

# CHAPTER ONE

## INTERNATIONAL LAW

### 1.1 Introduction

**H**uman rights are laid down in the following international instruments:<sup>7</sup>

*declarations and recommendations:*

Generally, Declarations and Recommendations are documents of intent, which in most cases do not create legally binding obligations on the countries that have signed them. A declaration and/or recommendation may gain the force of binding law if its contents are widely accepted by the international community. It then achieves the status of customary international law. The Universal Declaration on Human Rights of 1948 is an example of a Declaration, of which a large part has gained the force of binding (customary) international law.

*conventions, covenants and treaties:*

Conventions, Covenants and Treaties are international legal instruments, which legally bind the countries that have signed and ratified them. After country representatives have signed a treaty, their head of state or government has to approve. Upon such approval, the signed treaty is ratified. By ratifying a treaty/convention, a State accepts a solemn responsibility to apply all obligations embodied in the treaty and to ensure that its national laws are compatible with these international obligations, in a spirit of good faith. The State Party therefore becomes accountable to the international community, to other States Parties, and to its own citizens and other residents in its territories. If a State has not signed and ratified a treaty, it can still accede to the treaty at a later date. The State Party is then bound by the same obligations.

Covenants, conventions and treaties can be bilateral (between two countries) or multilateral (between more than two countries). If concluded under the auspices of the United Nations, they are first adopted, by resolution, by the General Assembly and then opened for both signature and ratification. All treaties entered into by member states to the UN are registered with the UN Secretariat. In some countries, a ratified treaty becomes immediately applicable at national level, but in most countries treaty obligations must be transformed into national legislation.

*resolutions:*

Resolutions are documents without legally binding force (except for the resolutions of the UN Security Council). However, as they are usually adopted by UN bodies, they can carry considerable weight and often are much more detailed on one particular subject than other international instruments.

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<sup>7</sup> An overview of international human rights instruments can be found on the web site of the UN High Commissioner for Human Rights (UNHCHR): [www.unhchr.ch](http://www.unhchr.ch)

### *agendas and platforms for action*

In the past decade, an increasing phenomenon has been that a Platform for Action or Agenda is attached to a Declaration. The status of such documents in international law is thought to be the same as the Declarations they are attached to: they are considered to constitute “soft” law, generally laying down commitments and intentions that have a political rather than legally binding status.

A Platform for Action or an Agenda emerges from a political process and is agreed to by a large majority of States; it therefore carries political and moral persuasion.<sup>8</sup>

In the following Section, the most important international human rights instruments that contain provisions related to the (equal) right to land, housing and property are examined. As can be seen, except for resolutions on women’s equal right to land, the individual right to land is not explicitly laid down in international instruments. However, the human right to property includes immovable property such as land, and a viable and inextricable link exists between land and the human right to adequate housing. Women’s equal right to inherit land and housing can be found in a General Comment of the Human Rights Committee, and various resolutions. It also can be deduced from the provisions on the right to equality and on non-discrimination in international instruments.

Section 1.3 will examine whether the Governments of Uganda, Tanzania and Kenya have signed and ratified the most relevant international instruments. If they have, are the obligations in these international instruments translated into national law and implemented at national and local level? In Section 1.4, the reports from monitoring committees (established under each major human rights convention/treaty) will help in answering that question.

## 1.2 Relevant international instruments

### **DECLARATIONS:**

*The Universal Declaration on Human Rights (UDHR)*<sup>9</sup>, adopted in 1948 :

- stipulates that everyone is entitled to the rights and freedoms laid down in the Declaration, without discrimination, such as on the ground of sex (Article 2);
- entitles women and men to equal rights before and during marriage and at its dissolution (Article 16);
- recognises every person’s right to own property alone as well as in association with others and stipulates that “[n]o one shall be arbitrarily deprived of his property” (Article 17);
- confirms the right to an adequate standard of living, including housing (Article 25).

<sup>8</sup> Centre on Housing Rights and Evictions (COHRE), *Sources 5: Women and Housing Rights*, Geneva, 2000. p. 60.

<sup>9</sup> Universal Declaration of Human Rights, adopted on 10/12/1948 by General Assembly Resolution 217 A (III), UN GAOR, 3<sup>rd</sup> Session. The gender-biased language of the older international human rights instruments has been interpreted as automatically including women.

The UDHR is the foundation upon which the international system for protection and promotion of human rights has been built.<sup>10</sup> Commitment to the provisions of the UDHR and other instruments relating to human rights was reaffirmed in the *Vienna Declaration and Programme of Action* of 1993<sup>11</sup>. In addition, many of the provisions of the UDHR have come to be regarded as expressing customary international law and having some binding force.<sup>12</sup> The Vienna Declaration and Programme of Action of 1993 emphasise a holistic vision, integrating economic, social and cultural rights with civil and political rights. In addition, these documents explicitly recognise that human rights of women and of the girl-child are an inalienable, integral and indivisible part of human rights.

On September 13, 2000 the *UN Millennium Declaration* was adopted.<sup>13</sup> While resolving to fully respect and uphold the Universal Declaration of Human Rights, several additional objectives are added. One of the fundamental values considered essential to international relations, listed in Paragraph 6, is gender equality: “*The equal rights and opportunities of women and men must be assured.*” Under Paragraph 19, the Member States resolve to promote gender equality and the empowerment of women.

The *Declaration on Cities and Other Human Settlements in the New Millennium* was adopted on 9 June 2001 at the General Assembly’s 25<sup>th</sup> Special Session for an Overall Review and Appraisal of the Implementation of the Outcome of the UN Conference on Human Settlements (Habitat II).<sup>14</sup> The contents of this Declaration will be examined below, as it is linked to the Habitat Agenda.

#### **COVENANTS/CONVENTIONS/TREATIES:**

The *International Covenant on Civil and Political Rights (ICCPR)*<sup>15</sup> adopted in 1966:

- stipulates that the rights recognised in this Covenant are to be respected and ensured without discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2(1));
- requires States Parties to ensure the equal right of men and women to enjoy all rights laid down in it (Article 3);
- confirms that all persons shall be equal before the courts and tribunals (Article 14);
- confirms the right of everyone to be recognised everywhere as a person before the law (Article 16);
- prohibits arbitrary or unlawful interference with a person’s privacy, family and home and recognises the right of every person to protection of the law against such interference or attacks (Article 17);
- requires States Parties to take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution (Article 23 (4));
- confirms that everyone is entitled to the equal protection of the law, without discrimination Article 26).

<sup>10</sup> In particular the two international covenants adopted in 1966 (the first on civil and political rights, and the second on economic, social and cultural rights) form the “International Bill of Rights, together with the UDHR. P. Alston (ed), *The United Nations and Human Rights: A Critical Appraisal*, 1992, p. 454.

<sup>11</sup> Vienna Declaration and Programme of Action, Report of the World Conference on Human Rights, Vienna, 14-25 June 1993, A/CONF.157/23.

<sup>12</sup> Tim Hiller, *Principles of Public International Law*, London, 1999, pp. 291 and 295.

<sup>13</sup> United Nations Millennium Declaration, adopted as General Assembly Resolution A/55/L.2 on 8 September 2000.

<sup>14</sup> Declaration on Cities and Other Human Settlements in the new Millennium, adopted on 9 June 2001 during the twenty-fifth special session of the General Assembly for an overall review and appraisal of the implementation of the outcome of the United Nations Conference on Human Settlements (Habitat II). See Report of the Secretary-General, 16 October 2001, A/56/477.

<sup>15</sup> International Covenant on Civil and Political Rights, adopted on 16/12/1966 by General Assembly Resolution 2200 (XXI), Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force 23/3/1976). A total of 148 States is Party to this Covenant.

Under Part IV of the Covenant, a Human Rights Committee was established. This Committee monitors the implementation of the Covenant by the States Parties. Through its reports and through general comments, the Committee also helps interpret the different provisions in the Covenant. One such general comment, General Comment 28, specifically interprets Article 3 of this Covenant, on the equality of rights between men and women.<sup>16</sup> The Human Rights Committee states that *“Article 3 implies that all human beings should enjoy the rights provided for in the Covenant, on an equal basis and in their totality. The full effect of this provision is impaired whenever any person is denied the full and equal enjoyment of any right. Consequently States should ensure to men and women equally the enjoyment of all rights provided for in the Covenant.”*<sup>17</sup>

State parties are required to take steps to remove obstacles to the equal enjoyment of such rights, to educate the population and state officials, and to adjust domestic legislation. Protective measures alone are not enough: State parties need to adopt positive measures *“so as to achieve the effective and equal empowerment of women.”*<sup>18</sup> The Committee notes that inequality in the enjoyment of rights by women is often deeply embedded in tradition, culture and religion. It emphasises that *“States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all Covenant rights”*.<sup>19</sup>

The right of *everyone* to be recognised everywhere as a person before the law implies *“that the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground. It also implies that women may not be treated as objects to be given together with the property of the deceased husband to his family.”*<sup>20</sup>

On the requirement to treat men and women equally in regard to marriage, the Committee states that polygamy is an inadmissible discrimination against women, as it is incompatible with the principle of equality of treatment. It also emphasises that States must ensure that the matrimonial regime contains equal rights and obligations for both spouses, among others with regard to the ownership or administration of property, *“whether common property or property in the sole ownership of either spouse”*.<sup>21</sup> Upon the dissolution of marriage, the decisions with regard to property distribution should be the same for men and for women, and *“women should also have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses.”*<sup>22</sup>

The Optional Protocol to this Covenant enables the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights enshrined in the Covenant.<sup>23</sup>

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<sup>16</sup> CCPR General Comment 28 on “Equality of Rights between Men and Women” (Article 3), adopted on 29 March 2000, CCPR/C/21/Rev.1/Add.10. This is an update of General Comment 4, adopted in 1981.

<sup>17</sup> Paragraph 2 of General Comment 28.

<sup>18</sup> Paragraph 3.

<sup>19</sup> Paragraph 5.

<sup>20</sup> Paragraph 19.

<sup>21</sup> Paragraphs 24 and 25.

<sup>22</sup> Paragraph 26.

<sup>23</sup> The Protocol entered into force on 23/3/1976 and 101 States have become parties.

The *International Covenant on Economic, Social and Cultural Rights*<sup>24</sup> (ICESCR) adopted in 1966:

- requires States Parties to take steps - to the maximum of their available resources - to achieve progressively the full realisation of the rights recognised in this Covenant (Article 2(1));
- prohibits discrimination of any kind as to race, colour, sex, religion, political or other opinion, national or social origin, property, birth or other status (Article 2(2));
- obliges the States Parties to “undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant” (Article 3);.
- recognises the right to adequate housing (Article 11(1)). Article 11(1) states: “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions...”

The Committee on Economic, Social and Cultural Rights is the body that monitors implementation of this Covenant, and through its reports and general comments helps interpret its provisions. In 1991, the Committee on Economic, Social and Cultural Rights issued its General Comment No. 4 on the Right to Adequate Housing, in which it explained that one of the main elements of the human right to an adequate standard of living is the right to adequate housing.<sup>25</sup> In the same General Comment the Committee explains that the right to adequate housing consists of the following elements: (a) legal security of tenure;<sup>26</sup> (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility;<sup>27</sup> (f) location; and (g) cultural adequacy.<sup>28</sup>

Unlike the Human Rights Committee, as established under the ICCPR, the Committee on Economic, Social and Cultural Rights cannot (yet) receive and consider communications from individuals claiming to be victims of violations of any of the rights enshrined in the Covenant. A Draft Optional Protocol to the ICESCR - that enables the Committee to receive and consider individual complaints - has been ready since 1998, but is still going through a process of comments from States parties to the ICESCR.<sup>29</sup> However, NGOs can submit “shadow reports” to the Committee, as will be further discussed in the next Section.

<sup>24</sup> International Covenant on Economic, Social and Cultural Rights, adopted on 16/12/1966, General Assembly Resolution 2200 (XXI), 21<sup>st</sup> Session, Supp. No. 16, U.N. Doc. A/6316 (1966), 993, U.N.T.S. 3, entered into force on 3/1/1976. By April 2002, 145 States had become parties.

<sup>25</sup> See UN Doc. EC/12/1991/41 (1991).

<sup>26</sup> The Committee emphasises that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats, no matter what type of tenure they enjoy.

<sup>27</sup> The Committee makes clear that increasing access to land by landless or impoverished segments of society should constitute a central goal within many State parties. Access to land is described as an entitlement.

<sup>28</sup> Par. 8 of General Comment No. 4 of 1991.

<sup>29</sup> See note 10, p. 474.

The *Convention on the Elimination of All Forms of Discrimination Against Women*<sup>30</sup> (CEDAW) adopted in 1979:

- **defines discrimination against women as** “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field” (Art. 1);
- **obliges States Parties to** “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women” (Article 2 (f) );
- **requires States Parties to**, “by all appropriate measures, including legislation, ensure full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men” (Article 3).
- **states that, to achieve the elimination of prejudices and customary and all other practices based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women, States Parties undertake to take all appropriate measures to modify the social and cultural patterns of conduct of men and women (Article 5(a)).**

Provisions in this Convention that deal specifically with women’s access to economic resources require States Parties:

- **to take all appropriate measures to eliminate discrimination against women in areas of economic and social life to ensure women's equal right to bank loans, mortgages and other forms of financial credit (Article 13);**
- **to undertake to ensure rural women's right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications (Article 14(2)(h));**
- **to accord women equality with men before the law, and equal rights to conclude contracts and administer property as well as equal treatment at court procedures, and that all contracts directed at restricting the legal capacity of women shall be deemed null and void (Article 15).**

With respect to all matters relating to marriage and family relations, States Parties shall:

- take “all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (...)
- the same rights and responsibilities during marriage and at its dissolution;
  - the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.” (Article 16 (l) (c) and (h)).

CEDAW’s monitoring body, the Committee on the Elimination of Discrimination Against Women, issued a General Recommendation in 1994 on “Equality in Marriage and Family Relations”.<sup>31</sup>

<sup>30</sup> Convention on the Elimination of All Forms of Discrimination Against Women, adopted on 18/12/1979, General Assembly Resolution 34/180, U.N. G.A.O.R., 34<sup>th</sup> Session, Supp. No. 46, U.N. Doc. A/34/36 (1980), entered into force 3/9/1981. By April 2002, 168 States had become parties.

<sup>31</sup> General Recommendation No. 21, 13<sup>th</sup> Session, 1994, available at: <http://www.un.org/womenwatch/daw/cedaw/recomm.htm>

On women's equal right to conclude contracts, the Committee states:

*“When a woman cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband's or a male relative's concurrence or guarantee, she is denied legal autonomy. Any such restriction prevents her from holding property as the sole owner.” (...)* Such restrictions seriously limit the woman's ability to provide for herself and her dependants.”<sup>32</sup>

The Committee confirms that the right to own, manage, enjoy and dispose of property is essential to women's right to enjoy financial independence, and, in many countries, is critical to women's ability to earn a livelihood and provide adequate housing and nutrition for themselves and their families.<sup>33</sup> On the distribution of property upon the dissolution of a marriage or the death of a family relative, the Committee states:

*“(...) any law or custom that grants men a right to a greater share of property at the end of a marriage or de facto relationship, or on the death of a relative, is discriminatory and will have a serious impact on a woman's practical ability to divorce her husband, to support herself or her family and to live in dignity as an independent person.”*<sup>34</sup>

On October 6, 2000, an Optional Protocol to CEDAW was adopted. By ratifying the Optional Protocol, a State Party recognises the competence of the Committee on the Elimination of Discrimination Against Women to receive and consider complaints from individuals or groups within its jurisdiction.<sup>35</sup> As with the other committees, states that are party to CEDAW also have to report to the Committee on the implementation of CEDAW in their country. Likewise, NGOs can submit shadow reports to the Committee.<sup>36</sup>

Another avenue by which women can draw international attention to cases of gender-based discrimination is to send individual or group communications to the UN Commission on the Status of Women. The focus of this Commission is on emerging trends and patterns of discrimination against women and to develop policy recommendations against gender-based discrimination. It cannot take action on individual complaints.<sup>37</sup>

The *Convention on the Rights of the Child (CRC)*<sup>38</sup>, adopted in 1989:

- defines child as “every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.” (Article 1);
- prohibits arbitrary or unlawful interference with a child's privacy, family or home and unlawful attacks on his or her honour and reputation. (Article 16(1));
- recognises the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (Article 27).

<sup>32</sup> Paragraph 7, General Recommendation No 21.

<sup>33</sup> Paragraph 26, General Recommendation No 21.

<sup>34</sup> Paragraph 27, General Recommendation No 21.

<sup>35</sup> Optional Protocol to CEDAW, adopted by General Assembly Resolution 54/4 on 22 December 2000. Available in electronic form on: <http://www.un.org/womenwatch/daw/cedaw/protocol/index.html>.

As of April 2002, 30 States had become party to the Protocol.

<sup>36</sup> See the next section for more details.

<sup>37</sup> See note 10, p. 479. Address of UN Commission on the Status of Women: c/o Division for the Advancement of Women, Room DC2-1220, P.O. Box 20, United Nations, New York, N.Y. 10017, U.S.A.

<sup>38</sup> Convention on the Rights of the Child, adopted on 20/11/1989 by General Assembly Resolution 44/25, U.N. Doc. A/44/25, entered into force on 2/9/1990. As of April 2002, 191 States were party to this Convention.

The Committee on the Rights of the Child examines the progress made by State Parties in achieving the realisation of the children's rights as laid down in this Convention. To this end, States Parties are required to send reports on the measures undertaken for the implementation of these rights.<sup>39</sup>

The *African Charter on Human & People's Rights* (ACHPR)<sup>40</sup>, adopted in 1981:

- stipulates that every individual is entitled to the enjoyment of the rights and freedoms laid down in the Charter, without distinction of any kind, such as a person's sex (Article 2);
- instructs States Parties to undertake to adopt legislative or other measures to give effect to these rights and freedoms (Article 1).
- recognises equality before the law and equal protection of the law for every individual (Article 3);
- at the same time, it gives every individual the duty to treat others without discrimination (Article 28);
- another duty for every individual is to preserve the "positive" African cultural values in the spirit of tolerance, dialogue and consultation (Article 29(5));
- recognises the family as the natural unit and basis of society, the "custodian of morals and traditional values" that needs to be protected (Article 18(1));
- at the same time, it requires States Parties to ensure that "every" form of discrimination against women is eliminated and that the rights of women and children are protected (Article 18 (2) and (3));
- obliges States Parties to promote and ensure the respect of the rights and freedoms contained in the Charter (Article 25).

On the one hand, the family as the natural unit and basis of society and the "*custodian of morals and traditional values*" has to be protected by the State. On the other hand, Article 18(2) and (3) makes clear that the States Parties have to ensure that "*every*" form of discrimination against women is eliminated and that the rights of women and children, as stipulated in international instruments, are protected.<sup>41</sup> Thus, the possibility of considering an unequal relationship between men and women - as often found in customary laws and practices today - as a "traditional value", is firmly ruled out: "*every*" form of discrimination against women is to be eliminated and can therefore not constitute a traditional value. Moreover, the duty to preserve "*positive*" African cultural values in the spirit of tolerance, dialogue and consultation, as laid down by Article 29(7), seems to indicate that not all African values have to be preserved and that some cultural values that are not seen as "*positive*" may change over time.

Various human rights organisations have criticised the lack of specific provisions regarding women's equal rights in the African Charter, and have lobbied for an additional protocol to the Charter on women's rights. A Draft Protocol to the Charter was adopted by the African Commission on Human and People's Rights in November 2000, and was subsequently sent to the OAU General Secretariat for "appropriate action." In order for the Protocol to be adopted, it needs to be submitted to the OAU Assembly.<sup>42</sup> The Draft Protocol includes provisions on

<sup>39</sup> Article 44 CRC.

<sup>40</sup> African Charter on Human and People's Rights, adopted on 17/6/1981 by the Eighteenth Assembly of the Heads of State and Government of the Organisation of African Unity, entry into force on 21/10/1986, ratified by thirty-five states.

<sup>41</sup> Article 18(3). Interesting here is the word of "*every*" form of discrimination; this creates obligations upon States Parties to eliminate every form of discrimination against women and not merely discrimination based on sex. As no exceptions from this requirement are included, this creates a rather absolute obligation.

<sup>42</sup> Federation of Women's Lawyers Kenya (FIDA-K), *Setting the Pace, Annual Report on the Legal Status of Kenyan Women*, Nairobi, 2000, p. 40.



the prohibition of polygamy, on women's equal rights in, during and upon dissolution of marriage, the obligation to register all marriages and spouses' equal rights to freely acquire, administer and manage their own property, on women's equal right to adequate housing, women's right to sustainable development and the right of widows to inheritance.<sup>43</sup> This Draft Protocol will be deliberated upon in Addis Abeba in May 2002.

### ***PLANS OF ACTION AND AGENDAS***

At the Fourth World Conference on Women in Beijing in 1995, the *Beijing Declaration and the Platform for Action (PFA)* were adopted.<sup>44</sup> Governments and the international community thus agreed to a common development agenda with gender equality and women's empowerment as underlying principles.<sup>45</sup> More specifically, in the *Beijing Declaration* the participating Governments:

reaffirm their commitment to

- the equal rights and inherent human dignity of women and men (Pars. 8 and 36);
- ensure the full implementation of women's and girl's human rights as an inalienable, integral and indivisible part of all human rights and fundamental freedoms (Par. 9);

are convinced that

- poverty eradication requires full and equal involvement and participation of women and men as agents and beneficiaries of people-centred sustainable development, and requires equal opportunities for women to do so (Par. 16);
- the full participation of women in the design, implementation and monitoring of gender-sensitive policies and programmes is essential to the empowerment and advancement of women (par. 19);
- the participation and contribution of women's groups, networks and other NGOs and CBOs and other actors of civil society, in cooperation with Governments while fully respecting their autonomy, is important to the effective implementation and follow-up of the Platform for Action (Par. 20);

are determined to:

- take all necessary measures to eliminate all forms of discrimination against women and the girl child and remove all obstacles to gender equality and the advancement and empowerment of women (Par. 24);
- ensure equal access for all women to productive resources (Pars. 26 and 35);

The *Platform For Action* aims at accelerating the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women<sup>46</sup> and at removing all the obstacles to women's active participation in all spheres of public and private life through a full and equal share in economic, social, cultural and political decision-making.<sup>47</sup> It also identifies 12 special concerns - areas of particular urgency that stand out as priorities for action. Attached to these "critical areas" are strategic objectives, and actions to be taken by governments, regional and international organisations, the private sector, NGOs and other actors of civil society. The critical areas are:

<sup>43</sup> Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, CAB/LEG/66.6/Rev.1, Articles 6, 15, 18, and 19.

<sup>44</sup> Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (United Nations publication, Sales No. E.96.IV.13), resolution 1, Annex II.

<sup>45</sup> Report of the Ad Hoc Committee of the Whole of the twenty-third special session of the General Assembly, Supplement No. 3(A/S-23/10/Rev. 1), paragraph 53.

<sup>46</sup> Adopted at the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi, 15-26 July 1985. United Nations publication, Sales No. E.85.IV.10, chap. I, sect. A.

<sup>47</sup> Paragraph 1, Platform for Action.

- A. Women and Poverty;<sup>48</sup>
- B. Education and training of women;
- C. Women and health;
- D. Violence against women;
- E. Women and armed conflict;
- F. Women and the economy;<sup>49</sup>
- G. Women in power and decision-making;<sup>50</sup>
- H. Institutional mechanisms for the advancement of women;<sup>51</sup>
- I. Human rights of women;<sup>52</sup>
- J. Women and the media;
- K. Women and the environment;
- L. The girl child.<sup>53</sup>

Some of the specific statements and actions of the PFA are:

- reaffirms that all human rights are universal, interdependent and interrelated and that women's human rights are an inalienable, integral and indivisible part of universal human rights; (Par. 213);
- states that the full and equal enjoyment of all human rights by women and girls is a priority for Governments and the UN and is essential for the advancement of women. Governments must work actively to promote and protect these rights (Pars. 213 and 215);
- commits Governments to remove all obstacles for women in obtaining affordable housing and access to land (Par. 58m);
- requests Governments to undertake legislative and administrative reforms to give women equal access to economic resources, and accord them the right to inherit and own land and other property (Pars. 61(b) and 165(e));
- instructs Governments to enact and enforce legislation guaranteeing equal rights to succession and inheritance to girls. (Par. 274(d));
- requires Governments to facilitate rural women's equal access to and control over productive resources, land, credit, capital and property rights (Par. 166(c));
- requests Governments to set specific targets to reach gender balance in all governmental and public administration positions (Par. 190(a)).

<sup>48</sup> Strategic Objectives attached to this area: (1) review, adopt and maintain macro-economic policies and development strategies that address the needs and efforts of women in poverty; (2) revise laws and administrative practices to ensure women's equal rights and access to economic resources; (3) provide women with access to savings and credit mechanisms and institutions; and (4) develop gender-based methodologies and conduct research to address the feminisation of poverty.

<sup>49</sup> Strategic objectives attached to this area: (1) promote women's economic rights and independence; (2) facilitate women's equal access to resources, employment, markets and trade; and (3) provide business services, training, access to markets, information and technology, particularly to low-income women.

<sup>50</sup> Strategic objectives attached to this area: (1) take measures to ensure women's equal access to and full participation in power structures and decision-making; and (2) increase women's capacity to participate in decision-making and leadership.

<sup>51</sup> Strategic objectives attached to this area: (1) create or strengthen national machineries and other governmental bodies; (2) integrate gender perspectives in legislation, public policies, programmes and projects; and (3) generate and disseminate gender-disaggregated data and information for planning and evaluation.

<sup>52</sup> Strategic objectives attached to this area: (1) promote and protect the human rights of women, through the full implementation of all human rights instruments, especially CEDAW; (2) ensure equality and non-discrimination under the law and in practice; (3) achieve legal literacy.

<sup>53</sup> Some of the strategic objectives attached to this area: (1) eliminate all forms of discrimination against the girl child; (2) eliminate negative cultural attitudes and practices against girls; (3) promote and protect the rights of the girl child and increase awareness of her needs and potential; and (4) eliminate discrimination against girls in education, skills development and training.

Five years later, at the Beijing + 5 Conference in June 2000, a *Political Declaration* and *Further Actions and Initiatives to implement the Beijing Declaration and Platform For Action* were adopted.<sup>54</sup> In the *Political Declaration*:

- the commitments to the goals and objectives in the Beijing Declaration and PFA are reaffirmed;
- the role and contribution of civil society, in particular NGOs and women's organisations, in the implementation of the Beijing Declaration and PFA, is recognised, and their further participation encouraged;
- the need for men to take joint responsibility with women for the promotion of gender equality is emphasised;
- Governments pledge to ensure the realisation of societies in which both women and men work together towards a world where every individual can enjoy equality, development and peace in the 21st century.

The *Further Actions and Initiatives to implement the Beijing Declaration and Platform for Action* include an overview of achievements in and obstacles to the implementation of the Platform for Action. They follow the 12 critical areas for priority action, among which are:

***Critical Area A: Women and Poverty***

*Some achievements:* \* increasing recognition of gender dimensions of poverty; \* recognition that gender equality is one of the factors of specific importance for eradicating poverty, particularly in relation to the feminisation of poverty.

*Some obstacles:* \* widening economic inequality between women and men; \* gender inequalities and disparities in economic power-sharing; \* unequal access to, and control over, capital, particularly land and credit and access to labour markets; \* harmful, traditional and customary practices.

***Critical Area F: Women and the Economy***

*One of the achievements:* \* some Governments have taken measures to address women's economic and social rights, and equal access to and control over economic resources.

*One of the obstacles:* \* in some countries, women's full and equal property rights are not yet recognised by law.

***Critical Area I: Human Rights of Women***

*Some achievements:* \* legal reforms in many countries to prohibit all forms of discrimination; \* in various countries discriminatory provisions have been eliminated in civil, penal and personal status law governing marriage and family relations, all forms of violence, women's property and ownership rights.

*Some obstacles:* \* gender discrimination continues to cause threats to women's enjoyment of their human rights. \* many countries have not yet implemented fully the provisions of the CEDAW; \* discriminatory legislation and harmful traditional practices and negative stereotyping of women and men still persist; \* legislative and regulatory gaps, as well as lack of implementation and enforcement of legislation and regulations perpetuate inequality and discrimination; \* insufficient access to the law, resulting from illiteracy, lack of legal literacy, lack of information and resources, gender bias and insensitivity; \* lack of awareness on the parts of law enforcement officials and the judiciary of the human rights of women.

<sup>54</sup> Twenty-third special session of the General Assembly, Supplement No. 3 (A/S-23/10/Rev. 1).

Some of the current challenges that affect the full implementation of the Beijing Declaration and Platform for Action are listed as: \* the impact of globalisation and structural adjustment programmes; \* the high costs of external debt servicing; and \* the decline of international trade in several developing countries. These have worsened the existing obstacles to development, aggravating the feminisation of poverty.

The *Further Actions and Initiatives* are categorised in actions and initiatives on national and international level, and in responsible actors (Governments, the private sector, civil society, and regional and international organisations).

Actions and initiatives to be taken by *Governments* include:

- draft, adopt and implement policies that promote and protect women's enjoyment of all human rights and create an environment that does not tolerate violations of the rights of women and girls (Paragraph 68 (a));
- review legislation and remove discriminatory provisions as soon as possible, preferably by 2005; (Paragraph 68(b));
- develop, review and implement laws and procedures to prohibit and eliminate all forms of discrimination against women and girls (Paragraph 68(f));
- ensure that national legislative and administrative reform processes, including those linked to land reform, decentralisation and reorientation of the economy, promote women's rights, particularly those of women living in poverty, and take measures to promote and implement those rights through women's equal access to and control over economic resources, including land, property rights, right to inheritance, credit and traditional saving schemes, such as women's banks and co-operatives" (Paragraph 68(h)).

Further actions to be taken by *Governments, the private sector, NGOs and other actors of civil society* include:

- encourage the creation of training and legal literacy programmes which build and support the capacities of women's organisations to advocate for women's and girl's human rights (Paragraph 78(a));
- encourage collaboration among Governments, non-governmental organisations, grass-roots organisations and traditional and community leaders for the promotion and protection of all human rights and fundamental freedoms of women and girls, the dignity and worth of the human person and equal rights for women and men (Paragraph 78(b)).

Further actions to be taken at the national and international levels, by *Governments, regional and international organisations, including the UN system, and international financial institutions and other actors*, include:

- take steps to avoid and refrain from measures that create obstacles to the full enjoyment of women's and children's human rights (Par. 90);
- adopt measures to ensure that the work of rural women is recognised and valued (Par. 94(e));
- improve knowledge and awareness of the remedies available for violations of women's human rights (Par. 98(a));
- implement poverty eradication programmes and evaluate, with the participation of women, their impact on the empowerment of women living in poverty, in terms of access to inheritance and access to and control over land, housing, income, micro-credit and other financial instruments and services, and introduce improvements to such programmes in the light of the above assessment (Par. 101(d)).

In June 1996, at the UN Conference on Human Settlements (Habitat II), the *Istanbul Declaration* and *The Habitat Agenda* were adopted.<sup>55</sup>

The *Declaration* states that Governments will ensure and enhance:

- gender equality in policies and programmes related to shelter and sustainable human settlements development;
- protection from discrimination and equal access to affordable housing for all, and
- access to land and credit.<sup>56</sup>

Among the Goals and Principles of the Habitat Agenda are listed:

- (a) adequate shelter for all; and (b) sustainable human settlements development in an urbanising world (Par. 25);
- the full realisation of human rights, particularly the human right to adequate housing (Par. 26);
- equitable human settlements are realised when:
  - \* all people, without discrimination of any kind, have equal access to housing and equal access to economic resources (including the right to inheritance, the ownership of land and other property) (Par. 27);
  - \* they provide equal opportunity for participation in public decision-making and equal access to mechanisms that ensure that rights are not violated (Par. 27);
- women's empowerment as fundamental to sustainable human settlements development (Par. 27).

Furthermore, “Adequate Shelter For All” and “Gender Equality” are two of the seven Commitments laid down in the Agenda.

Under Commitment A (Adequate Shelter For All), Paragraph 40(b) specifically commits governments to provide legal security of tenure and equal access to land to all people, including women and those living in poverty. Governments are also to undertake legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property, credit, natural resources and appropriate technology.



Photo: Wandia Seaforth

<sup>55</sup> Report of the United Nations Conference on Human Settlements (Habitat II), Istanbul 3-14 June 1996, 7 August 1996, Habitat Agenda, U.N. Doc. A./CONF.165/14.

<sup>56</sup> Paragraphs 7, 8 and 9 of the Istanbul Declaration.

Under Commitment D (Gender Equality), Paragraph 46 commits States to ensure gender equality in all aspects of human settlements, such as integration of gender perspectives in human settlements related legislation, policies, programmes and projects.

The Goals, Principles and Commitments are complemented by strategies for implementation. States are called upon to:

- promote awareness campaigns and education regarding women's legal rights to land ownership and inheritance (Par. 78 (b));
- to review legal and regulatory frameworks to ensure that women's equal rights are clearly specified and enforced (Par. 78 (c));
- to support community projects, policies and programs that aim to remove all barriers to women's access to affordable housing and property ownership, economic resources, infrastructure and social services and ensure the full participation of women in all decision-making processes; (Par. 78 (e) and
- to promote mechanisms for the protection of women who risk losing their homes and properties when their husbands die (Par. 78(g)).

In total, 37 paragraphs in the Habitat Agenda mention the constraints faced by women in obtaining access to secure and adequate shelter and ways to remove these constraints.<sup>57</sup>



Women lobbying for equal rights at the Habitat II Conference. Photo: UN-HABITAT

Five years after the Habitat II Conference, on 9 June 2001, the *Declaration on Cities and Other Human Settlements in the New Millennium* was adopted at the General Assembly's 25<sup>th</sup> Special Session for an Overall Review and Appraisal of the Implementation of the Habitat Agenda.<sup>58</sup>

The commitments made at the UN Conference on Human Settlements (Habitat II) in 1996 are reconfirmed in this Declaration, and progress in the implementation of the Habitat Agenda is welcomed. Paragraph 9 notes the growing awareness of the need to address the following issues in an integrated manner: poverty, homelessness, unemployment, lack of basic services, exclusion of women and of children and of marginalised groups, including indigenous communities, and social fragmentation.

Of the various *gaps and obstacles* that are recognised in this Declaration, the following are relevant for this study:

- the majority of people living in poverty still lack legal security of tenure for their dwellings (paragraph 17);
- political will, public information and awareness raising are insufficient (paragraph 18);
- many women still do not participate fully on the basis of equality in all spheres of society, while at the same time they suffer to a greater extent the effects of poverty (paragraph 20).

Under *further actions*, various commitments are made. The most relevant are:

- to reaffirm the goal of gender equality in human settlements development, and to promote gender equality and the empowerment of women as effective ways to combat poverty; (par. 44); and to promote changes in attitudes, structures, policies, laws and practices that form obstacles to gender equality (par. 32);
- to promote full and equal participation of women in policy formulation and implementation (pars. 32, 44);
- to promote greater security of tenure for the poor and vulnerable and to enable better access to information and good practices, including awareness of legal rights and remedies in case of violation (pars. 37 and 49);
- to empower local authorities, NGOs and other Habitat Agenda partners to play a more effective role in shelter provision, in particular through ensuring the effective role of women in decision-making (par. 38);
- to acknowledge, value and support the volunteer work and the work of community-based organisations and to intensify efforts to enhance the role of youth and civil society (pars. 42 and 53);
- to continue legislative and administrative and social reforms to give women "full and equal access to economic resources, incl. the right to inherit and own land and other property, credit, natural resources and appropriate technologies", and the "right to security of tenure and to enter into contractual agreements" (pars. 45 and 49);
- to promote equal access to housing finance, and support the savings mechanisms in the informal sector (par. 45);
- to intensify efforts at all levels against HIV/AIDS, particularly to formulate and implement appropriate policies and actions to address its impact on human settlements (par. 52);
- to strengthen institutional frameworks in order to extend micro-credit to those living in poverty, particularly the women, without collateral or security (par. 64).

<sup>57</sup> Paragraphs 15, 27, 28, 31, 37, 38, 40, 42, 43, 46, 48, 61(b), 63, 72, 75, 76(m), 78, 79, 81(j), 82(c), 83, 86(g), 93, 98, 115, 116, 117, 118, 119, 122, 123, 124, 141, 162, 182, 186 and 201.

<sup>58</sup> Supra note 14.

The Declaration also underlines that marriage must be entered into with the free consent of the intending spouses and that it should be an equal partnership between wife and husband.<sup>59</sup>

### **RESOLUTIONS:**

Since 1997, six Resolutions on women's (equal) rights to land, housing and property have been adopted by three different inter-governmental UN bodies:

- 1) **Resolution 1997/19** on "*Women and the right to adequate housing and to land, housing and property*", adopted by the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities;<sup>60</sup>
- 2) **Resolution 1998/15** on "*Women and the right to land, housing and property and adequate housing*", adopted by the same Sub-Commission;<sup>61</sup>
- 3) **Resolution 42/1** on "*Human rights and land rights discrimination*", adopted by the Commission on the Status of Women;<sup>62</sup>
- 4) **Resolution 1999/15** on "*Women and the right to development*" by the Sub-Commission on the Promotion and Protection of Human Rights;<sup>63</sup>
- 5) **Resolution 2000/13** on "*Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing*", adopted by the Commission on Human Rights;<sup>64</sup>
- 6) **Resolution 2001/34** on "*Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing*", adopted by the Commission on Human Rights on 23 April 2001;<sup>65</sup>
- 7) **Resolution 2002/49** on "*Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing*", adopted by the Commission on Human Rights on 23 April 2002.<sup>66</sup>

These Resolutions all express concern about discrimination faced by women with respect to acquiring and securing land, housing and property, whether this discrimination originates from gender-biased laws, policies and/or traditions. They reaffirm the equal rights of women and men and recognise that adequate remedies to deal with discrimination against women may require different treatment of women, based on a consideration of women's specific socio-economic context. Governments are urged to comply fully with all their international and regional obligations and commitments concerning women's equal rights to land, property,

<sup>59</sup> Paragraph 30, Declaration on Cities and Other Human Settlements in the New Millennium.

<sup>60</sup> Sub-Commission on the Prevention of Discrimination and Protection of Minorities, Resolution 1997/19, E/CN.4/Sub.2/RES/1997/19 (1997). This Sub-Commission was established by the Commission on Human Rights to undertake studies and to make recommendations to the Commission concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and to the protection of racial, national, religious and linguistic minorities, and to carry out any other functions entrusted to it by ECOSOC or the Commission on Human Rights (E/1371 of 1949). In July 1999, ECOSOC renamed this Sub-Commission into the Sub-Commission on the Promotion and Protection of Human Rights.

<sup>61</sup> Sub-Commission on the Prevention of Discrimination and Protection of Minorities, Resolution 1998/15, E/CN.4/Sub.2/RES/1998/15 (1998).

<sup>62</sup> Commission on the Status of Women, Resolution 42/1, E/CN.6/1998/12 (1998).

<sup>63</sup> Sub-Commission on the Promotion and Protection of Human Rights, Resolution 1999/15, E/CN.4/Sub.2/RES/1999/15 (1999).

<sup>64</sup> Commission on Human Rights, Resolution 2000/13, UN Doc. E/CN.4/2000/13, 17 April 2000.

<sup>65</sup> Commission on Human Rights, Resolution 2001/34, UN Doc. E/CN.4/2001/34, 23 April 2001.

<sup>66</sup> Commission on Human Rights, Resolution 2002/49, E/CN.4/2002.L.49, 23 April 2002.



inheritance, adequate housing including security of tenure and an adequate standard of living. They are also requested to ensure that women acquire training, education and information in all matters related to these rights. Moreover, Governments are urged to amend and/or repeal laws and policies which inhibit women's equal rights to land, property and housing, deny women security of tenure and equal access to loans and to encourage the transformation of customs and traditions which deny women these rights. Various UN bodies and organisations are requested to fully incorporate women's land, property and housing rights in their work, and the World Bank, IMF, WTO and OECD are called upon to take the human rights implications for women fully into account in their policies. Each Resolution reaffirms the substance and validity of and often further strengthens the previous Resolutions. While lacking the legally binding force of treaties, these Resolutions are still important normative standards of international human rights law which possess political legitimacy.<sup>67</sup> Resolution 2002/49 also requests the Special Rapporteur on adequate housing, who was appointed by the Commission on Human Rights in 2000, to submit a study on women and adequate housing.<sup>68</sup>

On 13 April 2000, the Commission on Human Settlements also adopted **Resolution 2000/5 on the right to development**.<sup>69</sup> In this Resolution, the Commission affirms the need to apply a gender perspective in the implementation of the right to development, and emphasises that the empowerment of women and their full participation on a basis of equality in all spheres of society is fundamental to development.

On 20 April 2001 the Commission on Human Rights adopted **Resolution 2001/28 on "adequate housing as a component of the right to an adequate standard of living"**.<sup>70</sup> In this Resolution, the Commission expresses concern about how the deterioration in the general housing situation disproportionately affects the poor, women and children and members of groups requiring special protection. It also requests the Special Rapporteur to further review how the right to adequate housing is interrelated with other human rights. It calls upon States to give full effect to housing rights, giving particular attention to the individuals, most often women and children, and communities living in extreme poverty, and to counter social exclusion and marginalisation of people who suffer from discrimination.

### 1.3 Status of Treaties in East Africa

Uganda, Tanzania and Kenya are parties to most major international human rights conventions that are relevant to women's equal right to land and housing.<sup>71</sup> Below is an overview of when each convention was signed, ratified or acceded to by the three states.<sup>72</sup>

<sup>67</sup> Supra note 10, p. 41.

<sup>68</sup> In his reports of 2001 and 2002, the Special Rapporteur, Miloon Kothari, already incorporated sections on women's equal rights to land, housing and property and made specific recommendations to Governments on the implementation of these rights. See for example pp. 17, 18 and 24 of his last report: UN Doc, E/CN.4/2002/59, 1 March 2002.

<sup>69</sup> Commission on Human Rights, Resolution 2000/5, adopted on 13 April 2000, E/CN.4/RES/2000/5.

<sup>70</sup> Commission on Human Rights, Resolution 2001/28, adopted on 20 April 2001, E/CN.4/RES/2001/28.

<sup>71</sup> The only exception is the 1966 Convention on the Elimination of Racial Discrimination, which was not signed by Kenya. Article 5(e)(iii) includes the right to housing for every person without distinction as to race, colour, national or ethnic origin. This Convention has not been listed in the current report, since its focus is mainly on racial discrimination and not on discrimination on the ground of sex.

<sup>72</sup> Treaties are usually *signed* by states representatives. After their signature is approved by the head of state or government of the signatory state, *ratification* of the treaty takes place. *Accession* means that a state becomes party to a treaty after the signatory phase has elapsed.

**Table 1.3.1 Status of most relevant treaties in East Africa**

TREATIES	UGANDA	TANZANIA	KENYA
International Covenant on Economic, Social and Cultural Rights (ICESCR)	acceded: 1987	acceded: 1976	acceded: 1972
International Covenant on Civil and Political Rights (ICCPR)	acceded: 1995	acceded: 1976	acceded: 1972
Optional Protocol to the ICCPR (1996)	acceded: 1995	not a party	not a party
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	signed: 1980 ratified: 1985	signed: 1980 ratified: 1985	acceded: 1984
Optional Protocol to CEDAW (2000)	not a party	not a party	not a party
African Charter on Human and People's Rights (ACHPR)	signed: 1986 ratified: 1986	signed: 1982 ratified: 1984	signed: no data ratified: 1992
Convention on the Rights of the Child (CRC)	signed: 1990 ratified: 1990	signed: 1990 ratified: 1990	signed: 1990 ratified: 1990

The only reservation that was made by any of the three countries while becoming party to one of these treaties was Uganda's reservation to the Optional Protocol to the ICCPR.<sup>73</sup>

In Uganda, Tanzania and Kenya (as in most countries with a British common law tradition), ratification of a treaty does not automatically make the provisions of the treaty applicable on national level.<sup>74</sup> Treaties thus need to be "domesticated" into national (also called: municipal) law before they can be applied and enforced. This is done through the enactment of national laws, which implement the treaty obligations.<sup>75</sup> Therefore, in order for Uganda, Tanzania and Kenya to implement their treaty obligations, national legislation needs to be adopted. In turn, the national laws need to be implemented at ground levels.

## 1.4 Implementation of treaty obligations

As briefly discussed in the previous Section, a treaty body or committee has been established under each of the main human rights treaties or conventions.<sup>76</sup> These committees provide

<sup>73</sup> The text of Uganda's reservation to this Optional Protocol reads: "The Republic of Uganda does not accept the competence of the Human Rights Committee to consider a communication under the provisions of Article 5(2) from an individual if the matter in question has already been considered under another procedure or international investigation or settlement". Tanzania and Kenya are not yet party to this Optional Protocol.

<sup>74</sup> Practice usually demands implementing legislation if the treaty: (a) changes or requires changes in domestic law; (b) confers new powers on the executive; or (c) imposes financial obligation upon the states. See Oscar Schachter, Mahomed Nawaz and John Fried, *Toward a wider acceptance of UN Treaties*, a UNITAR Study, 1971, p. 94 - 96. In addition to legislation, other appropriate measures, such as administrative, judicial, economic, social and educational measures, should also be taken. See *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, Principle No. 17, in: *Human Rights Quarterly*, vol. 9(2), May 1987, pp. 122-135.

<sup>75</sup> Uganda: see Article 123 of the 1995 Constitution. Tanzania: see Article 63(3)(e) of the 1977 Constitution. Kenya: no provision on implementing treaties through national legislation has been laid down in Kenya's Constitution.

<sup>76</sup> For the International Covenant on Economic, Social and Cultural Rights this is the *Committee on Economic, Social and Cultural Rights*. For the International Covenant on Civil and Political Rights this is the *Human Rights Committee*. For the Convention on the Elimination of All Forms of Discrimination Against Women this is the *Committee on the Elimination of Discrimination against Women*. For the African Charter on Human and People's Rights, this is the *African Commission on Human and People's Rights* and for the Convention on the Rights of the Child this is the *Committee on the Rights of the Child*.

“general comments” or “general recommendations” on how the provisions in each treaty should be interpreted.<sup>77</sup> In addition, the committees monitor the implementation of the treaty obligations by the States parties. States are required to report to the Committee established under each human rights treaty they are party to. Since most States are party to several human rights treaties, they need to report to various Committees. The initial report needs to be submitted within the first year (or second year, depending on which Committee) after a State has become Party. The report must describe the steps the State Party has taken, the progress that has been made, and the difficulties that have been encountered in implementing its treaty obligations at national level. After the initial report, periodic reports are to be submitted every four or five years (again, depending on which Committee the report needs to be submitted to).<sup>78</sup> These state reports are examined in public meetings, at which representatives of the government in question introduce the report and answer questions of the relevant Committee members. On the final day of the public session, the Committee adopts concluding observations, in which its main concerns are summarised and appropriate suggestions and recommendations to the State Party are made.<sup>79</sup> In addition to government reports, these Committees also accept “shadow” reports from NGOs whose governments are States Parties.<sup>80</sup> Women’s organisations can therefore also prepare and submit “shadow” reports to the Committees, in which they can report on problems in their country in the implementation of women’s equal rights. In addition, NGOs can present statements in the NGO pre-sessional hearings and/or attend the oral review of their country’s reports.<sup>81</sup>

Unfortunately, not that much information is available with regard to government reports from Uganda, Tanzania and Kenya, and comments or observations from the various Committees. The few reports that are available are examined below:

1. **UGANDA:** In 1995, the Committee on the Elimination of Discrimination Against Women considered the initial and second periodic reports that the Government of Uganda had submitted to it.<sup>82</sup> As can be seen in Chapter Three of this book, Uganda was about to adopt a range of laws in 1995, and the Committee’s consideration is therefore mostly outdated by now. Still relevant is the praise that the Government of Uganda received from the Committee with regard to the way it has involved non-governmental organisations in the preparation and evaluation of the report.<sup>83</sup> The Government’s policy of affirmative action in appointing women to high government positions was also commended.<sup>84</sup> Under principal subjects of concern, the Committee raised the issue of religious and cultural

<sup>77</sup> See for example General Comment No. 4 on “the Right to Adequate Housing”, issued by the Committee on Economic, Social and Cultural Rights in 1991 (as mentioned on page 18 of this report), or General Recommendation No. 21 on “Equality in Marriage and Family Relations”, issued by the Committee on the Elimination of Discrimination Against Women in 1994 (as mentioned on page 18-19 of this report).

<sup>78</sup> The main weakness here is that these treaty bodies are only allocated 2% of the total UN budget, which is insufficient for the committees to function effectively. In addition, a serious problem is posed by excessive delays by States Parties to submit their reports. See note 8, p. 457-458.

<sup>79</sup> See note 10, p. 473.

<sup>80</sup> A “shadow report” can be submitted as a reaction to a government report, or can be submitted at the same time.

<sup>81</sup> For more information on the procedures before the Committee on Economic, Social and Cultural Rights: [www.cohre.org/un\\_body3.htm](http://www.cohre.org/un_body3.htm).

<sup>82</sup> United Nations, General Assembly, Fiftieth Session, Supplement No. 38, A/50/38, Report of the Committee on the Elimination of Discrimination Against Women, fourteenth session, 1995. The Committee allowed States Parties to combine a maximum of two reports as an exception, in view of the large backlog it has to deal with. See note 10, p. 478.

<sup>83</sup> Ibid, paragraph 283.

<sup>84</sup> Ibid, paragraph 284.

practices, which perpetuate domestic violence and discriminate against women in the field of inheritance. The Committee recommended that laws be amended to empower women in matters of inheritance and succession.<sup>85</sup> It also expressed concern about the very high percentage of households headed by girl children.<sup>86</sup>

2. **TANZANIA:** In 1998, the same Committee on the Elimination of Discrimination Against Women considered Tanzania's combined second and third periodic reports.<sup>87</sup> In addition, a "Tanzania NGOs Shadow Report on CEDAW" was submitted by Tanzanian NGOs and taken into account by the Committee. The Committee commended the Government of Tanzania for its efforts and commitment in advancing the status of women and adopting several important amendments of the law. However, serious concern was expressed about the fact that customary laws still constituted obstacles to the advancement of women and their full integration in society. The Committee also noted that continued and sustained efforts were necessary to improve the living conditions of women and for women to achieve equality before the law.<sup>88</sup>
  
3. **KENYA:** In its concluding observations on the "review of the implementation of the Covenant in relation to States Parties which have failed to report", the Committee on Economic, Social and Cultural Rights considered Kenya in June 1993.<sup>89</sup> It was made clear in these observations that Kenya has not submitted a single report since it became party to the Covenant in 1976.<sup>90</sup> The Committee emphasised that non-performance by a State Party constitutes a violation of the International Covenant on Economic, Social and Cultural Rights. In addition, non-performance greatly hinders the Committee in the fulfilment of its functions. In the absence of a report from the Government of Kenya, the Committee based its observations on a variety of information from intergovernmental and non-governmental sources. It noted the political and economic turbulence in the country and the lack of targeted programmes designed to protect the vulnerable groups and members of society. It warned that if carefully targeted measures are not undertaken, current developments would lead to even greater deprivation of the economic and social rights of the Kenyan people. The absence in Kenya's legislation of the economic, social and cultural rights recognised by Kenya as a State Party to the Covenant is another concern of the Committee. With regard to the right to an adequate standard of living, the Committee expressed grave concern about the economic and fiscal policies of the Government of Kenya, which are not designed to secure this right for the overwhelming majority of the population. Practices of forced evictions without consultation, compensation or adequate resettlement were noted with great concern. The Committee requested the Government of Kenya to actively participate in a constructive dialogue with it as to how the obligations arising from the Covenant can be fulfilled in a more adequate manner. It called upon the Government to stop violating its obligations under the Covenant and start submitting its reports to the Committee.

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<sup>85</sup> Ibid, paragraph 341.

<sup>86</sup> Ibid, paragraphs 332 and 335. The Government of Uganda in its report to the Committee stated that 49% of households were headed by single young women. This percentage contradicts the statistics gathered by the United Nations. See above, under note 3.

<sup>87</sup> Committee on the Elimination of Discrimination Against Women, Pre-session Working Group of the Nineteenth session, New York, 15-19 June, 1998, item 5 of the provisional agenda, CEDAW/C/1998/II/CRP.1/Add. 6 of 19 June 1998.

<sup>88</sup> Ibid, page 2.

<sup>89</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights: Kenya. 03/06/93, E/C.12/1993.6 of June 3, 1993.

<sup>90</sup> Tanzania and Uganda have also failed to submit reports to this Committee so far.

The Government of Kenya did report to the Committee on the Elimination of Discrimination against Women.<sup>91</sup> In February 2000, this Committee commented on the third and fourth periodic reports submitted by the Government of Kenya.<sup>92</sup> The Federation of Women Lawyers (FIDA-Kenya) is planning to submit a shadow report on Kenya's implementation of CEDAW, but since the shadow report had not yet been submitted, the Committee's considerations are based only on the report of the government.

The Committee applauds the Government's efforts to (a) table a Draft National Policy on Gender and Development; (b) establish a Task Force to review all laws relating to women and children; (c) initiate a constitutional review process; (d) establish a Women's Bureau; and (e) propose to establish a National Council for Gender and Development.<sup>93</sup>

With regard to discrimination, the first observation made by the Committee is that the legal definition of discrimination in Kenya's legislation does not cover all aspects of discrimination as meant by the Convention.<sup>94</sup> Kenya's Constitution still allows for discrimination in personal law matters of adoption, marriage, divorce, burial or inheritance, and doesn't prohibit gender based discrimination in customary laws of a particular ethnic group. But the Committee then states: "However, this must be seen in context since Kenyan society is composed of various ethnic groups with different customs and practices."<sup>95</sup> This is a curious statement in view of the fact that discrimination against women is defined in the CEDAW as "*any* distinction, exclusion or restriction made on the basis of sex ...".<sup>96</sup> In its closing remark on the issue of discrimination the Committee also states: "However customary practices, lack of awareness on legal rights, lack of capacity-building opportunities, stereotyped roles and poverty still pose a major deterrence on women in attaining their full development and fundamental rights."<sup>97</sup> When discussing the law of domicile, which provides that a married woman acquires the domicile of the husband, the Committee states: "... the law of domicile touches the very essence of how the life of a woman is harped up. ... Upon marriage, she is subjected to the customary and personal laws governing her husband ... One may, therefore, assume that since she acquires the domicile of the husband, then the personal law of the husband governs her."<sup>98</sup>

With regard to the exercise and enjoyment of human rights and fundamental freedoms, the Committee observes that women in Kenya's laws have equal access as men in, inter alia, ownership of property.<sup>99</sup> This observation seems to overlook the fact that Kenya's Constitution still allows for gender based discrimination in personal law matters.

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<sup>91</sup> FIDA (Kenya) deserves a lot of credit here, as they raised funds for a computer and trained staff of the Women's Bureau and the Attorney-General Chambers about the CEDAW procedures.

<sup>92</sup> Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of CEDAW, third and fourth periodic reports of States parties: Kenya, CEDAW/C/KEN, 3-4.

<sup>93</sup> *Ibid*, page 3-4. More on whether these announced plans were actually implemented in Chapter Five.

<sup>94</sup> *Ibid*, page 5, paragraph (i).

<sup>95</sup> *Ibid*, page 5.

<sup>96</sup> Article 1 CEDAW. Italics by author.

<sup>97</sup> *Supra* note 79, page 6.

<sup>98</sup> *Ibid*, page 38.

<sup>99</sup> *Ibid*, page 7.

The right to vote, according to the Committee, is guaranteed to both women and men. The right to stand for election to all publicly elected bodies is guaranteed to both women and men, but it is noted that in practice the percentage of women in Parliament and local government councils is very low.<sup>100</sup> The total number of women's representation in the judiciary increased to 30% in 1998, with women forming 10% of the judges of appeal, 35% of the district magistrates but 0% of the chief kadhil kadhis (the Islamic court).<sup>101</sup>

The literacy rate in Kenya is noted as 67.4% for women compared to 82.8% for men.<sup>102</sup>

In its Conclusion, the Committee refers to the Task Force to review all laws relating to women as well as to the ongoing Constitutional Review Process.

Unfortunately, the contents of the report of the Task Force are not discussed, nor is the outcome of the Constitutional Review Process known yet. It will be interesting to read the next report of this Committee, which should include the findings of the Task Force and should also include the shadow report from Kenyan NGOs.

## 1.5 Conclusion

Housing and property rights are human rights laid down in different international human rights instruments. Individual land rights are inextricably linked to housing and property rights, and women's equal land rights are also enshrined in various resolutions. The equal right to inherit is implicit in the many provisions on non-discrimination and equality rights in the above listed human rights instruments. This right is explicit in General Comment 28 of the Human Rights Committee, General Recommendation 21 of the CEDAW Committee, the Beijing Platform for Action, the Habitat Agenda and both Further Actions and Initiatives, and in the various resolutions described above.

Uganda, Tanzania and Kenya are party to the human rights instruments that are most relevant to land, housing and property rights. The committees' reports help in assessing whether these countries have implemented their treaty obligations. A more specific assessment can be made upon a detailed examination of the countries' national legislation, policies and practices with regard to (women's) land and housing rights.

Chapters Three, Four and Five will examine the national legislation, policies and, where possible, practices in Uganda, Tanzania and Kenya will be looked into. Before that, the historical background of East Africa is described in Chapter Two.

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<sup>100</sup> Ibid, page 15-17. In 1998, the percentage of women in the National Assembly was 4.1%, while the percentage of women in local authorities was 8%. The source quoted here is the Electoral Commission, Kenya Gazette, 16<sup>th</sup> January 1998.

<sup>101</sup> Ibid, page 18-19.

<sup>102</sup> Data from 1994, Welfare Monitoring Survey II as quoted on page 25 of the Committee's report.