Women’s Rights to ‘Inheritance’ and Joint Control of Housing, Land and Property

The issue of ‘inheritance’ is especially vital for women because it relates to the underlying reasons for women’s disproportionately high levels of poverty and housing insecurity in the world today. The feminisation of poverty is
Women’s Rights to ‘Inheritance’ and Joint Control

Growing ever-faster day by day; over the last several years, the number of rural poor women has been increasing twice as fast as the number of rural poor men. ‘Inheritance’ issues are inextricably intertwined with women’s ownership of both land and housing, and therefore with their economic autonomy. Because ‘inheritance’ rights play such a fundamental role in the transfer of wealth in society, they also directly relate to the protection of women’s right to adequate housing.

The Universal Declaration of Human Rights (UDHR) recognises the right to equality before the law and to equal protection; the right to equality with respect to marriage; the right to own property; and the right to an adequate standard of living, including the right to adequate housing.

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) elaborate and codify the rights articulated in the UDHR, and also explicitly recognise the right to equality.

Stripping women of marital property upon the death of a spouse is one of the most frequent methods used to deprive women of their assets. Many societies in developing countries transfer property through ‘inheritance’ and other customary means which sometimes preference men and boys over women and girls. This does not only perpetuate gender inequality in access to housing, but also disadvantages women economically thus condemning them to a system of dependency on men. As observed by UN-HABITAT, “The fact that women do not inherit property to the same extent as men has been identified as a major obstacle to their economic empowerment and is claimed to be a cause of the ‘feminisation of poverty.’”

The fact that women cannot ‘inherit’ land and housing after
between women and men and the right to non-discrimination. These rights to equality and non-discrimination have direct implications with regard to women’s access to property and inheritance.

General Comment No. 28 of the United Nations Human Rights Committee on Article 3 of the ICCPR (entitled ‘Equality of Rights between Men and Women’) explicitly requires that: “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.” Similarly Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provides that: “States Parties ... shall ensure, on a basis of equality of men and women: … (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property ….”

the death of their spouse or relative reflects the more general violation of women’s right to adequate housing. For millions of women in sub-Saharan Africa, the systematic denial of ‘inheritance’ lies at the heart of their economic marginalisation and housing poverty. If women are unable to legally own, control and inherit property, they have little economic and personal autonomy because they fundamentally lack access to wealth. Women’s economic contribution to their families, which is essential, remains unremunerated and invisible.

**Customary and Religious Law**

Customary and religious law are often said to condone violations of women’s ‘inheritance’ rights. However, cultural identities are neither static nor uniform, and advocating for change at the local level is possible. In order to do so, women must be able to interpret customs and religious principles for themselves.
Women who do not control their own housing and are unable to access housing independently are placed in a position in which they may face homelessness and destitution at any given moment. Especially in sub-Saharan Africa, a woman’s access to housing usually depends upon her relationship to a male, in most cases either her husband or father. Rarely are women able to gain housing and land in their own right. This dependency is the breeding ground for violence and exploitation.

When a woman becomes homeless, she loses much more than just a house. She is deprived of her personal security and social status. Its loss may well signal the end of economic and food security for herself and her family. Too often, a woman also loses much of her social network, on which she depends for day-to-day survival.

Violence Against Women

Violence against women within the context of ‘inheritance’ disputes reflects women’s low status within societies, and in particular the low status of widows.

Disputes over lack of rights to inheritance, land and property ownership frequently expose widows to physical harm and even death at the hands of male relatives. Often, relatives abuse widows with impunity, as their activities are seen as ‘family matters,’ falling within the private sphere. For this reason, police and other authorities are often lax, or unwilling to intervene. Disinheritance is often accompanied by physical violence and harassment of widows. In some cultures, upon the death of her husband, a woman herself may be inherited, as she is seen to ‘belong’ to her late husband’s family. She may be married off to a brother-in-law or one of her late husband’s uncles.
Land and Food Insecurity

**Housing insecurity cannot** be separated from land and food insecurity. Indeed, many of the cultures that forbid women to inherit property upon the death of a spouse are also agrarian and therefore depend heavily on their own food production for their survival.

Often, such societies also depend heavily on women’s agricultural production, as it is usually the women who are charged with producing food for themselves and their families. When a woman loses her house to her in-laws, she almost always loses her land as well.

In that event, she also loses the primary means by which she is able to feed herself and her children, affecting her health and economic well-being in a multitude of ways. From a national social and economic standpoint as well, States lose a major source of food production and economic gain when women are denied access to land.

Destitution and Homelessness

The Real Consequences for Women

**‘Disinheritance’ robs a** woman of her home, land and property – basic things that she needs to live in peace, and in a secure and dignified environment. The phenomenon of in-laws taking over the home and land of the widow has become so commonplace throughout Africa that it has gained the popular tag ‘property grabbing.’

The police or other authorities have generally done little or nothing to address such incidents, so the practice still runs rampant throughout the region. The widow is ejected from her home by means of intimidation, threats, physical violence or a combination thereof. This if often done under the guise of custom and tradition. With nowhere else to go, she is often left destitute and homeless.
The Impact of HIV/AIDS, Displacement

Women’s ‘Inheritance’ Rights within the Context of HIV/AIDS

The impact of HIV/AIDS has resulted in literally millions of women becoming widowed, and has accelerated the rates at which women are ‘disinherited.’ Of their marital property.

After the death of the husband, disputes over land and housing are common, often resulting in the widow, herself ailing with the disease, being ejected from the house by greedy in-laws. This leaves women in a terrible predicament — not only homeless, but also struggling to cope with the disease. Even if a woman is able to hold on to her home and land, COHRE has found that she is often forced to sell them in order to meet the costs of medical and other care for herself, her family and others in her care.

The HIV/AIDS pandemic has greatly exacerbated the difficulties that women face with regard to housing, land and property. The cycle becomes a vicious one, as women suffering violations of their housing, land

Conflict, Disaster and Displacement

War creates multiple hardships for women. Not only are they vulnerable to gender-based violence during war and armed conflict, they also suffer disproportionately in post-conflict situations, especially if they become widowed. Indeed, war and other conflict may serve to further diminish women’s precarious right to housing. Often as a result of conflict, houses are abandoned or destroyed, title deeds or other vital papers lost, family members killed, with nothing and no one to support the woman’s claim to be able to inherit marital land and housing. In addition, when violent conflicts occur, many women who own land jointly with their husbands lose any proof of joint ownership, making their restitution claims much more difficult to process.

Once again, if a woman’s husband dies as a result of the conflict, his relatives may seize her home and land.
and Poverty on Women’s ‘Inheritance’ Rights

Extreme Poverty

The connections between extreme poverty and the denial of human rights such as ‘inheritance’ must be made, for they clearly affect each other. Poverty leaves women far more vulnerable to violations of ‘inheritance’ rights, and a denial of such rights makes women far more susceptible to a life of poverty. Today the majority of the world’s poor are women.

The grinding poverty in which so many live undoubtedly aggravates the problem of ‘property-grabbing.’ While the social subordination of women is clearly a common factor in the denial of their ‘inheritance’ rights, it is also true that women in poverty are far more susceptible to property-grabbing and maltreatment. The denial of economic, social and cultural rights is also related to the erosion of traditional safety nets that used to provide for the well-being of widows.

‘Inheritance’ rights must not be understood as in opposition to women’s autonomous rights to housing, land and property.

While ‘inheritance’ has been used commonly to address women’s right to marital property, marital property should rightly seen as belonging to both spouses while both spouses are alive and continue to be married to one another.
Women are denied ‘inheritance’ rights within the context of national law, in flagrant violation of international human rights standards. Even though most national constitutions contain guarantees for equality and non-discrimination based on sex and/or gender, discrimination against women continues to be widespread. In many cases, parallel customary and civil legal systems lead to gaping holes in protection, and may leave certain groups of women having their ‘inheritance’ rights violated. The codification of customary law and the leeway given to civil courts in applying – and even interpreting – such law create hybrids of custom and civil law, which usually prove detrimental to women.

Social Stigma

Social stigma is an enormous obstacle to the realisation of women’s ‘inheritance’ rights, and even in cases where the law provides protections, women may be reluctant to claim their rights in a court of law because of the severe social stigma that can result from doing so. A lone woman going outside the traditional system and presenting her claim within the court system tends to be viewed in a very negative light. She may be regarded as being greedy, disrespectful, or smug. In particular, a woman laying claim to her housing and land rights after the death of her spouse may be accused of being after his money. Sometimes the widow is even accused of having caused his death in order to seize the property for herself, and may be harasshed, physically assaulted and/or left entirely destitute. Many widows have good reason to fear that they and their children will be targeted and harmed if they attempt to claim their ‘inheritance’ rights.
Lack of Rights Awareness

Identifying Obstacles and Challenges

A devastating factor for women is simply the widespread lack of awareness and knowledge of their rights. In communities where women have access to information on their legal rights, and the resources to secure these rights, the women are much more empowered to seek a better future for themselves and their families. Laws are extremely complicated, and simplified legal information in plain language is very rarely disseminated.

Yet without basic, essential information, it is difficult – if not impossible – for women to confront and improve their situation. Key information includes, for example, the benefits of civil unions, of writing a will, and of claiming joint ownership of marital property. Women also need to know how to access available resources and support. It is vital that women be informed of their rights and the processes for claiming those rights.

Discriminatory Customs

Customs and traditions too often place women at a disadvantage to men. With regard to ‘inheritance,’ the view is expressed that women should not be allowed to inherit property because they themselves are property. A milder interpretation of this practice is that widowed women need to be ‘taken care of’ by their male relatives, and that they should not trouble themselves with the drudgery of administering property. Either way, these ideas ultimately serve to reinforce women’s dependence on men.

Lack of Political Will

Political will is an important driver of social change, and responsible leadership takes women’s human rights seriously. The apathy and inertia of political leaders in many countries, be it due to corruption, ineptitude, or indifference, is a major reason why so many women continue to face an uphill struggle with regard to their ‘inheritance’ rights. Political authorities excuse their own lack of leadership by blaming traditional norms, lack of resources; in some cases, they even blame women themselves for not fighting hard enough for their rights.
All States should ensure that international human rights law and standards are domesticated into their national and local legislation. States should review their existing law in a comprehensive and participatory manner to ensure that all laws adequately protect women’s equality and housing and land rights, including ‘inheritance’ rights, and, where necessary, should adopt new legislation and policies to ensure the complete fulfillment of these rights. States should also establish enforcement systems, including a special police unit and legal aide, to ensure that women are freely able to claim their ‘inheritance’ rights without fear of reprisal. Such enforcement systems should be generously supported with all necessary financial and other resources.

States should also design and implement extensive education and sensitisation programmes specially targeted at women in all segments of society and geographical areas, especially rural areas, where rights awareness is usually minimal. All these women should be made aware not only of their rights but also how to claim and enforce them.

To Governments

To Non-Governmental Organisation (NGOs)

Making a Change: Recommendations for Realising

Non-governmental organisations (NGOs) should emphasise, as a priority issue in their work, the role that housing and land plays in women’s lives. Such a focus would also assist in improving other aspects of women’s lives. NGOs should utilise the mass media in their countries to draw popular attention to and raise awareness of the issue of violations of women’s ‘inheritance’ rights, and to mobilise for positive action and change. NGOs should work with governments to domesticate international human rights standards, paying particular attention to women’s housing and land rights, including women’s rights to equal ownership and inheritance, and should also share with one another strategies and best practices related to advocacy.
**Women’s Equal Rights in ‘Inheritance’ and Ownership**

The **donor community** should support locally targeted and implemented projects that are designed to educate, inform and sensitise the general public, women, communities and local and national authorities about women’s human rights to equality and non-discrimination, as well as to housing, land and inheritance. The donor community should focus on women’s rights to equal property ownership and inheritance, as well as to adequate housing and land, in a systematic and sustained manner, to ensure that these issues are not ignored and that the momentum already gained is not lost. Donors should ensure that their Poverty Reduction Strategies include women’s rights to housing, land and inheritance, encouraging governments to abide by their commitments under international human rights law.

To the **International Community**

The **United Nations** should strengthen its existing mechanisms to protect women’s housing and land rights. The United Nations treaty monitoring bodies, including the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights should also increasingly address issues of women’s ‘inheritance’ and equal ownership rights.

To the **Donor Community**

COHRE’s mission is to ensure the full enjoyment of the human right to adequate housing for everyone, everywhere, including preventing forced evictions of persons, families and communities from their homes or lands.

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