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## Property and security: articulating women's rights to their homes

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### 1 Introduction

Since the early 1990s a rapidly expanding body of so-called 'soft law' documents has added to the dynamics and detail of human rights law. These formally non-binding documents have been central for efforts to deepen and expand the understanding of human rights from women's perspectives. By demonstrating how life experiences can be understood and articulated as human rights themes, they have aided in making existing documents relevant for women and other groups whose experiences were not fully considered at the time the treaty texts were drafted.

This chapter seeks to contribute to the understanding of these developments, by exploring how one specific real-life situation has come to be articulated as a human rights theme. Focusing on women's homes, it maps how international human rights institutions have responded to information about situations that are primarily experienced by women. Juxtaposing and comparing the analyses provided by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee, the International Covenant on Economic, Social and Cultural Rights (ICESCR) Committee and by the 2000–2008 Commission on Human Rights' (CHR) Special Rapporteur on the Right to Adequate Housing, it identifies two different paths that have been developed for approaching women's rights to their homes, focusing on, respectively, property rights and security.

The chapter starts by describing the housing story of a widow living in an informal settlement in a third-world city (section 2). It proceeds by describing how her situation can be understood firstly as an example of gender bias in the distribution of property rights between spouses (section 3), and secondly as a question of the right to housing (section 4). Finding that soft law documents have been a central tool in making

the experiences, threats and vulnerabilities experienced by women legible and visible in the human rights discourse, it proposes that the two approaches are not only overlapping, but also complementary (section 5). Together, they can form the basis for a comprehensive understanding of the situation in terms of human rights, and of the range of measures that can be taken to reduce women's vulnerability.

## 2 A view from the ground

### 2.1 *Rose's story*

As part of the research for my PhD project, I met Rose in her home in the Hanna Nassif settlement, Dar es Salaam, Tanzania.<sup>1</sup> Together with her husband, she had settled in this part of town in 1984. For the first few years they rented a room. But her husband was gainfully employed, and Rose was making money by trading in clothes, and in 1986 they were able to buy a plot in the area. They started construction on the house in 1987 and moved in the following year. In 1990 they had children and decided to expand the building. They added a 'business part', eventually comprising four rooms. Today, three of the rooms in the business part are rented out. Rose uses the fourth for her business of selling beverages.

Rose's life changed when her husband suddenly passed away in 2002. His family blamed her for his death and a conflict ensued. According to Rose, her mother-in-law and sisters-in-law caused her many problems by taking control over the house and other property. They wanted to sell the house, and had even agreed on a price and made arrangements with a buyer. Rose consulted with her own relatives, who saw this as a serious problem. Together, they went to the city and talked to a women's organization, who advised Rose to take the case to court. The court issued an injunction that stopped the sale, and Rose got her house back.

Hanna Nassif was an unplanned settlement and was thus perceived by the inhabitants as vulnerable to state expropriation without compensation as part of development projects in the city. When I met Rose, the area was therefore in the midst of a process of surveying and issuing title deeds for individual plots. Rose was planning to use the name of her three children on the title deed. Due to the circumstances of her husband's death, she feared that the use of her own name would disturb his relatives.

<sup>1</sup> I. Ik Dahl, *Securing Women's Homes. The Dynamics of Women's Human Rights at International Level and in Tanzania* (Faculty of Law, University of Oslo, Unipub, 2010).

They would say: ‘There, you see, she wanted the property for herself.’ Rose believed that the title deed would assure a more peaceful transfer of the property to the children when she passed away. The children could later decide on their own what to do with the house, and if one of the children then passed away, the other two names would still be on the document.

## 2.2 *Widows and their homes*

Rose’s story illustrates that women’s use of land, their contributions, and their means of access to land and housing do not translate easily into formal legal ownership. This also has implications for their legal protection in situations such as widowhood, divorce or a husband’s decision to sell or mortgage the couple’s land and home.

Furthermore, it displays the double vulnerability of women in informal settlements: women are made insecure not only by in-laws refusing to see them as owners upon widowhood; they are also subject to the same vulnerability as men at the hands of a state that does not recognize the legitimacy of the area as a whole. Moreover, even acting and speaking of themselves as owners, as Rose did, does not translate straightforwardly into being named as owner on the title deed. In Rose’s situation, the law made her eligible for ownership – but a combination of state and non-state norms and social relations more broadly contributed to her choice of not taking this option.

Her story thus also demonstrates how threats and protection can be influenced by a complex interplay of different norms and institutions. Formal law in Tanzania provides only limited property rights for a widow.<sup>2</sup> However, the local court did rule in favour of Rose in her case against her in-laws. Local norms and practices, as I encountered them during a series of interviews, displayed a mixture of influences: norms of fairness based on the spouses’ contribution to acquisition of property, religious norms, and traditional customary law that emphasized the role of male lineage in property ownership and tended to support the view that women who pursued their own individual property rights were selfish or egoistic.

The interaction between local, religious, customary and statutory norms creates a scenario in which not only gender, but also marital status, religion, the bearing of children and social status more generally influence a woman’s opportunity to remain in her home in situations such as

<sup>2</sup> M. E. Magoke-Mhoja, *Child-Widows Silenced and Unheard. Human Rights Sufferers in Tanzania* (Milton Keynes: AuthorHouse, 2008).

divorce and widowhood. This story from Tanzania thus corroborates empirical studies from other contexts and countries.

### 2.3 *Articulating the human rights dimensions*

The present theme aptly illustrates current dynamics in international human rights law. Despite the inclusion of equal rights for women and the principle of non-discrimination in the human rights conventions, women's experiences of insecure housing were chiefly marginalized in human rights debates. In a similar vein, women's rights to land and property, and the insecurity experienced by residents in informal settlements, were low on the agenda of international debates on human rights.

However, various human rights are indeed influenced and could provide the basis for analyses of these types of situations. These include gender equality and the prohibition of discrimination, but also, more specifically, the equal right to enjoyment of property, the right to an adequate livelihood, including the right to housing and the right to food, and equal rights between spouses. Since the early 1990s a range of UN institutions and mechanisms have been involved in developing more detailed human rights analyses of women's rights and access to land, property and housing. Two main approaches emerged: firstly, that this type of situation is a manifestation of a lack of equality in the distribution of *property* rights between husband and wife, and secondly, that it demonstrates the gendered nature of *security* of tenure for one's home. These are presented in the following sections.

## 3 'Property': equal property rights within the family

### 3.1 *The equal property rights of wives*

The alleged lack of attention given by international law to the private sphere has been the basis of concern of some feminist lawyers.<sup>3</sup> Nevertheless, the human rights conventions explicitly establish obligations to ensure equality of rights between spouses. Article 23.4 of the International Covenant on Civil and Political Rights (ICCPR) establishes that:

<sup>3</sup> H. Charlesworth and C. Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, 2000).

States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.

Furthermore, Article 16.1 of the CEDAW contains both a general call for equal rights and responsibilities of spouses (litra c), and a right to equality in property relations in particular (litra h):

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 ... (h) 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.<sup>4</sup>

The respective treaty bodies have developed more detailed understandings of these provisions. In 1989 the Human Rights Committee (HRC) argued that Article 23 of the ICCPR creates a 'positive duty of States parties' to ensure that spouses have equal rights. Appropriate action may take different forms: legislative, administrative or other types of measures.<sup>5</sup> In its 2000 General Comment No. 28 on *Equality of Rights between Men and Women*, the HRC stated the implications of Article 23.4 for property rights. States must ensure that the matrimonial property regime:

contains equal rights and obligations for both spouses with regard to ... the ownership or administration of property, whether common property or property in the sole ownership of either spouse. States parties should review their legislation to ensure that married women have equal rights in regard to the ownership and administration of such property, where necessary ... Equality during marriage implies that husband and wife should participate equally in responsibility and authority within the family.<sup>6</sup>

In 1994 the CEDAW Committee, in its General Recommendation No. 21 on *Equality in Marriage and Family Relations*, discussed Article 16 in detail. The Committee drew attention to ways in which family relations, distribution of work and responsibilities in the household, and gender

<sup>4</sup> Article 16.1(h) CEDAW.

<sup>5</sup> HRC, General Comment No. 18, *Non-Discrimination*, 10 November 1989, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), para. 5. See also HRC, General Comment No. 19, *Protection of the Family, the Right to Marriage and Equality of the Spouses (Article 23)*, 27 July 1990, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), paras. 6–9.

<sup>6</sup> HRC, General Comment No. 28, *Equality of Rights between Men and Women (Article 3)*, UN Doc. CCPR/C/21/Rev.1/Add.10, para. 25.

stereotypes can cause bias in the distribution of property rights between spouses.

A central argument made by the CEDAW Committee was the problematic effect of assigning to the man alone the role of provider and representative of the household. Pointing out the number of single or divorced women who support a family on their own, the Committee argued that the notion that men should have a higher share due to their responsibility to support women and children is based on unrealistic assumptions. Consequently, granting men a greater share of the property in cases of relationship break-up or on the death of a relative is not only discriminatory, but '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>7</sup> The CEDAW Committee thus held that regulation resulting in the husband being accorded 'the status of head of household and primary decision-maker' contravened the Convention.<sup>8</sup>

A second line of reasoning in the CEDAW Committee's General Recommendation No. 21 is that women's proportionately lower contribution, in strictly financial terms, to the family's acquisition of property is frequently intimately linked to gender roles and gendered divisions of work. Women's work is often household-oriented (care for children and the elderly, housework) or small-scale production-oriented (kitchen gardens for subsistence or for small-scale sales). If women have paid employment, they are likely to receive lower wages than men. Building on its earlier attention to women's unpaid and domestic work,<sup>9</sup> the Committee developed an understanding of the implications of gendered patterns of work for women's property rights within the family.<sup>10</sup> It stated its concern that:

<sup>7</sup> CEDAW Committee, General Recommendation No. 21, *Equality in Marriage and Family Relations*, 4 February 1994, UN Doc. HRI/GEN/1/Rev.9 (Vol. II), para. 28.

<sup>8</sup> *Ibid.*, para. 17.

<sup>9</sup> CEDAW Committee, General Recommendation No. 13, *Equal Remuneration for Work of Equal Value*, 7 March 1989, UN Doc. HRI/GEN/1/Rev.9 (Vol. II). CEDAW Committee, General Recommendation No. 16, *Unpaid Women Workers in Rural and Urban Family Enterprises*, 2 January 1991, UN Doc. HRI/GEN/1/Rev.9 (Vol. II). CEDAW Committee, General Recommendation No. 17, *Measurement and Quantification of the Unremunerated Domestic Activities of Women and their Recognition in the Gross National Product*, 3 January 1991, UN Doc. HRI/GEN/1/Rev.9 (Vol. II). See also Article 14.1 CEDAW on the obligation of states to consider the unpaid, but economically important work of rural women.

<sup>10</sup> See CEDAW Committee, *Equality in Marriage and Family Relations* paras. 11–12, 15 and 21.

In some countries, on division of marital property, greater emphasis is placed on financial contributions to property acquired during a marriage, and other contributions, such as raising children, caring for elderly relatives and discharging household duties are diminished. Often, such contributions of a non-financial nature by the wife enable the husband to earn an income and increase the assets.<sup>11</sup>

The Committee concluded that in division of marital property, '[f]inancial and non-financial contributions should be accorded the same weight.'<sup>12</sup>

### 3.2 *The equal inheritance rights of widows*

While equal property rights of spouses are called for both by the ICCPR and the CEDAW, the absence of explicit calls for equality in *inheritance* matters in treaty texts is noteworthy. Inheritance is not explicitly mentioned in the Covenants, the CEDAW or the Convention on the Rights of the Child (CRC).

The controversial nature of calls for equality in inheritance law is linked to its potential conflict with direct discrimination in customary or religious norms. The tension between calls for equality and religious norms has been a central theme in the context of the high number of reservations made by states during ratification of the CEDAW.<sup>13</sup> At the UN World Conferences during the early 1990s, efforts by women's rights advocates, particularly those from the global south, to place inheritance law on the agenda incited strong protests from some countries.<sup>14</sup>

<sup>11</sup> *Ibid.* para. 32.

<sup>12</sup> *Ibid.* para. 32.

<sup>13</sup> A number of states have made broad reservations to Article 2 CEDAW, limiting its application if it runs counter to Islamic law. Furthermore, Article 16, which established the right to equality in marriage and family relations, has been the most heavily reserved of the substantive Articles of the CEDAW. On reservations to the CEDAW, see R. J. Cook, 'Reservations to the Convention on the Elimination of All Forms of Discrimination against Women', *Virginia Journal of International Law* 30 (1990) 643–716, and A. C. Byrnes, 'The "other" human rights treaty body: the work of the Committee on the Elimination of Discrimination against Women', *The Yale Journal of International Law* 14:1 (1989) 1–67 at 53.

<sup>14</sup> The compromise solution was to carefully avoid placing the word 'equal' immediately before 'inheritance', although the texts committed the states to take steps to promote and strengthen women's rights to inherit. See e.g. *The Programme of Action of the International Conference on Population and Development*, adopted at the UN International Conference on Population and Development, held in Cairo, 5–13 September 1994, UN Doc. A/CONF.171/13, paras. 3.18, 4.6 and 4.17, and *The Beijing Platform for Action*, adopted at the Fourth World Conference on Women, held in Beijing from 4–15 September 1995, UN

However, resistance expressed at world conferences and similar venues does not limit treaty obligations undertaken by States Parties, and the treaty bodies have elaborated on the rights to equal inheritance. In 1994 the CEDAW Committee discussed inheritance in the context of Article 16.1(h) finding that provisions that placed women, whether as widows or daughters, at a disadvantage in relation to inheritance contravened the Convention.<sup>15</sup>

In a similar vein, both the HRC and the ICESCR Committee have drawn attention to the inheritance rights of *widows*. In 2000 the HRC used Article 23 on the equality of rights between spouses as a point of departure for this argument.<sup>16</sup> In 1999 the ICESCR Committee drew attention to women's inheritance rights in the context of the right to food.<sup>17</sup> In 2005 the same Committee argued that the combination of Article 3 (the equal rights of men and women) and Article 10 (according the widest possible protection and assistance to the family) requires that States Parties 'ensure that women have equal rights to marital property and inheritance upon their husband's death'.<sup>18</sup>

The inheritance rights of *daughters* have received less attention from the HRC and the ICESCR Committee.<sup>19</sup> However, the CEDAW Committee's call for equal inheritance rights of daughters was supported by the Committee on the Rights of the Child in 2003.<sup>20</sup>

Doc. A/CONF.177/20, paras. 61(b) 60(f), 165(e) and 274(d). This consensus formulation has later been used in resolutions by the UN General Assembly and the Commission on the Status of Women, and in a series of CHR resolutions on *Women's Equal Ownership of, Access to and Control over Land and the Equal Rights to Own Property* (2000–5, see note 48).

<sup>15</sup> CEDAW Committee, *Equality in Marriage and Family Relations* para. 35.

<sup>16</sup> Arguing that Article 23 requires that '[w]omen 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'. HRC, *Equality of Rights between Men and Women* para. 26.

<sup>17</sup> ICESCR Committee, General Comment No. 12, *The Right to Adequate Food (Art. 11)*, 12 May 1999, UN Doc. E/CN.12/1999/5, para. 26.

<sup>18</sup> ICESCR Committee, General Comment No. 16, *The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the ICESCR)*, 11 August 2005, UN Doc. E/DN.12/2005/4, para. 27.

<sup>19</sup> When the HRC touched upon discriminatory inheritance law in its General Comment on the rights of the child, the Committee focused on discrimination of children on the basis of their citizenship or whether they were born in or out of wedlock, rather than gender. HRC, General Comment No. 17, *Rights of the Child (Article 24)*, 7 April 1989, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), para. 5.

<sup>20</sup> In the context of children orphaned or affected by HIV/AIDS, the CRC Committee reminded states to 'ensure that both law and practice support the inheritance and property rights of orphans, with particular attention to the underlying gender-based discrimination which may interfere with the fulfilment of these rights'. CRC Committee,



### 3.3 *When some are more equal than others: substantive equality and married women's acquisition of property*

A more detailed understanding of what it takes to realize equality of rights of spouses, as regards property rights in particular, has emerged. I suggest that these developments are best understood on the background of how the analysis of the term 'equality' has moved beyond formal equality and towards exploring the context in which substantive equality shall be realized.

Neither the ICCPR nor the ICESCR defines the concept of discrimination. However, both Committees have adopted definitions similar to that found in Article 1 of the CEDAW.<sup>21</sup> Furthermore, both Committees have adopted rather detailed presentations of their understandings of the concepts of equality and discrimination.<sup>22</sup> Recognizing the need to include both formal and substantive equality, and both direct and indirect discrimination, in the analysis, these suggest approaches resembling those taken by the CEDAW Committee. Nevertheless, the HRC and the ICESCR Committee have been less specific on the implications of these concepts in questions of marital property and inheritance.

The CEDAW Committee has provided the most explicit calls for accommodating difference. Paying attention to how gender roles influence the acquisition and division of property rights, this Committee has focused not only on creating equality by removing notions that men are the proper heads of household, but also by pointing out that differences between the typical 'male' and 'female' life patterns must be accommodated: ways to access land that are typical for women should also translate into property rights, and different types of work and contribution should

General Comment No. 3, *HIV/AIDS and the Rights of the Child*, 17 March 2003, UN Doc. CRC/GC/2003/3, para. 33.

<sup>21</sup> HRC, *Non-Discrimination* paras. 6–7. ICESCR Committee, *The Equal Right of Men and Women* para. 11.

<sup>22</sup> See HRC, *Equality of Rights between Men and Women*; ICESCR Committee, *The Equal Right of Men and Women*; and ICESCR Committee, General Comment No. 20, *Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, Para. 2)*, 2 July 2009, UN Doc. E/C.12/GC/20. For a discussion on the developments leading to the latter document, see D. Otto, "Gender Comment": why does the UN Committee on Economic, Social and Cultural Rights need a General Comment on women?, *Canadian Journal of Women and the Law/Revue juridique la femme et le droit* 14/1 (2002) 1–52. For a broad presentation of the concepts of non-discrimination and equality as used by the different treaty bodies, see W. Vandenhole, *Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies* (Antwerp: Intersentia, 2005).

be considered on equal footing. This discussion thus provides a more 'engendered' interpretation.<sup>23</sup>

#### 4 'Security': the right to secure tenure for one's home

##### 4.1 *Analyzing the human right to housing*

A second path for articulating the human rights dimensions of Rose's experience is to focus on its consequences for her enjoyment of the human right to housing.<sup>24</sup> The analysis of this right has developed tremendously over the past two decades. By 1990 the lack of analytical work on housing rights was perceived as a problem, as was the lack of normative specificity of economic and social rights more generally.<sup>25</sup>

During the 1990s the right to housing received 'a boost' of attention. While some governments instigated heated debates about the status of housing as a human right, particularly during the preparations for the 1996 World Conference on Human Settlements (Habitat II),<sup>26</sup> UN human rights institutions began to develop a more detailed jurisprudence on the right to housing and the corresponding obligations. Two institutions took the lead in the elaboration of the normative content of the right: the newly established ICESCR Committee and the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (hereinafter 'the Sub-Commission').<sup>27</sup>

<sup>23</sup> See Fredman, 'Engendering socio-economic rights', this volume.

<sup>24</sup> See, in particular, Article 11.1 ICESCR.

<sup>25</sup> In his 1990 report a Special Rapporteur on the Realization of Economic, Social and Cultural Rights appointed by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (hereinafter 'the Sub-Commission') stated that virtually no analytical work had been carried out within the human rights organs of the UN directly concerning housing rights (referred to in Sub-Commission Resolution No. 26/1992, *Promoting the Realization of the Right to Adequate Housing*, 27 August 1992, UN Doc. E/CN.4/Sub.2/1992/L.11/Add.4, at preambular para. 3). In 1996 Philip Alston stated that because of the lack of normative specificity of economic and social rights, 'efforts in the fields over the past few years have focused primarily on developing a more detailed and sophisticated normative framework', P. Alston, 'The US and the right to housing – a funny thing happened on the way to the forum', *European Human Rights Law Review* 2/1 (1996) 120–33 at 122.

<sup>26</sup> Alston, 'The US and the right to housing'.

<sup>27</sup> Furthermore, the outcome documents of the 1996 UN Conference on Human Settlements (Habitat II) recognized key elements of the human right to housing, as well as the multi-faceted relationships between housing and other human rights.

Only two dimensions of these normative developments will be mentioned here: firstly, how attention on forced evictions and the concept of 'legally secure tenure' allowed for an exploration of the role of property rights for housing. Secondly, how discrimination and women's rights to housing were articulated in the emerging analyses.

#### 4.2 *Secure tenure: property rights and the right to housing*

In 1991 ICESCR Committee General Comment No. 4 provided an analysis of what it takes for housing to be 'adequate'.<sup>28</sup> In its list of criteria for assessing adequacy, it focused not only on the quality of the home, but also on the security against the risk of losing it. This dimension was captured through the concept 'legal security of tenure':

Legal security of tenure: Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced evictions, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.<sup>29</sup>

In 1991 the Sub-Commission appointed a Special Rapporteur on the Realization on the Right to Adequate Housing, Rajindar Sachar.<sup>30</sup> He continued the discussion of vulnerability to being thrown out of one's home as a dimension of the right to housing. In particular, he pointed out the role of illegality and lack of formal property rights, and incorporated this dimension in his proposals for indicators on the right to housing.<sup>31</sup> The Sub-Commission adopted a number of resolutions in response to his work, inter alia urging governments to '[c]onfer legal security of tenure for all persons'.<sup>32</sup>

<sup>28</sup> ICESCR Committee, General Comment No. 4, *The Right to Adequate Housing (Art. 11(1) of the Covenant)*, 13 December 1991, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), para. 7.

<sup>29</sup> *Ibid.* para. 8(a).

<sup>30</sup> Sachar was appointed as Independent Expert in 1991 and as Special Rapporteur in the period 1992–5. Rajindar Sachar, Special Rapporteur, *The Right to Adequate Housing: Final Report*, 12 July 1995, UN Doc. E/CN.4/Sub.2/1995/12.

<sup>31</sup> *Ibid.* paras. 113–14 and 119.

<sup>32</sup> See for example Sub-Commission Resolution No. 29/1995, *Forced Evictions*, UN Doc. E/CN.4/SUB.2/RES/1995/29, paras. 1 and 3.

In 1997 General Comment No. 7 of the ICESCR Committee provided further clarifications on the conditions under which eviction from one's home constitutes a human rights violation.<sup>33</sup> The term 'forced evictions' was defined as:

the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal and other protection.<sup>34</sup>

General Comment No. 7 further listed examples of instances of forced evictions, including evictions 'resulting from international armed conflicts, internal strife and communal or ethnic violence',<sup>35</sup> and evictions 'carried out in connection with conflict over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects, with land acquisition measures associated with urban renewal, housing renovation, city beautification programmes, the clearing of land for agricultural purposes, unbridled speculation in land, or the holding of major sporting events like the Olympic Games'.<sup>36</sup> Thus, while the definition, as quoted above, included situations where 'individuals, families and/or communities' were evicted, the examples of evictions centred on situations where larger groups or whole communities were influenced.

Overall, these documents established secure tenure and forced evictions as key concepts to describe the relationship between property rights and the human right to housing. As lack of property rights may increase the risk of such evictions, the extension of property rights to informal or illegal settlements emerged as one possible measure for increasing legal security of tenure and thus the adequacy of housing.

#### *4.3 Gender neutrality and non-discrimination in the 1990s documents on the right to housing*

The wording of Article 11.1 of the ICESCR itself presents the family, headed by a male breadwinner, as the basic unit for analysis:

<sup>33</sup> ICESCR Committee, General Comment No. 7, *The Right to Adequate Housing (Art. 11.1 of the Covenant): Forced Evictions*, 20 May 1997, UN Doc. HRI/GEN/1/Rev.9 (Vol. I).

<sup>34</sup> *Ibid.* para. 3. <sup>35</sup> *Ibid.* para. 6.

<sup>36</sup> *Ibid.* para. 7.

The right of everyone to an adequate standard of living for *himself and his family*, including adequate food, clothing and housing.<sup>37</sup>

The underlying stereotype, the presumption that a male breadwinner was providing housing for the family, was debated at a one-day session on the right to housing arranged by the ICESCR Committee in 1990. It was argued that right to housing is not reserved for families, but applies to individuals. Furthermore, home ownership by women should be safeguarded due to the high number of female-headed households.<sup>38</sup> In 1991 General Comment No. 4 brushed aside the term ‘himself and his family’: this derived from the typical gender roles and economic activity patterns at the time. Given the changes that had taken place since, the term was not found to carry any legal implications.<sup>39</sup>

Furthermore, considerations of equality and non-discrimination were included in the documents. General Comment No. 4 of the ICESCR Committee stated that enjoyment of the right to housing must not be subject to ‘any form of discrimination’.<sup>40</sup> It further argued that States Parties must give particular consideration and due priority to social groups living in unfavourable conditions, and that policies and legislation should not be designed to benefit already advantaged groups at the expense of others.<sup>41</sup>

The work of Special Rapporteur Sachar (1991–5) and General Comment No. 7 of the ICESCR Committee (1997) pursued this point by drawing attention to the fact that women in particular suffer from

<sup>37</sup> Article 11.1 ICESCR, emphasis added. See also Article 25.1 Universal Declaration of Human Rights (UDHR). Westendorp has argued: ‘The right to housing was formulated in a traditional context; it is the male head of household who is the breadwinner and provider who must be enabled to realize this right for himself, his partner the homemaker, and their children. At the time it was not intended to attribute this right to individual women for the simple reason that they were not supposed (or enabled) to earn the family income and thus could not be burdened with the task of providing housing’, I. Westendorp, *Women and Housing: Gender Makes a Difference* (School of Human Rights Research Series Vol. 23; Antwerp: Intersentia, 2007) at 11–12.

<sup>38</sup> Westendorp, *Women and Housing* at 34. M. C. R. Craven, *The International Covenant on Economic, Social, and Cultural Rights. A Perspective on Its Development*, paperback issue (with corrections) (Oxford: Clarendon Press, 1998) at 293 and 334.

<sup>39</sup> ICESCR Committee, *The Right to Adequate Housing* para. 6. See also ICESCR Committee, *The Right to Adequate Food* para. 1. As noted above, the CEDAW Committee has similarly denounced regulation that accords ‘the status of head of household and primary decision-maker’ to the husband: CEDAW Committee, *Equality in Marriage and Family Relations* paras. 17 and 28.

<sup>40</sup> ICESCR Committee, *The Right to Adequate Housing* para. 6. See also paras. 9 and 17.

<sup>41</sup> *Ibid.* para. 11.

discrimination in the enjoyment of the right to housing.<sup>42</sup> Both pointed out that women suffer disproportionately during and after evictions.<sup>43</sup>

However, the documents' statements of equality and non-discrimination generally lacked concretization and detail on how women's enjoyment of the right to housing may differ from that of men, and how housing needs, experiences and threats are influenced by gender relations.<sup>44</sup> For example, the concept of 'secure tenure' does not in itself answer the question of *which specific* threats such security will protect against.

During the 1990s a rich body of literature provided more grounded and empirically based perspectives on the role of sex and gender relations for housing and property. In particular, as Rose's story illustrates, women may be exposed to additional *types* of evictions and insecurity due to factors such as discriminatory laws, customs and traditions in the field of inheritance and rights to marital property.<sup>45</sup> However, the gender-neutral language of the 1990s documents failed to reflect this. Despite the rejection of the notion of the man as head of household, the ICESCR Committee's work as well as that of Special Rapporteur Sachar largely focused on threats affecting the household as a unit with shared interest, rather than exploring the potential for conflicts and evictions occurring between members of the household.

However, the 1990s soft law documents on the right to housing did not *exclude* such perspectives and arguments. As commented by women's housing rights activist Leilani Farha in 1999: 'At the international level,

<sup>42</sup> Sachar, *The Right to Adequate Housing: Final Report* paras. 44–9, 105 and 169. ICESCR Committee, *Forced Evictions* para. 10.

<sup>43</sup> See Sachar, *The Right to Adequate Housing: Final Report* para. 47; ICESCR Committee, *Forced Evictions* para. 10; and the discussion by L. Farha, 'Is there a woman in the house? Re/conceiving the human right to housing', *Canadian Journal of Women and the Law/Revue juridique la femme et le droit* 14:1 (2002) 118–41 at 131–6. The disproportionate effect of evictions on women was later discussed by the CHR Special Rapporteur on Adequate Housing in the period 2000–8, Miloon Kothari.

<sup>44</sup> Women's housing rights activist Leilani Farha has made this point repeatedly, in relation to ICESCR Committee General Comment No. 4 (see, e.g., Farha, 'Is there a woman in the house?' at 126–31 and 139) as well as the work of Special Rapporteur Sachar (L. Farha, 'Women and housing' in K. D. Askin and D. M. Koenig (eds.), *Women and International Human Rights Law* (Ardsey, NY: Transnational Publishers, 1999) 483–532 at 505–6.

<sup>45</sup> See also Farha, 'Is there a woman in the house?' at 128 and 137–41, which provides an overview of how each of the 'adequacy' elements listed in the ICESCR Committee's General Comment No. 4 could be reconceptualized in order to ensure women's substantive equality. In a similar vein, the housing NGO COHRE has developed a fact sheet that points out ways in which gender relates to each of the seven aspects of 'adequacy': COHRE, *Fact Sheet on Women's Rights to Adequate Housing, Land and Property* (Centre on Housing Rights and Evictions, not dated) at 2.

there is a dearth of information that details in a substantial or substantive manner the meaning of the international right to housing for women; at the same time, however, the definition of the international right to housing in no way forecloses the possibility of articulating a woman's right to housing.<sup>46</sup>

#### 4.4 *Unpacking the household: 'family evictions' and the human right to housing*

A rare example of the 1990s' recognition of how women are exposed to distinct types of evictions and insecurity in relation to the human right to housing was found in the final report of Special Rapporteur Sachar. He pointed out that many women do not have *rights* to their homes, neither to the one in which they were born, nor to the home they live in after marriage. While women may have access to a home, they do not have security that they will be able remain in it. He referred to this home-without-rights as 'essential homelessness'.<sup>47</sup>

The interaction between the regulation of property rights between family members and secure tenure was explored further by 2000–8 CHR Special Rapporteur on the Right to Adequate Housing, Miloon Kothari.<sup>48</sup> In his reports, including three studies devoted specifically to the theme of women and adequate housing,<sup>49</sup> he pointed out a range of gender-specific

<sup>46</sup> Farha, 'Women and housing' at 484.

<sup>47</sup> Sachar, *The Right to Adequate Housing: Final Report* para. 46.

<sup>48</sup> While the CHR contributed to the integration of women's rights in the human rights discourse during the 1990s, it was fairly silent on the question of the right to housing. However, at the 2000 session when Miloon Kothari was appointed as Special Rapporteur, the CHR also adopted its first resolution on *Women's Equal Ownership of, Access to and Control over Land and the Equal Rights to Own Property and to Adequate Housing*, CHR Resolution No. 2000/13, 17 April 2000. It was followed by several resolutions on the same theme: CHR Resolution No. 2001/34, 23 April 2001; CHR Resolution No. 2002/49, 23 April 2002; CHR Resolution No. 2003/22, 26 April 2003; CHR Resolution No. 2005/25, 15 April 2005.

<sup>49</sup> M. Kothari, *Women and Adequate Housing. Study by the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination*, Miloon Kothari, in accordance with Commission Resolution 2002/49, 26 March 2003, UN Doc. E/CN.4/2003/55. M. Kothari, *Women and Adequate Housing. Study by the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, Miloon Kothari, 25 February 2005, UN Doc. E/CN.4/2005/43. M. Kothari, *Women and Adequate Housing. Report by the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination*, Miloon Kothari, 27 February 2006, UN Doc. E/CN.4/2006/118.

types of evictions and tenure insecurity. These included *family evictions*: situations where a woman faces threats of eviction brought on by family members or other household members. Two types of such situations will be presented here: when families fall apart, and when one family member enacts transactions of the land or house.<sup>50</sup>

The first type of family eviction can occur when family units fall apart, whether through divorce or by death. Special Rapporteur Kothari pointed out that insecurity may be caused by discriminatory inheritance norms, whether grounded in formal law or in religion or custom.<sup>51</sup> He drew attention to instances where widows whose husbands died from HIV/AIDS were evicted from their homes,<sup>52</sup> and argued that housing policies place women's tenure security at risk by not considering marriage separations.<sup>53</sup> The Commission on Human Rights supported this by reaffirming that 'forced relocation and forced eviction from home and land have a disproportionately severe impact on women, *including when these are committed by spouses or in-laws*'.<sup>54</sup>

Thus, women's rights to remain in their homes can be insecure for daughters as well as for wives in cases of family breakdown, whether by divorce or upon the death of a spouse/father. This type of vulnerability frequently hinges on notions that women are family members 'in transit', while land is to remain in the family. Consequently, women's property rights are contingent on their (temporary) membership of the family. When such membership ends, threats of eviction may arise. Viewing such situations as questions of tenure security brings the regulation and practice of property rights within families under the ambit of the right to housing.

<sup>50</sup> Domestic violence is a third example of eviction induced by family members. Kothari has argued that domestic violence can be viewed as a cause of forced eviction, as it makes women unable to stay in their homes. See M Kothari, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, Miloon Kothari, 8 March 2004, UN Doc. E/CN.4/2004/48, paras. 41, 56–7. For more on the relationship between domestic violence and the right to housing, see G. Paglione, 'Domestic violence and housing rights: a reinterpretation of the right to housing', *Human Rights Quarterly* (2006) 120–47, and Westendorp, *Women and Housing* at 102–11. This theme will not be discussed in more detail here.

<sup>51</sup> See e.g. Kothari, *Women and Adequate Housing* 2003 para. 41; Kothari, *Women and Adequate Housing* 2005 para. 55; and Kothari, *Women and Adequate Housing* 2006 paras. 38–40 and 44.

<sup>52</sup> Kothari, *Women and Adequate Housing* 2003 para. 30.

<sup>53</sup> Kothari, *Women and Adequate Housing* 2005 para. 55.

<sup>54</sup> CHR Resolution No. 2003/22 preambular para. 7, and CHR Resolution No 2005/25 preambular para. 10 (author's emphasis).



A second type of family eviction identified by Special Rapporteur Kothari includes situations in which women face homelessness because men sell or mortgage the house or property without informing them or asking their consent.<sup>55</sup> A similar observation has been made by the CEDAW Committee, which warned about the problems that may arise when ‘there is no legal requirement that a woman be consulted when property owned by the parties during marriage or de facto relationship is sold or otherwise disposed of’.<sup>56</sup>

Such incidents are regulated at the intersection of multiple legal fields, each of which provides possibilities for protection. Firstly, norms and practices in the field of *family law* sometimes place property rights, decision-making and representation of the household in the hands of males. This excludes women from participating in decisions pertaining to sales, mortgages and gifts of the land on which they live, and prevents them from gaining a share of income thereby obtained. Joint ownership regimes in family law may reduce the risks.

Secondly, *contract law and regulation of land markets* have implications here. Regulation of land markets may serve to counteract such dispositions by protecting the rights of users without formal property rights. One example is the requirement of spousal consent to sales or mortgages.<sup>57</sup>

Finally, such situations are influenced by the *regulation of land titling and registration of land rights*, for example when the state seeks to regularize property rights established under traditional or informal tenure systems. The term ‘formalization’, frequently used in conjunction with titling processes, suggests that the existing relations and interests can be captured on paper and fit in with the property structures of formal law. However, since titling usually means registration of one rights holder only, it will in practice often constitute simplification of complex and overlapping land rights. Thus, titling may change the relationship between the rights of different users of land. When one person is registered as the rights

<sup>55</sup> Kothari, *Women and Adequate Housing* 2003 para. 44.

<sup>56</sup> CEDAW Committee, *Equality in Marriage and Family Relations* para. 31.

<sup>57</sup> ‘Spousal consent requirements’ are legal measures that make the consent from a non-owning spouse a prerequisite for valid dispositions over property such as the matrimonial home or land used by the spouses. They can also be designed to require consent from other household members, for example adult children, and thus protect a wider range of individuals with interests in the land or house. For an illustration of the controversies such measures can generate, see I. Ik Dahl, ‘Competing notions of property rights: land rights reform at the intersection of the international and the local’ in C. C. Eriksen and M. Emberland (eds.), *The New International Law: An Anthology* (Leiden: Brill Academic Publishers, 2010) 99–113.

holder, he becomes the ‘formal owner’, while the interests of his family remain informal and invisible to outsiders. They thus experience limited security against transactions in the ‘formal market’. Consequently, the frequent gender bias in titling processes is not only a reflection of underlying inequalities, but a manifestation of discrimination. It also makes women more vulnerable to this type of family eviction. Joint titling is an example of a legal measure intended to counteract such risks.<sup>58</sup>

#### 4.5 *Bringing women’s experiences into the right to housing: mainstreaming, indivisibility and life stories*

The right to housing has thus shifted away from the notion of the male-headed household: first to a gender-neutral household threatened from the outside, and then towards taking the individuals within the household as the point of departure. The difference such an individual-centred focus can make is obvious in the context of family evictions. Attention to relations *within* the household facilitates the articulation of a wider range of women’s experiences of housing insecurity as human rights themes, in line with the quest for engenderment.<sup>59</sup>

While Kothari’s reports during his tenure as CHR Special Rapporteur are seen as having minimal formal weight as a source of international law, his work was significant for this development. The reports demonstrated the impact of unequal property relations within the family on the realization of the right to housing. He established a basis for grounded and gender-sensitive perspectives on how *tenure security* is created, and on the range of situations that can be understood as *forced evictions*. His analyses provide an example of ‘gendered’ interpretation of the right, in line with the calls for inclusion of women’s perspectives in human rights.

Several factors may have contributed to Kothari’s focus on the interaction between tenure security and the distribution of property rights between family members. Firstly, his mandate explicitly included the right to non-discrimination, and the CHR requested that he apply a

<sup>58</sup> ‘Joint titling’ refers to provisions calling for inclusion of both/all spouses when land rights are registered. Rather than establishing only one owner per parcel of landed property, joint titling serves to include several members of a household when rights are registered. For a discussion of challenges in the implementation of such measures, see I. Ikdahl, “Go home and clear the conflict”: human rights perspectives on gender and land in Tanzania’ in B. Englert and E. Daley (eds.), *Women’s Land Rights and Privatization in Eastern Africa* (Woodbridge/Kampala/Nairobi/Dar es Salaam: James Currey, 2008) 40–60.

<sup>59</sup> See Fredman, ‘Engendering socio-economic rights’, this volume.

gender perspective in his work.<sup>60</sup> This was in line with the principle of gender mainstreaming, which had been established as a general principle for human rights analysis and activities during the 1990s.<sup>61</sup>

Secondly, he acquired information from a wide range of sources, with a view to increasing the understanding of the types of eviction situations occurring on the ground.<sup>62</sup> Alison Aggarwal, research associate to the CHR Special Rapporteur, has emphasized the importance of this broad approach for his work pertaining to women's rights to housing:

Working with women's groups has been of critical importance, in light of the limited information on women's rights that is available through the periodic reports by member states to the human rights treaty committees, as well as the lack of data and research available from many national housing groups.<sup>63</sup>

<sup>60</sup> CHR Resolution No. 2000/9, *Question of the Realization in All Countries of the Economic, Social and Cultural Rights Contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and Study of Special Problems Which the Developing Countries Face in Their Efforts to Achieve These Human Rights*, 17 April 2000, paras. 7(c) and 7(d)(iii).

<sup>61</sup> In 1993 the declaration adopted at the World Conference on Human Rights urged the mainstreaming of women's perspectives in all aspects of human rights. *The Vienna Declaration and Programme of Action*, adopted at the UN World Conference on Human Rights, held in Vienna 14–25 June 1993, UN Doc. A/CONF.157/23, section I, para. 18. Similar calls for inclusion were made at the 1995 World Conference on Women, *The Beijing Declaration*, adopted at the Fourth World Conference on Women, held in Beijing 4–15 September 1995, UN Doc. A/CONF.177/20, para. 8. However, the language shifted somehow between these occasions, from 'integration of women's rights' to 'gender mainstreaming'. For a detailed discussion, see S. Kouvo, *Making Just Rights?* (Uppsala: Iustus, 2004).

<sup>62</sup> Kothari cooperated closely with civil society, including through regional consultations. See e.g. M. Kothari, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context*, Miloon Kothari, 13 February 2008, UN Doc. A/HRC/7/16, para. 37. During these consultations, testimonies from 'grassroots women' were intended to allow the Special Rapporteur to gain 'much of his information on the direct and specific experiences of women from diverse backgrounds': A. G. Aggarwal, 'UN Special Rapporteur on Adequate Housing: strengthening gendered norms for the right to adequate housing', *Australian Journal of Human Rights* 10:1 (2004), available at: [www.austlii.edu.au/au/journals/AJHR/2004/8.html](http://www.austlii.edu.au/au/journals/AJHR/2004/8.html) (last accessed 13 February 2013).

Furthermore, a questionnaire on women and adequate housing was developed and distributed widely. It was meant to serve multiple purposes: obtaining information with a view to advancing the conceptual understanding of the right to adequate housing; ascertaining gaps in legislation and implementation; and educating states and civil society on women's right to adequate housing. See Kothari, *Women and Adequate Housing* 2008 para. 55. The questionnaire, as amended in 2003, is available at: [www2.ohchr.org/english/issues/housing/docs/questionnaireEn.doc](http://www2.ohchr.org/english/issues/housing/docs/questionnaireEn.doc) (last accessed 6 April 2011).

<sup>63</sup> Aggarwal, 'UN Special Rapporteur on Adequate Housing'.

Finally, the indivisibility of all human rights was a key element of his methodological approach, facilitating studies of the interaction between the right to housing and other rights.<sup>64</sup> Following the end of the Cold War, the divide between civil and political rights on the one hand, and economic, social and cultural rights on the other, had given way to more holistic approaches to human rights. The 1993 Vienna Conference proclaimed that all human rights are 'universal, indivisible, and interdependent, and interrelated'.<sup>65</sup> The emphasis on indivisibility was reflected not only in the Special Rapporteur's argumentation, but also in his efforts to cooperate with the treaty-monitoring Committees, as well as other mandate holders and UN agencies.<sup>66</sup> In particular, his cooperation with the ICESCR Committee was frequently mentioned in the annual reports. In comparison, the reports leave the impression that the contact and cooperation with the CEDAW Committee was more limited.<sup>67</sup>

Thus, methodological approaches to human rights emerging during the 1990s, in particular gender mainstreaming and the indivisibility of rights, facilitated the inclusion of knowledge about social and property relations inside the household and family in the analysis of the right to housing. Ultimately, this allowed for bridging, at least partly, the divide between two debates on property rights: their relevance for the right to adequate housing, as discussed primarily by the ICESCR Committee, and the analysis of equality between the spouses, developed primarily by the CEDAW Committee.

<sup>64</sup> See for example Kothari, *Report of the Special Rapporteur on Adequate Housing* 2008 para. 4.

<sup>65</sup> *The Vienna Declaration and Programme of Action*, section I, para. 5. See also paras. 1, 4 and 32. Over time, this contributed to the progress in the understanding of economic and social rights as binding and justiciable, rather than merely as policy objectives. See e.g. A. Eide, C. Krause and A. Rosas (eds.), *Economic, Social and Cultural Rights*, 2nd edn (Dordrecht: Kluwer Law International, 2001).

<sup>66</sup> See Kothari, *Report of the Special Rapporteur on Adequate Housing* 2008 paras. 56–60, and M. Kothari, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Mr. Miloon Kothari*, 1 March 2002, UN Doc. E/CN.4/2002/59, paras. 78–100.

<sup>67</sup> The geographical location of this Committee in New York may have been a factor here: until January 2008 the CEDAW Committee had its meetings and Secretariat in New York, where the Commission on the Status of Women is located, while the other treaty bodies – the CHR and the Office of the High Commissioner on Human Rights – were located in Geneva. Besides, personal connections can also influence such cooperation, and Special Rapporteur Kothari had a background from civil society, with close links to housing NGOs that directed their international lobbying efforts primarily towards the ICESCR Committee.

## 5 Convergence, complementarity and the way forward

The developments described above shed light on both substantive and institutional aspects of the relationship between equality in the property relations between spouses and the realization of security of tenure.

In the field of substantive rights and obligations, the intimate relationship between the two sets of rights is recognized today. Factors such as discriminatory inheritance norms and marital property regulation that does not recognize women's unpaid work diminish women's enjoyment of their right to secure housing, as well as their right to equal property rights within marriage.

Nevertheless, the specific right taken as the point of departure has implications for the types of measures that are appropriate for improving gender equality. It is significant that the ultimate *objectives* differ between the right to housing and the right to equality in property relations between spouses. As regards the latter, providing women with (equal) property rights to the land and home is the very objective. In contrast, the right to housing regards property rights as only one of several possible legal measures to advance the objective of providing security.

Increasing women's property rights will help the realization of both rights. The principle of equal rights to property between spouses is a powerful argument for land law calling for joint titling, as well as for joint ownership regimes in family law. Furthermore, measures such as sensitization of the bureaucracy and judges, as well as legal aid and awareness campaigns encouraging widows to title land in their own names, can be useful in facilitating women's claims of individual property rights.

However, the supplementary role of the right to secure tenure is demonstrated by the situation of women such as Rose who choose not to pursue individual property rights due to a concern that challenging local norms could jeopardize family relations. Extending the right to secure tenure to this group of women as well requires a dual perspective, considering both the present and the future. Women's right to adequate housing applies *today*, not in an ideal world where stereotypes and discrimination are already abolished. Strategies to increase tenure security need to acknowledge that individual women do not always want to challenge discriminatory norms. In such situations, provisions requiring spousal consent to land transactions may be an important tool. But in addition, the state must consider *tomorrow*, by taking steps to modify discriminatory

customs and norms, as well as negative gender stereotypes.<sup>68</sup> A comprehensive approach to the distinct types of evictions and insecurity experienced by women without property rights in their homes is required.

The combination of the 'property' and 'security' approaches thus results in a call for multiple strategies to realize women's rights to their homes, encompassing both immediate and long-term perspectives, and both legal and non-legal measures. For the short-term realization, legislative measures aimed at increasing women's property rights must be designed with a view to accommodating both typically 'male' and 'female' life patterns and ways to access land, along the lines suggested by the CEDAW Committee. Examples of such legal measures include non-discriminatory inheritance law, joint ownership regimes and recognition of unpaid work as basis for property rights. These should be accompanied by measures supporting women who want to claim their property rights. Furthermore, legal regulations protecting against 'family evictions' should be adopted, in order to offer immediate protection of the housing rights of women who do *not* claim property rights in their homes. In a long-term perspective, there is a need for sustained efforts to change customs, norms and stereotypes that obstruct or discourage women from claiming their rights.

Furthermore, the present theme also sheds light on the role of the various institutions participating in the development of human rights law. The soft law documents adopted by the Committees have helped render women's experiences of inequality, suffering and vulnerability pertaining to their rights in their homes visible and tangible in human rights discourse.

However, the two strands of analysis, to a large extent, have remained disconnected. The work of the ICESCR Committee has not fully recognized the issues that unequal property relations within the household raise for specific types of gendered insecurity. Conversely, while the CEDAW Committee has provided a detailed analysis of women's unequal property rights within the family, it has not yet engaged systematically with the effects on women's right to housing – despite the CEDAW's call for rural women's equal enjoyment of '[a]dequate living conditions, particularly in relation to housing'.<sup>69</sup>

In contrast, the work of the CHR Special Rapporteur on the Right to Adequate Housing demonstrates the inherent potential of a combined approach as a means of articulating an engendered understanding of

<sup>68</sup> Articles 2(f) and 5.1 CEDAW. <sup>69</sup> Article 14.2(h) CEDAW.

women's rights in relation to their homes. His work can serve as the basis for recommendations addressed to both Committees regarding their separate work, as well as the cooperation between them.

Firstly, given the development of knowledge and arguments in this field, it would be timely for the Committees to consider these questions explicitly.

The ICESCR Committee could carry this out through a revision of General Comments Nos. 4 and 7. While their current wording does not exclude threats experienced by women in particular, themes such as 'family evictions' are rendered invisible by the dominant perspective on threats affecting the household as a unit with shared interests. An updated interpretation of the right to housing should emphasize that while 'forced evictions, harassment and other threats' (the term used by the Committee in both General Comments) can affect the household or community as a collective, such incidents can also be targeted at individuals. Preferably, it should explicitly draw attention to threats that are predominantly experienced by women, including divorce, widowhood and situations where others sell or mortgage their homes or the land they live on. A reference to the Committee's views on women's equal rights to marital property and inheritance upon their husbands' death, as expressed in General Comment No. 16, could be added to ensure that family law themes are not sidelined in laws, policies and projects focusing on housing and land rights.<sup>70</sup>

As regards the CEDAW Committee, a General Recommendation concerning state obligations pertaining to women's equal right to housing, as established in Article 14 of the CEDAW, would be highly recommendable. This should incorporate an engendered understanding of 'security' for remaining in one's home, and thus supplement the Committee's existing focus on property rights. A systematic analysis of women's equal right to housing would provide guidance for States Parties, as well as facilitate the monitoring of state compliance during the examination of state reports.

Finally, while the normative developments analyzed in this chapter underscore the potential value of interaction and mutual learning between the two treaty bodies, it is also suggested that such interaction remains unsystematic. While it is commendable that CHR Special Rapporteur Kothari sought to cooperate with both bodies, such dialogue should not be left at the level of individuals, but ensured through direct

<sup>70</sup> CESCR GC 16 (2005) para. 27.

and systematic institutional cooperation on themes of shared interest. Arguably, the two complementing paths that have been employed to approach women's rights in their homes demonstrate the ability of the UN human rights system to respond to a complex theme. However, the strengths of a *combined* approach illustrate that cross-fertilization between the various treaty bodies is vital in order to realize substantive equality for women.