

# **PROGRESS REPORT**

## **ON REMOVING DISCRIMINATION AGAINST WOMEN IN RESPECT OF PROPERTY & INHERITANCE RIGHTS**

Tools on Improving Women's Secure Tenure  
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Author: Marjolein Benschop, Legal Officer, Land and Tenure Section, UN-HABITAT

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## 1.1 Introduction

The prohibition of discrimination on the basis of a person's sex, and the recognition of equal rights between men and women are clear and firm features of international human rights law. While these human rights already imply that women's rights to land, housing and property, including through inheritance, are to be equal with those of men, more explicit recognition of these rights have also been laid down in various resolutions of human rights treaty bodies.<sup>1</sup>

In most countries, international law is not directly applicable, but must be domesticated through the enactment of national legislation.<sup>2</sup> Without enactment and implementation of such national laws, a country is not meeting its obligations under international human rights law. While progress has been made in various countries with regard to the adoption of equal rights and non-discrimination provisions, there are still countries, which have not yet recognised these rights at national level. And even in countries where these human rights are laid down in national legislation, their implementation shows serious gaps.

In this progress report, an overview of which countries have and have not (yet) legally recognised women's equal rights at national level is provided. This overview is not exhaustive and new countries will be added to it on a continuous basis.

Section Two provides an overview at country level of factors, which still stand in the way of women's enjoyment of their human rights.

In Section Three the Constitutions of a cross section of countries are examined and analysed. In Section Four specific legislation in some countries that is still problematic is highlighted, while in Section Five some "best practices" in terms of legislation, policy or practice are described.

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<sup>1</sup> See UN-HABITAT, Women's Equal Rights to Land, Housing and Property in International Human Rights Law, November 2004 (posted on the UN-HABITAT website) which provides an overview of the most relevant human rights provisions related to women's land, housing and property rights, including through inheritance.

<sup>2</sup> The Constitution of Bosnia and Herzegovina provides one of the few exceptions, as it states in Article II(2): "The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law." In relation to other international human rights instruments, however, there is no direct applicability. Two other exceptions are Argentina and Namibia. Articles 22 and 75 of the Constitution of Argentina accord international human rights law the same hierarchy level as constitutional norms. Article 144 of the Constitution of Namibia declares that international agreements that are binding upon Namibia form part of the law of Namibia.

## 2. Factors blocking women's equal property and inheritance rights

At country level, the following factors still prevent women from enjoying their human rights to property and inheritance:

### \* Some Constitutions still contain discriminatory provisions

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

### \* Other Discriminatory Laws and Policies

Even today laws and policies related to land and housing that explicitly discriminate against women still exist. In Swaziland, for example, the law specifically excludes married women from registration of title to land in their name.<sup>3</sup>

In most countries, land related laws and policies are gender neutral and do not address existing discrimination. For example, many land laws allow for the co-ownership of land, but spouses have to mutually agree on this and take active steps to register as co-owners. In practice, only a small proportion of, usually well educated, urban-based and relatively wealthy people do so. Even among this group, many women face cultural attitudes that favour registration of land and housing in the name of only men. Innovative approaches, such as in Tanzania's Land Act of 1999, seem much more protective of women's interests, needs and rights. In this Land Act, land occupied by both spouses is now presumed to be co-registered unless otherwise indicated by the spouses.

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

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<sup>3</sup> A woman married in community of property cannot register land in her own name because she is considered to be a legal minor, subject to the marital power of her husband. Women and Law in Southern Africa (WLSA), *Family in Transition: the Experience of Swaziland*, 1997, p. 101.

about implementation of such provisions go hand in hand in preventing the implementation of joint titling for spouses.

Laws related to marital property and inheritance rights remain discriminatory in most Sub-Saharan African and various other countries. In countries such as Lesotho and Swaziland, married women are seen as legal minors, who cannot enter into contracts without the consent of their husband. While laws increasingly recognise the equal inheritance rights of daughters, this is often not the case regarding widows. In the few countries where the laws recognise women's equal marital property and inheritance rights (for example in Latin America), cultural attitudes in many areas in Latin America pressurise a daughter to relinquish her right to inherit land, to her brother. In many sub-Saharan African countries, the idea of women inheriting land is seen as a threat to the continuity of clan land. In Eritrea, married women's rights to land are seen as a threat to the stability of the society.<sup>4</sup> Even in various matrilineal societies, such as in Malawi, Zambia, Mozambique and Tanzania, land market pressure and individual registration processes are threatening the continuity of inheritance systems that so far have seemed to protect women more than patrilineal systems. Religious laws usually entitle women to inherit property, but the share of inheritance is invariably smaller, and there is an emphasis on access rather than ownership rights.

\* Eroded customary laws and practices

Due to colonial influences, individualisation of land tenure, land market pressure and other factors, many customary laws and practices have eroded over time. The forms of solidarity that used to exist and that protected women from exclusion have now disappeared from such customary practices in many areas. Examples abound in Eastern and Southern Africa and parts of Asia. Even where statutory national laws recognise women's rights to land, housing and property, "traditional" values prevail amongst judges, police officers, local councillors and land officials. They often interpret statutory laws in what at present is understood to be "customary" ways, as a result of which women are deprived of the rights they should enjoy under statutory law.<sup>5</sup>

\* Registration of land in name of husband

While in communal land tenure systems women had significant access and rights to use communal resources, through their roles as household managers, they were further excluded when land tenure was individualised and invariably adjudicated and registered in the name of "heads of households" or men. Without legal protection women are at risk of suddenly becoming landless. This happens in many cases when the husband sells the family land. Upon divorce, women still have to prove their contribution to the marital home in court, as court cases in Zambia and Zimbabwe illustrate.<sup>6</sup> Upon the death of the husband,

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<sup>4</sup> UN-HABITAT, Proceedings of the African Regional Civil Society Consultation on Women and Adequate Housing, presentation on Eritrea by Worku Zerai, Nairobi, 2002, <http://www.unhabitat.org/programmes/landtenure/documents/ARCSC.pdf>

<sup>5</sup> Supra note 4, presentations on Zambia, Zimbabwe and Kenya.

<sup>6</sup> Ibid.

the marital home is included in the deceased husband's estate and is divided among his heirs. Many succession laws only entitle widows to a temporary use right of the marital home. However, if the marital home had been registered jointly, it would not become part of the estate upon the death of any spouse. Instead the widow would remain registered right holder of the land and house with the authority to sell, mortgage or carry out any other transaction.

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

\* Limited implementation of laws and policies

Laws and policies, when recognising women's equal rights to land and property, are still very difficult to implement. Regulations and guidelines for the implementation of laws and policies are often very technical and in many cases have not yet been written from a gender perspective. As a result, for example, forms for registration of land, often simply lack the space to indicate joint registration of both spouses. Moreover, the land officials who work with these forms often lack any gender awareness. Inheritance procedures are often also quite technical, centralised, and difficult to access for many women. Persistent cultural and customary attitudes also work against implementation of women's rights.<sup>7</sup>

\* Lack of representation on decision-making bodies

Without gender aware officials on bodies dealing with land allocation, inheritance and dispute settlement, a male bias among these officials is likely to continue to stand in the way to women's enjoyment of their rights. Moreover, inclusion of women in decision-making and policy formulation processes is crucial, especially among vulnerable groups such as slum dwellers, ethnic minorities etc.<sup>8</sup>

\* Lack of awareness

Among men and women, there is still a lack of gender and human rights awareness on the serious repercussions that the denial of women's rights continues to have, and of the possible strategies that can be used to implement these rights on the ground. In addition, many women do not have information, confidence, experience and resources to obtain their legal entitlements.<sup>9</sup>

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<sup>7</sup> Susana Lastarria-Cornhiel, Land Tenure Center et al, Joint Titling in Nicaragua, Indonesia and Honduras: Rapid Appraisal Synthesis, University of Wisconsin-Madison, 2003. UN-HABITAT, Rights and Reality: Are Women's Equal Rights to Land, Housing and Property Implemented in East Africa?, 2002, <http://hq.unhabitat.org/register/item.asp?ID=296>.

<sup>8</sup> Beijing + 5, Political Declaration and Initiatives to Implement the Beijing Declaration and Platform for Action, June 2000; COHRE, Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women, 2004, Geneva.

<sup>9</sup> Supra note 4, and other testimonies of women and women's organisations in various meetings, such as the Gender and Land meeting organised by OXFAM and FAO, Pretoria, June 2003 and

While increasing attention is being paid to the factors mentioned above - in research, advocacy and lobbying work - this report seeks to provide updated information on the constitutions and on the laws related to land, housing, property and inheritance rights in various countries. The following tables are far from exhaustive, but provide a first attempt to an overview of the current legal status in a cross-section of countries as it affects women's property rights.

### 3. Overview of relevant constitutional provisions

Constitutions are also called “the supreme law of the land”, as they usually supersede and provide the basis for all other national legislation. As mentioned in Section 2 some constitutions declare (parts of) international human rights law to be directly applicable in their country.<sup>10</sup> Most countries however still require the domestication of international law into national legislation. This is often done through a constitutional amendment. Thus, constitutions are a good starting point to check if countries recognise and apply particular human rights.

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

The table is divided into four columns:

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

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<sup>10</sup> See footnote 2, which mentions Bosnia and Herzegovina, Argentina and Namibia as examples of countries where parts of international human rights law is declared to be directly applicable.





**Table 3.1 Overview of relevant constitutional provisions**

<b>COUNTRY</b>	<b>Prohibition of discrimination on basis of sex</b>	<b>Explicit recognition of women's equal rights</b>	<b>Recognition of right to land, housing and/or property</b>
<b>Bosnia and Herzegovina</b> <sup>11</sup>	<b>Yes</b> Article II(4) states that the enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina, without discrimination on any ground such as sex.	<b>No</b>	Article II (3) (k): <b>Right to property</b>
<b>Botswana</b> <sup>12</sup>	<b>No</b> Article 15 prohibits discrimination, but does not list "sex" as a ground of discrimination. However, the court has interpreted this clause as to include "sex" as one of the grounds. <sup>13</sup>	<b>Yes</b> Section 3(a)	Articles 3(j) and 8: Protection from deprivation of <b>property</b> without compensation
<b>COUNTRY</b>	<b>Prohibition of discrimination on basis of sex</b>	<b>Explicit recognition of women's equal rights</b>	<b>Recognition of right to land, housing and/or property</b>
<b>Brazil</b> <sup>14</sup>	<b>Yes</b> Article 3(IV) but only as fundamental objective of the state. Article 5(XLI) states that the law shall punish any discrimination against fundamental rights	<b>Yes</b> Article 5(1) – equal rights and duties	Article 5(XXII): The <b>right to own property</b> is guaranteed. Article 5(XXIII): Ownership of <b>property</b> shall attend to <b>its social</b> function. Article (XIV): The law shall establish the procedure of

<sup>11</sup> Source used: <http://www.ccbh.ba/?lang=en&page=texts/constitution/>

<sup>12</sup> <http://www.ditshwanelo.org.bw/index/Other/Botswana%20Constitution.htm>

<sup>13</sup> Unity Dow v. Attorney General of Botswana (1991) BLR 231. Cited in Centre on Housing Rights and Evictions (COHRE), Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women, A Survey of Law and Practice in Sub-Saharan Africa, Geneva, 2004, pp. 39 - 40.

<sup>14</sup> [http://www.oefre.unibe.ch/law/icl/br00000\\_.html](http://www.oefre.unibe.ch/law/icl/br00000_.html)

	and liberties, but does not define discrimination. Linked to Article 3(IV), Article 5(XLI) could be interpreted as being applicable to discrimination on the basis of sex.		expropriation for public use/need, or for social interest, against just and prior compensation in money, with the exception of the cases set forth in this Constitution. Article 5(XXX): The <b>right to inheritance</b> is guaranteed.
<b>Cambodia</b> <sup>15</sup>	<b>Yes</b> Article 45(1): All forms of discrimination against woman shall be abolished. Article 46(3): The State and society shall provide opportunities to women, especially to those living in rural areas without adequate social support, so they can get employment, medical care, and send their children to school, and to have decent living conditions	<b>Yes</b> Article 31(1): The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights. Article 32(2): Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of ... sex.	Article 44(1): All persons, individually or collectively, shall <b>have the right to ownership</b> . Only Khmer legal entities and citizens of Khmer nationality shall have <b>the right to own land</b> . Article 44(3): The right to confiscate possessions from any person shall be exercised only in the public interest as provided for under law and shall require fair and just compensation in advance. Article 36(3): The <b>work</b> by housewives <b>in the home shall have the same value</b> as they could receive when working outside the home.

<sup>15</sup> <http://www.constitution.org/cons/cambodia.htm>

COUNTRY	Prohibition of discrimination on basis of sex	Explicit recognition of women's equal rights	Recognition of right to land, housing and/or property
China <sup>16</sup>	<b>No</b>	<b>Yes</b> Article 48: Women in the People's Republic of China enjoy equal rights with men in all spheres of life, political, economic, cultural and social, and family life Article 33: All citizens of the People's Republic of China are equal before the law. Every citizen enjoys the rights and at the same time must perform the duties prescribed by the Constitution and the law.	Article 10: <b>Land in the rural and suburban areas is owned by collectives</b> except for those portions which belong to the state in accordance with the law; house sites and private plots of cropland and hilly land are also owned by collectives. The state may in the public interest take over land for its use in accordance with the law. No organization or individual may appropriate, buy, sell or lease land, or unlawfully transfer land in other ways. All organizations and individuals who use land must make rational use of the land. Article 13: The state protects <b>the right</b> of citizens to own lawfully earned income, savings, <b>houses and other lawful property</b> . The state protects by law <b>the right of citizens to inherit private property</b> .
Colombia <sup>17</sup>	<b>Yes</b> Article 5 and 13	<b>Yes</b> Article 13	Article 58 recognises the <b>right to property</b> , but the <b>social function of property</b> prevails over private interests. Article 51 recognises the right to a dignified life for all Colombians.
Croatia <sup>18</sup>	<b>No</b> Article 14 implies such prohibition by stating that everyone in the Republic of Croatia shall enjoy rights and freedoms regardless of "gender".	<b>Yes</b> Articles 3 and 14	Article 48(1) recognises the <b>right of ownership</b> and Article 48(4) guarantees the <b>right to inherit</b> .

<sup>16</sup> <http://english.people.com.cn/constitution/constitution.html>

<sup>17</sup> <http://www.senado.gov.co/Senweb/decripc/DESCONST.HTM>

<sup>18</sup> [http://www.oefre.unibe.ch/law/icl/hr00000\\_.html](http://www.oefre.unibe.ch/law/icl/hr00000_.html)

COUNTRY	Prohibition of discrimination on basis of sex	Explicit recognition of women's equal rights	Recognition of right to land, housing and/or property
<b>Egypt</b> <sup>19</sup>	<b>No</b> While Article 40(1) declares all citizens to be equal before the law, Article 40(2) states: "They have equal public rights and duties without discrimination between them due to race, ethnic origin, language, religion or creed."	<b>No</b> Article 11 states that "the State shall guarantee the proper co-ordination between the duties of woman towards the family and her work in the society, considering her equal with man in the fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence." In Article 8, the State guarantees equality of opportunity to all citizens.	Articles 29 and 32: <b>private ownership has a social function</b> and may not conflict with the general welfare of the people.
<b>Eritrea</b> <sup>20</sup>	<b>Yes</b> Article 7(2) prohibits "any act that violates the human rights of women or limits or otherwise thwarts their role and participation." Article 14(2) prohibits discrimination on account of a person's sex. Article 8(3) prohibits discrimination by the judiciary: "Judges shall be free from corruption or discrimination and, in rendering their judgment, they shall make no distinctions among persons."	<b>No</b> Article 14(1) states that all persons are equal before the law, which implies women's equal rights.	Article 23(2) stipulates that <b>all land, water and natural resources of Eritrea belong to the State</b> . Citizens may have usufruct rights. The recognition in Article 23(1) of <b>the right of any citizen to acquire, own, and dispose of all property</b> individually or in association with others and to bequeath to heirs, thus refers to developments on the land. Article 23(3) deals with expropriation of property in the national/public interest, subject to the payment of just compensation and in accordance with due process of law.

<sup>19</sup> <http://www.egypt.gov.eg/english/laws/constitution/index.asp> and <http://www.sis.gov.eg/egyptinf/politics/parlment/html/constit.htm>

<sup>20</sup> [http://www.nitesoft.com/eccm/Eritrean\\_Constitution.htm#A005\\_](http://www.nitesoft.com/eccm/Eritrean_Constitution.htm#A005_)

COUNTRY	Prohibition of discrimination on basis of sex	Explicit recognition of women's equal rights	Recognition of right to land, housing and/or property
<b>Ethiopia</b> <sup>21</sup>	<b>Yes</b> Article 25	<b>Yes</b> Article 25 and Article 35(1). Article 35(3) allows for affirmative measures to remedy the historical legacy of inequality and discrimination suffered by women in Ethiopia. Article 35(4) prohibits laws, customs and practices that oppress or cause bodily or mental harm to women, and the State commits itself to enforce the right of women to eliminate the influences of harmful customs.	Article 40(3) states that <b>land is a common property</b> vested in the State and the peoples of Ethiopia and cannot be sold or otherwise exchanged. Article 40(1) and (7) recognise <b>the right to own buildings or permanent improvements</b> built/brought about on the land by citizens. Articles 40(4) and (5) recognise the right for peasants and pastoralists to the allocation of free land and protection against eviction. Articles 34(1) and 35(2) explicitly recognise <b>women's equal marital rights</b> upon and during marriage and upon divorce. Article 34(4) allows for the enactment of a law recognising religious and customary marriages. Discrimination against women within such marriages is prohibited through Article 35(4). Article 35(7) recognises <b>women's equal rights to acquire, administer, control, use, transfer, administer and control property. They shall also enjoy equal treatment in the inheritance of property.</b>

<sup>21</sup> [http://www.civicwebs.com/cwvlib/constitutions/ethiopia/constitution\\_1994.htm](http://www.civicwebs.com/cwvlib/constitutions/ethiopia/constitution_1994.htm)

COUNTRY	Prohibition of discrimination on basis of sex	Explicit recognition of women's equal rights	Recognition of right to land, housing and/or property
<b>Ghana</b> <sup>22</sup>	<b>No</b> While Article 17(2) and (3) explicitly prohibit discrimination on the basis of a person's sex, Article 17(4) opens the door for exceptions: "Nothing in this article shall prevent Parliament from enacting laws that are reasonably necessary to provide - (b) for matters relating to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;	<b>Yes</b> Article 17(1)	Article 18(1) recognises <b>the right to own property</b> either alone or in association with others. Article 20(1) lists grounds for compulsory possession or acquisition of private property by the State: defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of property for public benefit. Article 20(2) provides for prompt and fair compensation and access to the High Court in cases of expropriation. Article 20(3) requires the State to <b>resettle</b> persons whose land has been expropriated to suitable alternative land with due regard for their economic well-being and social and cultural values.
<b>India</b> <sup>23</sup>	<b>Yes</b> Article 15(1) and (2), while Article 15(3) contains the possibility to apply affirmative action policies for women and children.	<b>No</b> Article 14 is implicit: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."	The <b>right to property</b> was guaranteed under Article 19 until 1979, when it was omitted in the 44 <sup>th</sup> amendment during the Janata party regime.
<b>Jordan</b> <sup>24</sup>	<b>No</b> Article 6(i) prohibits discrimination, but only on the ground of race, language or religion.	<b>No</b> Article 6(i) stipulates that all Jordanians shall be equal before the law.	Article 11 states <b>that no property of any person may be expropriated except</b> for purposes of public utility and in consideration of a just compensation, as may be prescribed by law.

<sup>22</sup> <http://www.ghanareview.com/parlia/Gconst5.html>

<sup>23</sup>

<sup>24</sup> [http://www.kinghussein.gov.jo/constitution\\_jo.html](http://www.kinghussein.gov.jo/constitution_jo.html)

COUNTRY	Prohibition of discrimination on basis of sex	Explicit recognition of women's equal rights	Recognition of right to land, housing and/or property
<b>Kenya</b> <sup>25</sup>	<b>No</b> Even if Article 82(1) prohibits laws discriminatory in content or effect, Article 82(4) still allows for exceptions with respect to marriage, divorce, devolution of property on death or other matters of personal law	<b>No</b> Article 70 states that every person in Kenya is entitled to the fundamental rights and freedoms of the individual, irrespective of sex. However, this Article is followed by many exceptions to the main rule, among which Article 82(4) still allows for discrimination in customary and personal law matters.	Article 75 provides <b>protective provisions against compulsory possession or acquisition of private property</b> , but lists as exceptions: defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of property for public benefit. Prompt payment of full compensation, and right of direct access to the High Court is also provided for. Articles 114 – 120 deal with Trust Land, communal land vested in county councils.
<b>Lesotho</b> <sup>26</sup>	<b>No</b> Article 18(4)(b) still allows discrimination against women in personal law matters such as marriage, divorce and devolution of property upon death. Article 18(4)(c) still allows the continued application of customary law and therefore condones those customary laws that discriminate against women's equal property and inheritance rights.	<b>No</b> Article 4(1) recognises and declares every person in Lesotho to be entitled to the fundamental rights and freedoms of the individual, whatever "his sex", but such rights are subject to limitations laid down in other Sections. Linked to Article 18(4)(b) and (c) this means that discrimination of women in areas related to property and inheritance rights is allowed.	Article 17(1) recognises <b>the freedom from arbitrary seizure of property</b> . Listed exceptions from this freedom are: defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of property for public benefit. Article 17(3) deals with prompt payment of full compensation and access to court, while Article 17(4) lists twelve other grounds for expropriation.

<sup>25</sup> <http://www.uni-bayreuth.de/departments/afrikarecht/kenyaco.html>

<sup>26</sup> <http://www.lesotho.gov.ls/constitute/gconstitute.htm>



COUNTRY	Prohibition of discrimination on basis of sex	Explicit recognition of women's equal rights	Recognition of right to land, housing and/or property
<b>Mexico</b> <sup>27</sup>	<b>Yes</b> Article 1	<b>Yes</b> Article 4	Article 27(1) vests the ownership of Mexican land and water in the Nation, which may transmit the title thereof to private persons, thereby constituting private property. <b>The right of communities to communal (ejido) land and the right of individuals and groups to private land</b> (with expropriation only in public interest and with payment of compensation) are regulated in the other paragraphs of Article 27, which since 1992 allow for the privatisation of communal (ejido) land.
<b>Morocco</b> <sup>28</sup>	<b>No</b>	<b>No</b> Only equal political rights (Article 8(1) and equal rights to education and work (Article 13) are explicitly recognised	Article 15(1) guarantees <b>the right of private property</b> and free enterprise. According to Articles 15(2) and (3), the law may prescribe limitations to these rights and uses, if required by socio-economic development planned for the Nation, and the law shall prescribe circumstances and provisions related to expropriation.
<b>Mozambique</b> <sup>29</sup>	<b>Yes</b> Article 67	<b>Yes:</b> Article 66 Article 57 contains some affirmative provisions regarding women's emancipation and role in all spheres of society.	Article 46(1) and (2) vest <b>the ultimate ownership of land in the State</b> and prohibit sales, mortgage or other alienation of land. Article 46(3) recognises <b>the right to use and enjoy the land</b> for all Mozambican citizens. The right to the use and enjoyment of the land shall be granted to individual or collective persons, while the social purpose of land shall be taken into account (Article 47(2)). The State determines the conditions for use and the law shall govern the terms for establishment of rights in respect of land. (Article 47(1) and (3)).

<sup>27</sup> <http://www.ilstu.edu/class/hist263/docs/1917const.html> and <http://info4.juridicas.unam.mx/ijure/fed/9/>

<sup>28</sup> [http://www.mincom.gov.ma/english/generalities/state\\_st/constitution.htm](http://www.mincom.gov.ma/english/generalities/state_st/constitution.htm)

COUNTRY	Prohibition of discrimination on basis of sex	Explicit recognition of women's equal rights	Recognition of right to land, housing and/or property
<b>Namibia</b> <sup>30</sup>	<b>Yes</b> Article 10(2)	<b>No</b> Article 10(1) stipulates that all persons are equal before the law. Only Article 14(1) explicitly recognises women's equal rights before, during and upon dissolution of marriage	Article 16(1) recognises <b>the right of all citizens in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property</b> individually or in association with others and to bequeath their property to their heirs or legatees. Article 16(2) stipulates that the State may expropriate property in the public interest subject to the payment of just compensation, in accordance with requirements and procedures to be determined by Act of Parliament.
<b>Nepal</b> <sup>31</sup>	<b>Yes</b> Article 11(2) and (3). Article 11(3) allows for affirmative action policies for women	<b>No</b> Article 11(1): All citizens shall be equal before the law. No person shall be denied the equal protection of the laws.	Article 17(1) recognises <b>the right of all citizens, subject to existing laws, to acquire, own, sell and otherwise dispose of, property.</b> Article 17(2) provides that the State shall not, except in the public interest, requisition, acquire or create any encumbrance on, the property of any person. Article 17(3) states that the basis of compensation and procedure for giving compensation for any property requisitioned, acquired or encumbered by the State in the public interest, shall be as prescribed by law.

<sup>29</sup> <http://confinder.richmond.edu/MOZ.htm#Chapter%20IV>

<sup>30</sup> [http://www.oefre.unibe.ch/law/icl/wa00000\\_.html](http://www.oefre.unibe.ch/law/icl/wa00000_.html)

<sup>31</sup> <http://www.concourt.am/wwconst/constit/nepal/nepal--e.htm>

<b>COUNTRY</b>	<b>Prohibition of discrimination on basis of sex</b>	<b>Explicit recognition of women's equal rights</b>	<b>Recognition of right to land, housing and/or property</b>
<b>Nicaragua</b> <sup>32</sup>	<b>Yes</b> Article 27(1) Furthermore, Article 48 states: "The State has the obligation of eliminating obstacles that in fact prevent equality among Nicaraguan people and their effective participation in the political, economic and social life of the country".	<b>Yes</b> Article 27(1) Furthermore, Article 73 stipulates that family relations rest on respect, solidarity and absolute equality of rights and responsibilities between the man and woman.	Article 64 recognises <b>the right to decent, comfortable and safe housing</b> that guarantees family privacy. Article 44 recognises <b>the right to personal property</b> and necessary goods, essential for the integral development of each person.
<b>Nigeria</b> <sup>33</sup>	<b>Yes</b> Article 15(2) and Article 42(1).	<b>No</b> Article 17(2)(a) recognises equality of rights, obligations and opportunities before the law.	Article 16(2)(d) states that the State shall direct its <b>policy towards ensuring that suitable and adequate shelter</b> ... are provided for all citizens. Article 43 recognises <b>the right to acquire property</b> , while Article 44 deals with grounds and conditions for compulsory possession or acquisition of such property.
<b>Philippines</b> <sup>34</sup>	<b>No</b>	<b>Yes</b> Article 14: "The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men."	Article 9 states that <b>private property</b> shall not be taken for public use without just compensation.
<b>Rwanda</b> <sup>35</sup>	<b>Yes</b> Article 11	<b>Yes</b> Preamble and Article 11	Article 23 states that <b>private property</b> , whether individual or collective, shall be inviolable. No infringement shall take place except for the reason of public utility, in the cases and manner established by law, and in return for fair and prior compensation.

<sup>32</sup> <http://www.leftjustified.com/leftjust/lib/sc/ht/wtp/nicaragu.html>

<sup>33</sup> [http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm#Chapter\\_2](http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm#Chapter_2)

<sup>34</sup> <http://www.gov.ph/aboutphil/constitution.asp> and <http://www.ldb.org/philcon/preamb.htm>

<b>COUNTRY</b>	<b>Prohibition of discrimination on basis of sex</b>	<b>Explicit recognition of women's equal rights</b>	<b>Recognition of right to land, housing and/or property</b>
<b>Senegal</b> <sup>36</sup>	<b>Yes,</b>	<b>Yes,</b> Preamble, Articles 1 and 7. Article 15 recognises <b>women's equal right to access, possess and own land</b> . Article 19 recognises <b>women's right to own and administer marital property</b> .	<b>The right to an adequate standard of living, including housing,</b> as laid down in the Universal Declaration on Human Rights, is recognised in the Preamble of Senegal's Constitution. Articles 8 and 15 recognise the <b>right to property</b> , only to be expropriated in the public interest and only accompanied by fair and prompt compensation.
<b>South Africa</b> <sup>37</sup>	<b>Yes</b> Article 9(3)	<b>Yes</b> Article 9(1)	Article 25 recognises <b>the right to property</b> . Article 26 recognises <b>the right to access adequate housing</b>
<b>Swaziland</b> <sup>38</sup>	<b>Partially</b> DRAFT: Article 21. Article 116 recognises non-discriminatory customs or traditions – however, exclusively male and non-elected Council of Chiefs are to decide on changes of custom	<b>Yes</b> DRAFT: Article 29(1)	Article 15(1)(d) recognises the <b>right to protection from deprivation of property without compensation</b> except as otherwise provided by law. Section 35(1) stipulates that a surviving spouse is entitled to "a reasonable provision out of the estate of the other spouse", whether there is a will or not and whether civil or customary marriage.
<b>Tanzania</b> <sup>39</sup>	<b>Yes</b> Article 13(5)	<b>Yes</b> Article 13(1)	Article 24 recognises the entitlement of every person <b>to own property</b> and provides for fair and adequate compensation in case of lawful deprivation of such property.

<sup>35</sup> [http://www.oefre.unibe.ch/law/icl/rw00000\\_.html](http://www.oefre.unibe.ch/law/icl/rw00000_.html)

<sup>36</sup> <http://www.senegal-online.com/francais/histoire/constitution.htm>

<sup>37</sup> [http://www.oefre.unibe.ch/law/icl/sf00000\\_.html](http://www.oefre.unibe.ch/law/icl/sf00000_.html) and <http://www.polity.org.za/html/govdocs/legislation/1993/constit0.html?rebookmark=1>

<sup>38</sup> Centre on Housing Rights and Evictions (COHRE), Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women, A Survey of Law and Practice in Sub-Saharan Africa, Geneva, 2004, p. 132.

<sup>39</sup> <http://www.tanzania.g.o.tz/constitutionf.html>

COUNTRY	Prohibition of discrimination on basis of sex	Explicit recognition of women's equal rights	Recognition of right to land, housing and/or property
Thailand <sup>40</sup>	No	<b>Yes</b> Article 24: Man and woman shall have equal rights. Section 25: All persons are equal before the law and shall enjoy equal protection under the law.	Article 37 states that the <b>property right</b> of a person is protected. The extent and the restriction of such right shall be specified by law. The succession is protected. The right of succession of a person shall be specified by law.
Tunisia <sup>41</sup>	No	<b>Yes</b> <b>Article 6:</b> All citizens have the same rights and the same duties. They are equal before the law. Article 7: The citizens exercise the plenitude of their rights in the forms and conditions established by the law. The exercise of these rights cannot be limited except by a law enacted for the protection of others, the respect for the public order, the national defence, the development of the economy, and social progress.	Article 14 recognises <b>the right to property</b> , which is exercised within the limits established by the law.
Uganda <sup>42</sup>	<b>Yes</b> Article 2(2) and 21(2)	<b>Yes</b> Article 21(1)	<b>Land rights!!!</b> Article XIV refers to the state objective that all Ugandans enjoy rights and opportunities to (...) <b>decent shelter</b> . Article 26(1) states that every person has the <b>right to own property</b> , either individually or in association with others. Article 31(2): "Parliament shall make appropriate laws for the protection of <b>the rights of widows and widowers to inherit the property</b> of their deceased spouses ...".

<sup>40</sup> <http://www.parliament.go.th/files/library/b05-b.htm> and [http://www.oefre.unibe.ch/law/icl/th00000\\_.html](http://www.oefre.unibe.ch/law/icl/th00000_.html)

<sup>41</sup> [http://www.oefre.unibe.ch/law/icl/ts00000\\_.html](http://www.oefre.unibe.ch/law/icl/ts00000_.html)

<sup>42</sup> <http://www.parliament.go.ug/Constitute.htm>

<b>COUNTRY</b>	<b>Prohibition of discrimination on basis of sex</b>	<b>Explicit recognition of women's equal rights</b>	<b>Recognition of right to land, housing and/or property</b>
<b>Zambia</b> <sup>43</sup>	<b>No</b> Article 23(4) of the Zambian Constitution allows discrimination in the area of customary law, family law and other areas such as adoption, marriage, divorce and inheritance.	<b>No</b> Article 11(1) recognises and declares every person in Zambia to be entitled to the fundamental rights and freedoms of the individual, whatever "his sex". However, the same article states that the entitlement of these rights and freedoms are subject to limitations contained in Part III related to Fundamental Rights and Freedoms. Linked to Article 23(4), this means that discrimination against women in areas related to property and inheritance rights is allowed.	Article 16 provides for <b>protection against deprivation of property</b> , which may only be carried out under an Act of Parliament providing for payment of adequate compensation.
<b>Zimbabwe</b> <sup>44</sup>	<b>No</b> Section 23(3)(a) allows discrimination in the area of customary law, family law and other areas such as adoption, marriage, divorce and inheritance.	<b>No</b>	Article 16 provides for <b>protection against deprivation of property</b> , which may only be carried out under an Act of Parliament providing for payment of adequate compensation.

<sup>43</sup> [http://www.oefre.unibe.ch/law/icl/za00t\\_\\_\\_\\_.html](http://www.oefre.unibe.ch/law/icl/za00t____.html)

<sup>44</sup> <http://www.parlzim.gov.zw/Resources/Constitution/constitution.html>

