HABITAT research recognises that in most countries a range of land rights and tenure types exist, which forms a continuum. At one end are the informal or illegal, shared forms of tenure, such as *de facto* recognition of an informal or illegal settlement, political protection against forced eviction, etc. In the middle of this continuum are co-occupancy rights, shared user rights, collective adverse possession, special concessions and customary communal tenure, which can be either informal or formal. At the other end of the continuum is co-ownership and registered leases, which are conventionally referred to as formal tenure types.

With the exception of some matrilineal customary societies, it would seem that customary communal tenure – where all land is held by the community – does not provide women with direct and secure land rights to agricultural land, but rather broad and equal access rights to communally managed lands through male relatives or husbands. There are exceptions, such as in parts of **Kenya** and in parts of **Tanzania** and **Ghana**, where fathers at times provide inheritance to daughters through conversion of communal land into family land. Under family tenure, it is the family (often an extended one) that is recognised as the owner of the land and individual property rights, as in **St. Lucia** in the Caribbean and in parts of Eastern Europe (**Albania**) and Central Asia (**Kyrgyzstan**). Though women are often disadvantaged within the family, **St. Lucia’s** experience suggests that family land offers women an opportunity to have legal rights to land, a right that is more difficult for women to obtain when land becomes individually owned.

Group title or community titling does not explicitly prevent women from accessing land or obtaining other land rights, but in practice safeguards are required to ensure that women are included. **Mozambique** has sought to do this through its recent land legislation, which seeks to extend community property rights to women. In **Mexico**, the *ejido* – a form of community and collective land tenure – demonstrates the risk of excluding women as full community members. The most extensive experience with co-operatives is found in **Eastern Europe** and **Latin America**. Under the land share system, usually land is held in tenancy in common rather than joint tenure and the members have a right to withdraw their land without the permission from the other members. Large co-operatives still exist in **Bulgaria**, **Estonia**, **Hungary** and **Slovakia** but the practices of the seller restricting membership to male household heads have continued. The two exceptions to this policy are **Cuba** and **Nicaragua** where all adult family members, regardless of gender, could join. Co-operative experiences in Latin America have generally not been beneficial for women’s land rights. There has also been considerable donor support for cooperative housing in **South Africa** – which did involve women – although many of the initial schemes have struggled to succeed, for financial reasons.

In group land market transactions a group of individuals or families come together to participate in the land market in order to facilitate a transaction. These groups in general have nothing like gender equity objectives nor do they target poor women farmers in particular. However, there are exceptions

such as in **Guatemala**, where the 'Peace' State-sponsored land market programme, based on a land bank, requires the names of both spouses from each family appearing on the document. An NGO in Andhra Pradesh (**India**), the Deccan Development Society (DDS), has worked with groups of landless and land-poor women since 1989 to gain the financial support for these groups to lease or purchase agricultural land for collective farming. Privatisation of State-owned housing often proceeds without understanding their gendered impact. In **Zambia**, for example, the land privatisation policy to transfer ownership (of colonial employee dwellings) to 'sitting tenants' was set out in gender-neutral language, but the practice favoured titling men as household head even though earlier rental contracts were in the names of husband and wife. Though the housing market does open opportunities for women to buy a house, it bypasses poor urban women. A number of countries have passed legislation to protect wives' and mothers' rights to rented housing through shared rental and occupancy rights, but this trend is weakening. In **Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Serbia**, occupancy rights to apartments within the social ownership system applied to both spouses. In **Brazil and Mexico**, similar collective rental housing is available in the historical centres, though these dwellings are generally overcrowded and in a deteriorated state. In most countries, as in **South Africa and Namibia**, informal backyard rental continues to be a major tenure form. Various shared tenure forms can also be used to regularise informal settlements, such as urban adverse possession, special concession for use of public land for housing purposes and user rights concession, which are discussed further below.

A number of innovative or flexible tenures are emerging across the world but it is not clear whether they are gender-responsive. For example, the draft **Namibian** Flexible Land Tenure Bill provides for two innovative and closely linked forms of tenure: a type of group ownership of surveyed urban land with starter titles in un-surveyed plots, subject to conditions laid down in the constitution of the group; and individual rights to measured (but not formally surveyed) plots in a surveyed block. However, a criticism of this programme is the lack of clauses that protect women's rights to land such as mandatory joint registration for spouses and/or automatic inheritance rights for widows, equal inheritance rights for daughters and sons, and participation quotas for women in block decision-making bodies. Elsewhere in **Africa**, two distinct initiatives could be harnessed in favour of women's property rights: the local-level registry system in force since the 1970s in **Zambia**, and prospects for tenure security without the need for surveying through the 1997 Land Law in **Mozambique**.

14. WOMEN'S MANAGEMENT OF PROPERTY

Even where property is independently or jointly owned by women, men are more likely to exercise control over it. For example, in **Pakistan** women can formally own land but custom may limit their rights to use or dispose of this land. There are no specific legal requirements as to women's rights to control or dispose of land. In some Southern African countries, for instance **Swaziland** and **Lesotho**, women are still regarded as legal minors. Husbands have the marital power to administer the joint property and to represent their wives in civil proceedings. A woman married under customary law is held to be a legal minor and requires her husband's consent to buy land or enter into contracts. Where marital power is retained over women by men – for example in **Swaziland** and **Lesotho** – it effectively nullifies any rights to property that accrue to women. This is also because property will often be registered under a husband's name. In **Swaziland**, women married out of community of property have to be assisted by their husbands to register property. Civil codes and family laws that still allow for unequal marital property management also violate international human rights instruments and may be contrary to the constitutions of these countries.

With regard to marital property, there exist three different property management models. Under joint management, the spouses are required to act jointly regarding community property, as practiced in **Bolivia, El Salvador, France, Namibia, the Philippines, Serbia** and **Spain**. Sole management grants one spouse exclusive power to manage jointly held property, as seen in **Paraguay, Mexico, Lesotho, Honduras, Guatemala, Ecuador, the Dominican Republic, Chile** and **Botswana**. Equal management offers either spouse, acting alone, the power to manage the whole of the property that is jointly titled, and is found in **Belgium, Brazil, Bulgaria, Ethiopia, Italy** and **Mozambique**. Most countries, however, have adopted a combination of management rules, the application of which depends on the nature of the property at issue. For example, one spouse can make all decisions, except those related to the house and land which requires agreement of both spouses. In **Ecuador**, under formal law any property acquired by a couple automatically forms part of the marital property and is jointly owned, but in practice if the land is titled under the name of the husband he can dispose of it without his wife's signature, because the signature rules are rarely enforced.

The concept of 'marital authority' was at one time written into most civil codes. Although this is no longer true for the majority, it is still a strong customary norm. In some countries, for example **Zimbabwe**, those who choose to marry in community of property must sign a special deed to this effect. Marital power is excluded, although women must still be "assisted" in registering property and property transactions. A change in patriarchal attitudes is required to improve not just women's formal ownership but also control over their land, property and housing rights. It has been argued that, if women do not hold land tenure separately and independently from their husbands, they cannot expect to benefit from that land over time, as their husbands will still control it.

15. PROPERTY RIGHTS IN *DE FACTO* UNIONS

Many women are not legally married, especially where customs and traditions predominate. For example, in rural **Peru** 40 percent of women report that they are living in a consensual union, while in rural **El Salvador** the proportion is 63 percent. Legal marriage can be expensive and time-consuming, and may require residence documentation that women do not possess. In many countries, if property is not jointly registered, proof of legal marriage is necessary before joint titling provisions can be enforced, if they are enforced at all. In some countries a specific legal provision which provides that consensual unions will trigger legal protection of property rights acquired during that union enables many women, who would not otherwise be able to, to enforce their property rights. In **Peru** and **Ecuador**, people who live together are declared to be property co-owners as distinct from joint property owners. The distinction is that their marital status is not important because they both own a separate share of the property rather than owning the property together as a whole. In **Colombia** consensual unions do not have to be proved, only stated as true. The **Philippines** Family Code states that property acquired in unions with or without marriage is covered under the national co-ownership and joint ownership laws, and the presumption is that if two people live together their land is jointly owned. Even if a female partner does not participate in the acquisition of property, she is deemed to have contributed jointly if she cared for and maintained the family and household.

In **Latin America**, with the increasing recognition of *de facto* unions in the region, the marital property regime is also slowly being applied to such unions. In the case of *de facto* unions, inheritance rights are usually recognised by the legislation under the general condition that there is no previous marriage. If there is a previous marriage of any of the *de facto* union members, the partners of both unions must share the inheritance right. Not all countries recognise *de facto* unions. Surviving partners from *de facto* unions are excluded unless their partner left a will. The general rule in *de facto* unions is that the partner – woman or man – can only become an intestate heir and attain that limited status in the countries where this type of union is legally recognised. *De facto* unions are especially recognised in government policies on land and housing.

Most women in **Southern Africa** are married under customary law, however some are married under both because customary marriages are sometimes difficult to prove in formal legal proceedings. In **Namibia**, evidence suggests that it is not uncommon in most regions for a couple to marry in terms of *both* civil and customary law, and to rely upon different legal and social norms, depending on the situation at hand. There are however, some positive developments. In **Mozambique**, the passage of the Family Law of 2004 changed things for women by recognising customary law marriages and non-formal unions. Now women married under custom can claim marital property. Although it is a progressive piece of legislation, it defines a household, which is the basis for the allocation of land, as a “set of people living in the same home under the authority of the head of the household, married or in *de facto* union.” It has been argued that this leaves room for the land to be allocated to the man, who under the patriarchal system is considered to be the head of the household.

16. WOMEN AS BENEFICIARIES IN LAND REDISTRIBUTION

Recognition of the tenure rights of the urban poor and informal settlement dwellers has been an important driver of land reform and redistribution. Among the countries where such land reform has taken place, the scale, the mechanisms and the impact have varied. However, women have rarely benefited since the criteria of eligibility and the titling method have favoured men. For example, modernist land reforms initiated across the **Middle East** did not achieve much by way of redistribution, and certainly bypassed most women. In fact, the changing patterns of the economy, the shift from share cropping to mechanised forms of production, the move from informal to formal tenure systems, as well as urbanisation have generally combined to consolidate land in male hands. In **Egypt**, the main beneficiaries were rural middle class men and to a lesser extent rural working class men. Women who gained access to land were few and largely confined to widows as guardians of young sons, although not divorced women in otherwise similar circumstances. **Namibia** puts women under increasing focus as beneficiaries through its National Housing Strategy; but then and as has happened with the draft land policy in **Zambia** (which provides 30 percent of all land demarcated to be set aside for women), in practice any land allocated to women is far away from urban areas, undeveloped and without adequate services.

Before 1960, **Latin America's** major land reforms took place as the result of social revolutions in **Mexico, Cuba** and **Bolivia**. In these reforms, most women were discriminated against in terms of access to, and management of, land, since the regular procedure favoured males as family heads and beneficiaries. Several countries have also responded to the colonial legacy of skewed and unequal land allocations in different ways, inevitably involving some form of redistribution of land rights. In **Bolivia** the benefit of the land allocations resulting from land reform was restricted to mothers and widows. Also, the majority of indigenous women did not benefit from land distribution because they were neither considered as household heads nor as farmers. Later **Chile** and **Nicaragua** supplemented the agrarian reform by distributing land to those who would work it and produce crops, though later regressive land reforms undid some of the benefits. Agrarian laws in **Bolivia, Brazil, Colombia, Costa Rica, Guatemala, Honduras, Nicaragua and Mexico** now explicitly recognise the equal rights of men and women. In terms of land allocation, priority is given to refugee and displaced women-headed households in **Guatemalan** and **Colombian** law, while in **El Salvador** the Land Transfer programme for former combatants prioritises women.

In **Southern Africa**, one of the main distinctions relevant to land reform is between those countries that had substantial settler populations and those that had not. **South Africa, Namibia** and up until recently **Zimbabwe**, have significant settler populations holding large areas of land, especially agricultural land and therefore the return of such property to the majority population has been a political goal, if not policy. In comparison, the majority of the settler populations of **Mozambique, Angola, Zambia** and **Malawi** left those countries shortly after independence. Within this group of countries there is a further distinction between, on the one hand, **Mozambique** and **Angola**, where the first post-independence governments were not hampered by the duty to compensate departing settler landowners, and, on the other hand, **Malawi** and **Zambia**, where initial land reform efforts were constrained by the duty to compensate. The third main category consists of **Lesotho** and **Botswana**, neither of which had significant settler populations. **Swaziland** is unique in the sense that, although it had significant settler land ownership, much of this land was repurchased by the Swazi people during

the last century. In countries where redistribution and compensatory schemes were carried out, women were rarely the target group.

Redistribution through land reform in parts of Africa has also taken place in two other ways. The first is conversion of tenure in response to rapid urbanisation, as in **Botswana** where land boards are involved in the process of allocating tribal land for urban use and development. The second is through tenure reorganisation where customary land has been converted into modern tenure, leading to conflicts in several African countries. The vast majority of land in Africa is still held under customary tenure, mainly in the rural areas, although the proportion of land held in some or other form of individualised title (not necessarily ownership) is increasing. Accurate figures for the amount of land held under different tenure forms are not available. In **Zambia**, where 94 percent of the land is officially customary land, customary tenure is under conversion to leasehold tenure under the 1995 Lands Act, but women are not able fully to benefit from the process. A similar method of conversion is under way in **Mozambique**. In all countries in the region, attitudes towards land tenure are undergoing a dynamic process of change, but there is little by way of systematic affirmative action to address issues of women's security of tenure.

17. AFFORDABLE PRO-POOR HOUSING FOR WOMEN

Spiralling urban growth has also increased the demand for housing, for example in **Latin America** and the **Caribbean**, 75 percent of the population were living in cities in the year 2000 and the proportion was expected to grow to 83 percent by 2030. Delivery of pro-poor housing is still an enormous challenge given the existing and growing backlogs, particularly for the poor who do not meet the strict financing criteria of the private sector. Since the major concern for most States has been the numerical housing deficit, most housing legislation has not been gendered. Inadequate housing, poor location, scarce access to potable water and electricity, public transportation, telecommunications, health and education services all have a great impact on the daily lives of women. Shared tenure regimes with respect to land, as discussed above, apply equally to shelter and have the same negative effects for women. Women are also often excluded from land or housing allocations. Expulsion from marital homes (sometimes without divorce) also often forces women into poor housing areas. In some countries, which retain the marital power of the husband on the statute books, laws restrict the registration of immovable assets in married women's names.

Women-headed households typically represent a high proportion of those in informal settlements worldwide and they are among the poorest. It is the lack of appropriate housing policies which has driven low-resource and low-income families to occupy vacant land and construct informal settlements without secure tenure. Within households, women particularly lack secure rights to safety and shelter. Formal and informal property rights often only include the head of the household, thereby excluding women and making them vulnerable to eviction by their spouses and in-laws. In Central Asia for example, the Civil Code of **Kyrgyzstan** provides for mandatory joint ownership of marital property for married couples and also allows for separate property by gift or inheritance to one spouse. However, under custom, the marital home is not marital property and the judicial interpretation in a divorce is generally that the house and land surrounding it are the separate property of the male heads of household. The **Lesotho** Land Act of 1997 allows widows not remarrying to stay in the matrimonial home, thereby giving the widow usufruct rights though not ownership rights. Property grabbing, particularly of HIV-AIDS widows, is a particularly serious issue. In the **Balkans** as in other post-conflict and transitional societies, there is a spate of *ad hoc* and emergency legislation, for example in relation to housing, where gender perspectives are often not sufficiently thought out.

As in formal settlements, the man is still considered the owner of the dwelling in an informal settlement or slum, except in women-headed households. However, the factors behind the marginalisation of women can be diverse and complex. For example, in **sub-Saharan Africa**, the availability of formal and informal urban housing could be very much a consequence of colonial and post-colonial policies that tied housing to male employment. With social housing having generally been considered a failure in most countries, the emphasis is on informal self-constructed housing. The **Latin American** experience generally shows that where there is solidarity within the community, through making time available for work, as well as commitment and resources from the families involved, that self-construction and mutual aid operates in the shantytowns and informal urban settlements to the benefit of poor women. However, other stakeholders are needed to provide supervision and expertise if good quality housing and gender inclusiveness are to prevail.

In contrast to land and property rights, the right to adequate housing is not sufficiently addressed in most national constitutions and legislation. For example, **South Africa** is the only country in Southern

Africa whose constitution recognises this right. Most Latin American constitutions, including **Argentina, Brazil, Colombia, Cuba, the Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Paraguay, Peru, Venezuela, Chile** and **Bolivia** recognise this right. In some countries, such as **Ecuador, Uruguay** and **Mexico**, the right to housing features among the essential rights recognised and granted by the States. In others, for example **Nicaragua** and **Peru**, it is mentioned together with the inviolability of the home. In **Bolivia, Colombia, Paraguay** and **Costa Rica** the right to housing is considered a State duty. In the **Colombian** Constitution, the right to housing appears as proceeding from the dignity of the human person and in the equivalent **Venezuelan** document, the right to housing constitutes an obligation of the State and the citizens that is to be implemented progressively. The **Argentine** Constitution offers one of the best examples of how a State can protect the right to adequate housing as it subjects the interpretation of the constitutional phrasing to that established in international human rights instruments.

For most, if not all, countries the delivery of housing is still an enormous challenge given the existing and growing backlogs, as mentioned above, and particularly for the poor who do not meet the strict financing criteria of the private sector. Worldwide, the overall housing deficit has risen mainly in the poorest segments of the population, who contrary to middle-class households cannot afford to buy even a modest house. For example, in **Brazil**, the urban housing deficit was estimated at 5.4 million homes and the rural deficit at 1.2 million homes in the year 2000, with more than 80% of demand in urban areas. In 2004 the municipality of São Paulo in **Brazil** adopted a rule requiring public housing programmes to include clauses giving women priority as the beneficiaries of contracts, conventions and other forms of partnerships financed from municipal funds, on top of access to social and professional education programmes. The rule grants these priority rights to single women, married women and to female heads of household.

Scarcity of jobs, especially for women, and inadequate wages to purchase housing are among the reasons why women have little chance to own decent housing. One of the main justifications for titling programmes is greater access to credit for landholders. Studies in **Honduras, Nicaragua** and **Peru** found that women with title enhanced their ability to access credit, although the gap with men remained significant, including for access to formal credit. In **Brazil**, Afro-Brazilian women in both urban and rural areas are often not considered good credit risks when they try to purchase housing. Formal financial institutions have not been the main source of credit for the poor, even less so for poor women. Generally, women turn to informal sources such as credit from friends, family, direct cash loans, or payments in kind for credit purchases.

Another informal channel is the participation of women in savings and credit organisations. These include rotating savings and credit associations – one of the main methods of informal financing found in rural Central America – community banks, rural banks and savings and credit cooperatives. One of the most effective credit arrangements has been solidarity groups, where groups of three to ten people – along the lines of Grameen Bank in **Bangladesh** and Banco Sol in **Bolivia** – jointly access credit and technical cooperation. Good models of women obtaining access to credit can be found in **Nicaragua** – the experience of the Women’s Centre of Xochilt-Acalt – and in **Mexico** with the *Modelo Tanda Préstamo*. These savings and credit schemes are beneficial to women’s associations and they strengthen women’s local management capabilities. However, the schemes are constrained by limited operating capital and a low level of security and they remain outside the formal financial system.

18. LAND REGULARISATION AND FORCED EVICTIONS

A large proportion of housing in most big cities in developing countries is informal in the sense that much of it is on land that has been occupied without legal title, consists of illegal subdivisions without planning permission, is self-constructed, or consists of informally rented inner-city tenements. Although gender-disaggregated data is sketchy, literature indicates that in most of Southern Africa the poorest of the poor are women, and their lack of access to land and housing has largely been due to their limited access to resources generally. Other problems such as poverty, illiteracy, violence, the high costs of freehold and leasehold titled land, HIV/AIDS and unfair inheritance and divorce laws, also tend to force women into slums and informal residential areas. While a number of programmes, both State-sponsored and those promoted by NGOs and community organisations, seek to improve living conditions and tenure security for urban dwellers, they do not always include women as equal participants, though the record of community-based organisations has been considered to be better. Women's lack of political voice lies behind their inability to resist forcible eviction as well as their claims for inclusion in land and tenure regularisation and slum upgrading.

Those informal settlements not recognised by law and the State land systems are at particular risk of forcible eviction carried out in the name of urban beautification, crime prevention or as a security measure. Women are a vulnerable category but are rarely factored into the analysis of forced evictions. Without security of possession – no matter whether formal or informal – the right to housing and peaceful enjoyment of property is under permanent threat, and the risk of eviction or forced dislocation will always be imminent. Because it is a key element in the human right to housing, security of tenure should be available to all, on equal terms and without discrimination. Though regularisation – either through land title regularisation or physical regularisation – is not widely applied in terms of national policies, it results in incremental improvements in the quality of life.

Throughout the world countries have mostly inappropriate or non-existent policy responses to rapid urbanisation. None of the countries actively resists the growth of informal settlements. However, the absence of resources, weak local government capacity and a reluctance to acknowledge the permanence of new urban migrants stand in the way of effective management of this issue. Upgrading of informal settlements has not occurred on an adequate scale, and studies call for looking beyond legal recognition of tenure in order to address the increasing backlog of demand for services in informal settlements. **Zambia** has deployed efforts to improve security of tenure for informal settlement residents, but of the 1,040 Occupancy Licenses granted as of October 2003, 14% were in women's names and only two of the licenses were for joint tenure.

The Cities Without Slums initiative involving governments, civil society and UN-HABITAT, indicates that gender perspectives are yet to be mainstreamed. Physical regularisation or slum upgrading has not been implemented as frequently as legal regularisation, principally because of the cost and disruption involved for the State and the general population. For the success of physical regularisation, popular participation and involvement of women is essential; but, as demonstrated by projects in countries such as **Ecuador, Costa Rica, Venezuela, Brazil, Peru, El Salvador** and **Mexico** as parts of **Asia** and **Africa**, this is a hard and difficult process requiring political commitment and gender empowerment. Gender-sensitive integrated urban policies are necessary to improve living conditions in informal settlements as well as to provide security of tenure against forcible eviction whether from other groups or the State.

Women also have difficulty in obtaining compensation or resettlement owing to their limited access to justice.

In **Africa**, few upgrading projects have catered explicitly for women. Though upgrading schemes for informal settlements and slums are a good practice, special attention needs to be paid to women if they are to benefit. In **Namibia**, which did not initially target women in slums as potential beneficiaries, there is now a deliberate effort to include women in the National Housing Strategy, as mentioned earlier. In countries with extensive private land holdings the primary problem facing informal settlement dwellers is the illegal nature of their occupation. In contrast, State ownership of land, e.g. in **Mozambique** and **Zambia**, means that there is often less focused legal opposition to informal settlements. However, in countries such as **Zimbabwe**, the State has carried out extensive evictions of squatters from its urban lands, with considerable impact on women.

Brazil offers a variety of innovative tenure forms which can be used by women in informal settlements. The Zone of Special Social Interest (ZEIS) is one of the instruments for land ownership regularisation that had been prescribed in the country's 'Statute of the City'. ZEIS allows variable rules to be applied to the use and occupation of land in projects of urban land ownership regularisation, and women have priority rights. Under ZEIS urban adverse possession rules, any individual or a group may acquire ownership of small private property if they have continuously occupied the property for a minimum of five years, without legal intervention of the owner. As for the Special Concession for Use of Public Land for Housing Purposes, its objective is to help reduce the social vulnerability of women and to avoid prejudices against them in the case of legal or *de facto* separation. Thus women who are irregular occupants of public lands and who qualify under this new law may obtain possession title in their own names. Concession of Real Right to Use is another instrument for regularising public land in **Brazil**. For the purposes of housing programmes and projects of social interest, the concession documents that are issued must be accepted as guarantees for housing financing loans. Preference is then also to single women with children who act as heads of households.

19. CIVIL SOCIETY PARTNERSHIPS FOR WOMEN'S RIGHTS

Numerous organisations deal with land rights and with gender issues, including government agencies, legal support groups, labour movements and non-governmental organisations (NGOs), which include informal community-based organisations (CBOs). However, only a small number of organisations deal with both land rights and gender issues. The position of NGOs in the land sector varies considerably from country to country. Government land titling programmes often co-ordinate their activities with national-level and local-level organisations, such as rural workers' or peasant organisations. These organisations are generally dominated and led by men who seldom have any interest in extending property rights to women. If titling programmes have an objective of entitling women, they need to work with organisations that prioritise women's rights and interests.

The more successful programmes dealing with enhanced security of tenure for women have been generated by innovative, gender-responsive policies through participative pro-poor land management systems where civil society has played a significant role in five major areas: (1) enhancing awareness of women's property rights; (2) lobbying for improvement in women's security for tenure; (3) participating in projects aimed at augmenting women's rights; (4) monitoring implementation of policies; and (5) providing legal support for enforcement of women's property rights.

Though many countries subscribe to international principles regarding women's equal rights to land, property and housing, as reflected in their constitutions and often in their laws, public awareness of these principles has been lacking. In **India**, the National Slum Dwellers Federation and Mahila Milan are examples of community organisations with a focus on protecting and improving women's housing and tenure rights in informal settlements. A study of joint titling in **Laos** demonstrates that women, particularly in rural areas and among the urban poor, are often less literate than men and have less confidence in dealing with written documentation and official transactions. The Lao Women's Union (LWU), through its research office, the Gender Resource Information & Development Centre (GRID), has been very active on both the national and local levels to promote gender equity and to ensure that women's rights are recognised and enforced under titling programmes. **Namibia** provides a good practice example in the partnership formed between the national government, the Namibian Housing Action Group and the Shack Dwellers' Federation to implement the block system of land tenure.

Civil society participation in the drafting of the 1997 Land Law in **Mozambique** is perhaps the best-known regional example of NGO involvement in policy-making. The **Zambia** Land Alliance is a coalition of civil society organisations that has been actively involved in the policy process leading up to the adoption of the land policy in that country. The **Tanzania** Women Lawyers Association (TAWLA) has also been extremely active in that country. Professional and legal organisations can also play an important role in lobbying for law reform through research, advocacy and litigation. The Women's Centre of Xochilt-Acalt in Malpaisillo, **Nicaragua**, is an example of how civil society organisations can also contribute to the enforcement of legislation and to overcome obstacles to land regularisation in favour of women. The landmark 2004 São Paulo rule in **Brazil** (see above under 'Women's participatory rights in land governance') resulted from joint proposals by women's and housing movements. The Brazilian organisations also drew up a Platform for Urban Reform to deal with the social and territorial inequalities based on the 'right to the city', including the social functions of the city and of property as well democratic urban management.

In Latin America several movements or projects are aimed at resisting forced evictions, promoting the right to shelter and facilitating cooperatives or upgrading informal settlements; they include the Occupiers and Tenants movement (**Argentina**), Villa El Salvador (**Peru**), the **Uruguayan** Federation of Self-Management Co-Operatives (FUCVAM), and the Feminist Centre for Information and Action (CEFEMINA) in **Costa Rica**. In that country, mobilisation and land invasions of State-held land by CEFEMINA and the National Patriotic Committee have prompted the government to declare a national emergency with regard to the housing situation in the country and triggered the creation of alternatives, such as multi-stakeholder, self-construction housing projects for the urban poor. In **Honduras** and thanks to NGO activism, the number of titles issued to women has more than doubled in comparison to the period before 2000 when NGOs were not involved. In **Peru**, NGO networks organised a series of events in the mid-1990s to influence the methodology and procedures of the rural titling programme in favour of recognising women's legal property rights.

Legal organisations provide free or low-cost legal counsel and advice to resource-poor groups and individuals. One of the more popular and widespread channels is the training of 'paralegals' who work with communities and disadvantaged groups. The principal objective of the Women's Legal Centre in **South Africa** is to remove barriers to substantive equality for women through advocacy and litigation. International (FIDA) and national women lawyers associations, such as the **Mozambican** Association of Women Lawyers (AMMCJ), and the National Legal Aid Clinic for Women (NLACW) in **Zambia**, provide legal aid to women. General legal aid centres also include legal support to women. In **Brazil**, **Colombia** and **Guatemala** several NGO networks support training and capacity-building for women in urban and rural communities; this enables women to become community lawyers, who are familiar with the existing national housing legislation and in a position to guide and advise other women (and men) in their communities regarding their housing rights, and particularly how they can use the existing laws to ensure their full right to adequate housing.

Often, a number of different organisations will band together into a network or a coalition to promote legislative action on land rights or women's rights. Some cross-country regional networks are also promoting women's equal land rights. The Huairou Commission is a global umbrella organisation of six grassroots women's networks, which raises awareness of women's innovative practices on the ground (for example through documentation of best practices in their Grassroots Women International Academy). Slum Dwellers International and the Habitat International Coalition are among the global NGOs which also deal with women's urban property rights. In **Africa**, the NGO Landnet operates in the eastern and western areas, and other organisations include Women's Land Link Africa (jointly started in 2005 by the Huairou Commission, COHRE, FAO and UN-HABITAT), Women and Law in Development in Africa (Wildaf), and Women and Law in Southern Africa (WLSA). These regional networks provide country organisations with information and support to lobby for inclusion of women's rights in land legislation.

In each country there are further networks, for example the Gender Land Task Force in **Tanzania**, the Women's Coalition made up of 30 organisations in **Zimbabwe** and the **Uganda** Women's Network (UWONET) and the **Uganda** Land Alliance (ULA). Although some networks are formalised and survive beyond specific projects, many disintegrate after they meet their objectives, or after the initiative for which they were formed fails to yield results, or funding is unavailable. They also often face political and social resistance. Many women's movements in Africa have also not been as forceful or organised around land and housing rights as they have been on other issues. Many NGOs in the region have strong ties to international NGOs and donors, most prominent among whom are Oxfam, Ibis, the UK Department for International Development (DFID) and the Swedish (SIDA), Norwegian (NORAD) and German (GTZ) development agencies.

20. CONCLUSIONS AND RECOMMENDATIONS

UN-HABITAT research outlines developments in key areas in relation to the implementation of women's security of tenure, as well as a large number of best practice and case-studies which could offer policy makers fresh insights and ideas. Detailed recommendations have been made in thematic global overviews, regional reports and country studies and are not reproduced here. Briefly, some of the proposals arising out of the research for policy makers to consider are as follows;

- 1. Review laws:** Women's land, housing and property rights are undermined by gaps in law (for example housing), unclear provisions and discriminatory laws. Land, housing and family (or personal) laws that deal with inheritance, marriage, and marital property need harmonisation and a gender dimension. Legal remedies through improved access to information and legal support should be available for women.
- 2. Study tenure reform:** Promote legal rights and forms of (shared) tenure – such as joint titling – as well other flexible and innovative tenure types that women consider valuable to them. Policy makers should consider pursuing pioneering concepts in land tenure and reform and enhance shared learning. Where formal, informal and customary tenures overlap, the legal basis for women's tenure must be addressed.
- 3. Integrate Policies:** Governments should take on a more proactive role in land matters and in addressing obstacles that women have to face. In particular, there is an urgent need to integrate poverty, land, housing, property and gender policies. Governments should focus especially on the more vulnerable among women, such as household heads, those in informal settlements, those from minorities, those displaced and those affected by HIV/AIDS.
- 4. Involve Women:** Top-down policies have failed. Affirmative action is required to ensure that women are supported in their access to training, skills and participation in decision making. Gendered participation must be promoted at all levels – family, community, local, national and international – if women's experiences, priorities and voices are to be reflected in policies and practice.
- 5. Support Partnerships:** The more successful initiatives consist of collaborations between various stakeholders. There is a need to strengthen social movements, NGOs and women's groups involved in the urban land and housing sector. In addition to this, land professionals, development agencies, analysts and researchers should be encouraged to participate more actively in the planning, implementation, monitoring and evaluation of women's security of tenure.
- 6. Develop Gendered Tools:** Several well-devised laws and policies have failed to deliver security of tenure to women due to a paucity of innovative, pro-poor, scalable, affordable and gendered land, property and housing tools. Successful initiatives should be seen as local testing grounds for good practice and these gendered tools should be replicated on a wider scale. The Global Land Tool Network being facilitated by UN-HABITAT should play a role in this.

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