

# A PLACE TO LIVE

**WOMEN'S INHERITANCE RIGHTS IN AFRICA**



**CENTRE ON HOUSING RIGHTS AND EVICTIONS (COHRE)**

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A Place to Live: Women's Inheritance Rights in Africa  
ISBN: 92-95004-30-2  
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Copies can be ordered from:  
COHRE  
83 Rue de Montbrillant  
1202 Geneva  
Switzerland  
Tel: +41.22.734.1028  
Fax: +41.22.733.8336  
Email: [cohre@cohre.org](mailto:cohre@cohre.org)

Copies can be downloaded free of charge from: <http://www.cohre.org>  
Also available in French

Original report prepared by Birte Scholz and Mayra Gomez of the Centre on Housing Rights and Evictions

This plain language English summary prepared by Anne Harley and Clare Verbeek of the Centre for Adult Education, University of KwaZulu-Natal, Pietermaritzburg, South Africa (<http://www.ukzn.ac.za/cae/>)

Graphic Design: Jane Harley of Alskeith Consulting, South Africa

Print: Interpak Books, South Africa

Cover photos by Birte Scholz and Mayra Gomez taken in Ghana, Rwanda, South Africa and Zambia

With grateful acknowledgement to the Netherlands Ministry of Spatial Planning, Housing and the Environment, and to Cordaid, for their support

Very special thanks to all the women who shared their experiences and knowledge. This publication is dedicated to them

# About this book

The Centre on Housing Rights and Evictions (COHRE) has been working for more than ten years to try to make sure everyone, everywhere, has proper housing.

Women have special needs and problems to do with housing. Most of the people in the world who do not have proper housing are women. Women have to care for children and other family members, find and prepare food for the family, try to get money, and so on. Not having land and a proper house makes it very hard for women to look after themselves and their families. Not having land and a proper house also means it is harder for women to be safe and to have control over themselves and their lives, and make their own decisions.

One of the biggest problems women have is that they are often not allowed to own and inherit housing, land and property. This means that if their father or husband dies, they often have no land and no home.

Often, women do not have land and a proper house just because they are women, because people think that women should not be allowed to have land or a house of their own. Many laws and traditions say that women cannot own land or have rights to land. If a woman tries to get her own land or house, she is often punished.

In 2003, COHRE's Women and Housing Rights Programme visited some countries in Africa to find out more about the needs and problems of women. They spoke to women in communities, to NGOs and to people in government. They held a workshop in Johannesburg, South Africa, in January 2004, with people who are doing work about land and housing in Africa. Then they wrote a report about ten countries in Africa, and are now trying to fight for change to make things better for women.

This short book comes from the longer report. It is written so that ordinary women and men in Africa can read about what COHRE found, and what COHRE and other people fighting for rights to land and housing think should happen to make things better for women.



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## What are rights?

All countries have rules which say what people can and cannot do. Some of these rules are written down as laws. These laws are different in each country, but they usually say:

- What you must do (the law calls this your duties or obligations). For example the law may say that you have a duty to look after your children, and if you don't, you have gone against the law.
- What you must not do. For example, the law may say that you must not murder or rape anyone, and if you do, you have gone against the law.
- What you can do or what you are allowed to do. The law calls this your rights. If someone else stops you from doing these things, they have gone against the law.

In most African countries there are different kinds of laws:

- **Statutory law** (sometimes called civil law) is the written law made by a parliament or a government.
- **Common law** is law which is not always written down, but is agreed to by everyone as part of what they think is right or wrong. For example, there may not be a written law which says that murder is wrong, but everyone agrees that it is wrong, and so it is part of the common law. Common law is also made up of decisions made by the judges sitting in the various courts.
- **Customary law** is law which is traditional for some cultures and groups of people in a country. Some customary law is written down and some is not. Many African countries use customary law as well as statutory law and common law.

Many countries also have their own list of rights for the people in that country (sometimes they are called a Bill of Rights). These are usually written in the constitution of that country. The constitution is the highest law in a country. Everyone in the country must do what the constitution says. The parliament or government cannot pass a law that goes against the constitution. The constitution can be changed, but only by parliament, and it is usually very difficult to change the constitution.

But as well as the laws in each country, there are also laws that say how all people in the world should be treated. These rules are called human rights and people have them just because they are people. Many countries have tried to agree about what human rights are and many **documents** about human rights have been written (these are often called *conventions*), for example:

- The *Universal Declaration of Human Rights*, written by the **United Nations** in 1948.
- The *International Covenant on Civil and Political Rights* and the *International Covenant on Economic Social and Cultural Rights* say more about the rights in the *Universal Declaration of Human Rights*.
- There is also a list of human rights for people living in Africa. It is called the *African Charter on Human and People's Rights* and was written by a group of African countries in 1981. The African Court of Human Rights can decide if a country that has signed the Charter has gone against it or not.

When a country **signs** a convention, it means it agrees with the convention and is getting ready to **ratify** it, or come under the law of the convention. Countries have their own rules about how they must ratify a convention (like discussing it in parliament or writing a letter to the United Nations about it). When a country ratifies a convention it promises to put it into practice. The country has to report on what it is doing about the convention and other countries which have signed can complain if that country is not doing enough. Countries who have ratified a convention must change their own laws so that they do not differ from that convention.

**Words you need to know:**

Some words in this book are quite hard. We have made these words stand out on the page, like this: **word**. You will find an explanation for these words in the box called "Words you need to know" in the margin on the right hand page, like this one.

- **Documents**  
Official written papers
- **United Nations**  
An organisation where representatives of nearly all the countries in the world work together to solve common problems and work for world peace. It has many committees and organisations which carry out its work

### Some International Agreements on Women's Rights

The *Universal Declaration of Human Rights* says that women should get the same rights as men. It says that everyone should have the right to be treated equally in marriage, that everyone should have the right to own property, and that everyone should have good enough housing.

The *International Covenant on Civil and Political Rights* says men and women should be treated equally. It says that women should get the same rights as men in marriage and when a marriage ends, and that women should have the same right to inherit property as men have.

Countries that sign the *Convention on the Elimination of all forms of Discrimination Against Women* (CEDAW) have to do everything they can to stop women from being treated worse than men.

The *African Charter on Human and Peoples' Rights* says that women should be treated the same as men, and that women should get proper housing no matter whether they are married and no matter how they were married. It says that women should have the same right to inherit property as men have.

## Women's Rights

All these international agreements say that women must have the same rights as men. Countries that sign the agreements have to protect (look after) the rights of women. There are also special agreements about women's rights, for example the *Convention on the Elimination of all forms of Discrimination Against Women* (CEDAW). The *African Charter on Human and Peoples' Rights* has a special part which is just about women's rights. This is called the **Optional Protocol on Women to the African Charter**. Two important things this optional protocol says are that all women (married or not married) must have the same rights as men to housing, and that all women (no matter what kind of marriage they have) must be allowed to inherit from their husbands.

## What are housing rights?

All of us need a place to live. This place does not have to be very grand but it must keep us safe from the weather and from unwanted outsiders coming in, and it must be a place where we can be happy, peaceful and well. International law calls this our right to adequate housing.

### What is 'adequate' housing?

In international human rights law, 'adequate' housing means:

- the house can protect you from the weather, like rain or wind or snow or heat or cold;
- the house can protect you from danger, like wild animals, or someone who wants to hurt you;
- the house must be close enough to water and a place that you can use as a toilet without harming your health or the environment;
- the house must be close enough to places like schools and clinics and jobs, so that you can keep your other human rights like your right to be healthy and your right to be educated.

You will also not be able to keep these other rights if your house is too expensive, so it should not use up too much of your money.

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If your country has ratified the *International Covenant on Economic, Social and Cultural Rights*, then it has agreed that it is your human right to have adequate housing. This covenant understands that adequate housing is expensive, so it says that countries can take time to give everyone that right. There are very many things a government could be doing to look after people's housing rights. For instance, a government must ensure that people are not evicted for no reason when they do not want to move from where they are living.

It is very important that people feel secure (not afraid of losing) where they live. If you are safe from losing your land or home, and you are safe from being forced to leave your home, then you have **security of tenure**. Security of tenure is especially important for women because women have more chance of losing their homes and they find it more difficult to get a home of their own. International law says that security of tenure is part of your right to adequate housing.

It is especially difficult for women to get rights to land and houses. In many countries, customary law does not allow women to own land or houses. Often women do not have enough money to buy land or a house because they do not earn enough money. Often women get a house by getting married to a man who has a house. If a woman gets divorced she might be forced to leave the house where she lives. If her husband dies she may lose the right to that house, because she may not have inheritance rights under customary law.

## What is inheritance?

When someone dies, and leaves **property**, the property of that person is given to another person or people. This person, or these people, **inherit** the property of the person who died. Who gets the property (who inherits) is decided in different ways in different countries.

### Words you need to know:

- **Optional Protocol**  
Part of an international agreement that a country can choose if it wants to sign or not. For example, Nigeria has signed the African Charter but it has chosen not to sign its Optional Protocol. Nigeria therefore does not have to do what the Optional Protocol says
- **Property**  
What someone owns, including money

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In many countries, the person can decide before he or she dies who should inherit his or her property. Usually, this must be written down and signed in a document called a will. There are usually laws in a country which say how a will must be written, and what must happen after a person who has written a will dies.

But if there is no will, then other laws must be used to decide who gets the property. Often what happens to the property depends on customary laws. More than anything else, what happens to the property depends on how the person was married and what kind of marriage contract there is.

## **Different marriages and marriage contracts**

In many African countries there are different ways to get married:

- You can get married under the written laws of that country (in other words, under statutory law)
- You can get married under the traditional laws of your family or people (in other words, under customary law)
- You can get married under the religious laws of your faith.

In some countries you can get married in more than one way. In different countries, these different marriages mean very different things under the law. So women married under different laws may have different *legal rights and status*. For example, in many countries under customary law the woman becomes, or stays, a legal minor (a person who is seen as a child in the law, and cannot make legal agreements or decisions) when she marries under customary law. This means she must always have a **legal guardian**, who can make decisions about her rights and her life. In marriage, this is her husband (the law says he has ‘**marital power**’); if he dies, then the guardian is a man from her family or her husband’s family. Also, she is usually not the legal guardian of her children (her husband is), so she does not have rights to them.

The law under which a woman gets married also affects her *property and inheritance*. When you get married you are making a legal contract (even if it is not written down) which has rules about property in your marriage. The marriage contract



also has rules about what will happen if you divorce or one of you dies. There are three main kinds of marriage contract:

- the husband and wife own everything together (this is called ‘in community of property’)
- the property of the husband and wife is kept separate (this is called ‘out of community of property’ or ‘separation of property’)
- the husband and wife share everything they get after the date of marriage, but keep whatever they had before they married as separate property (this is called ‘limited community of property’, or ‘accrual’)

‘In community of property’ means that you share everything that you and your husband own - including debts (money you owe) - from before your marriage. This sharing is called a joint **estate**. After the marriage everything you and your husband earn or buy, including your debts, is added to this joint estate. You control and look after this estate together. This means that UNLESS your husband has **marital power** both your and your husband’s signature is needed when:

- you want to buy or sell something important, like a house
- you sign a credit agreement, for example you borrow money
- you want to take money from your husband’s bank account, or he wants to take money from your account.

In many countries, all marriages are ‘in community of property’ unless you signed a legal document before your marriage (usually called an ante-nuptial contract or ANC), saying that your property will be kept separate from your husband’s after you are married - this is called being married ‘out of community of property’.

‘Out of community of property’ means that the things you own (called your **estate**) are kept separate from the things your husband owns. You will look after and control your estate and your husband will look after and control his estate. If you get divorced, you keep your estate, and your husband keeps his. Sometimes you and your husband look after your own estates during your marriage, but if you get divorced then you and your husband share the amount of money that your estates INCREASED BY during the marriage. It depends on the kind of marriage law in your country and how you were married.

## Words you need to know:

- **Legal guardian**

Someone who is chosen under the law to look after somebody else’s affairs: for example, their money and other property (if they have any), important choices in their life, and other personal matters. When someone has a legal guardian, this is usually because other people think that person cannot look after his or her own affairs

- **Marital Power**

When a husband makes legal decisions for his wife

- **Estate**

Everything owned by a person

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## Marriage and inheritance

Under many customary laws only men may inherit. This means, for example, that if a man who is married under customary law dies, the son of his first wife (if he is married to more than one wife) will be in charge of all his property. (If that son is dead, then the son's son would be in charge of the property, or the nearest male relative). There are usually rules like the one that says he cannot sell the house without the permission of the wife living in the house, and he has a duty to look after and support the widow (a woman whose husband has died) of his father, but often these rules are ignored by the male, and the widow is thrown out of the house and denied any rights to land or property.

So the right to inherit is also a human right, because without this right, women can lose the right to land and housing and so end up living in poverty.

This report looks at how laws and rules about inheritance affect women in different countries in Africa. It looks at what different countries are doing to try to help women, and what must still be done. You can read about the different countries on pages 12 to 31. COHRE also has some ideas about how things could be made better for women in these countries by their governments or by organisations (like NGOs) working to help women. You can read about these on the next few pages.

### **What should laws about inheritance say?**

Every country has many different statutory laws that say something about land and housing rights and inheritance rights. These laws might be about marriage, or about inheritance, or about tax, or about families, or about buying and selling property. To be good laws, which help women to have rights to land and housing and rights to inherit land and housing, many of these laws need to be changed.

- The laws must treat women equally to men, and must not result in women being treated unfairly just because they are women.

- All the people who will be affected by a law should have a chance to say what they think when the law is being made.
- Laws about owning land must **recognise** and **protect** the right of both the husband and the wife to adequate land and housing (see page 4).
- Laws to do with inheriting property should say that the husband of a wife who has died, or the wife of a husband who has died, and their children, should get most of the property first.
- All wives should have the right to inherit land, and to be treated the same as their husbands, no matter whether they are married under customary law, or religious law, or statutory or common law.
- Female (girl) and male (boy) children must be treated the same when it comes to inheritance.
- Marriage laws must not allow **marital power**. Property that people get while they are married must be **registered** in the name of the husband AND the wife, and they should **administer** it jointly (together).
- Everyone should be encouraged to write a **will** that says who should inherit their property so that there is no argument about this when they die. There needs to be an easy way to check that a will was written according to the law.
- Fair statutory law (and not customary law) should be used when a person dies without a will.
- There must be rules about **registering** and **administering** deeds (documents which say who owns a piece of land). These rules must **protect** women. It must be easy and cheap to register and administer deeds. **Proof** that a deed has been registered must be given to the wife AND the husband.
- The law should say that all government officials (people who work for a government) who have something to do with inheritance must get training about women's rights and human rights.
- The law should say there must be a plan to tell women about their inheritance rights and the ways they can get and keep these rights.

## Words you need to know:

- **Recognise**  
To accept that something is legal, true or important
- **Protect**  
Look after and keep safe. When a government protects people's rights it makes sure that nobody takes those rights away from the people
- **Marital Power**  
When a husband makes legal decisions for his wife
- **Registered**  
Written down on an official list and recognised by the authorities
- **Administer**  
To control or make decisions about something
- **Will**  
An official paper saying what a person has decided should be done with their money and property after their death
- **Proof**  
A fact or piece of information which shows that something is true

## What should African governments do to help with women's inheritance rights?

There are many different things governments should do to help women. Here are some of them:

- Governments should make sure all their laws agree with international human rights law (see page 3).
- Governments should sign and ratify the *Optional Protocol on Women to the African Charter on Human and Peoples' Rights*, and do what it says (see page 4).
- Governments should make all their laws protect (look after) women's rights to housing and land and to inherit, and make sure women are treated equally to men.
- Governments should educate Members of Parliament, judges, magistrates, lawyers, the police, government workers and ordinary people about women's rights. These include their rights to be treated equally to men, their rights to suitable housing and land, and their right to inheritance.
- Governments should educate all women, especially women in rural areas, about their rights and how they can get these rights.
- Governments should set up special police units and pay people to help women get their inheritance rights without fear. Governments should give money and other help for this.
- Governments should make sure that women do not become homeless when their housing, land and other property is stolen, by having places where women can stay for a short time (shelters). They should also give these women legal help and money.
- All changes to laws and the legal system, especially those about land, should help women as much as they help men.
- Governments should make it easy for women to use the legal system. The courts and the people who work with the law must not treat women badly just because they are women, and they must protect (look after) women's rights. There must be cheap or free legal help for women.

## **What can organisations do to help with women's inheritance rights?**

There are many different things organisations like NGOs should do to help women. Here are some of them:

- Organisations should say how important housing and land is in women's lives.
- Organisations should work with governments to make the laws in a country agree with international human rights law. They should work especially on women's rights to adequate housing (see page 4) and to land and women's rights to own and inherit in the same way as men.
- Organisations should talk to each other about ways to help with women's housing, land and inheritance rights.
- Organisations should use international human rights laws and agreements to help them in their work on women's inheritance rights.
- Organisations should use international committees and organisations to help with women's problems with inheritance. For example, NGOs can give reports about how women are being stopped from getting inheritance rights to committees of the United Nations (see page 3) that check whether governments who have signed agreements are doing what they are supposed to do.
- Organisations should make sure that communities know about all human rights and especially the right of women to be treated the same as men and not be treated unfairly just because they are women.
- Organisations should educate judges and magistrates, traditional and community leaders, and people who work for government, about the right of women to be treated the same as men and not be treated unfairly just because they are women, as well as women's rights to adequate housing (see page 4), land and inheritance.
- Organisations should use the radio, TV, newspapers and other media to make sure more people know about women's problems with inheritance rights, and to try to get all people to fight for women's rights.

# Botswana



Botswana became independent in 1966. Since then, the Government has tried to give women rights. The Constitution of Botswana says that men and women must be treated the same. The Supreme Court (the highest court in the country) also says men and women must be treated the same. Botswana has also ratified (see pages 3 and 4) many international **documents** about human rights and women's rights (you can read in the margin of this page which ones).

Botswana has agreed to:

- The International Covenant on Civil and Political Rights
- The African Charter on Human and People's Rights
- The Convention on the Elimination of all Forms of Discrimination Against Women

This means Botswana has to do what these agreements say.

Botswana has not agreed to:

- The International Covenant on Economic, Social and Cultural Rights

You can read about all of these on pages 3 - 4.

The law in Botswana says that marriages made under statutory law and under customary law (see page 2) must be registered. The law also says that men may not marry more than one wife.

According to a new law passed in 2004 men who are married under statutory law do not have **marital power** over their wives (see page 6). This does not apply to customary marriages. We still need to see if this law will be practiced. For example, at the moment the officials who register deeds still say that property must be registered in the husband's name only. A man may not sell or **mortgage** property without his wife agreeing in writing, and she must be there when he does this.

Women in Botswana still have many problems to do with land, housing and inheritance. Statutory law says that all adults, men and women, have the right to get land anywhere in Botswana. But it is still hard for women to get land. One problem is that people do not know what the law says, or that it protects them. Another problem is that customary laws take away some rights of women.

Many people in Botswana still believe that "mona ke thlogo ya lolwapa" - the man is the head of the family, and women must not question his power. This makes it harder for women to own land or a house.

Inheritance is a big issue in Botswana, especially since so many people have HIV and AIDS. Under customary law, the eldest son inherits most of his father's **estate**. Girls do not have the right to inherit from their father. When there are no sons to inherit, the property might be passed to a distant male relative.

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Statutory law does not protect the right to property or the right to inherit of a woman who lives with a man but is not married to him, or of a woman who is married under customary law.

Men still make most of the decisions in Botswana. Most of the land in Botswana is Customary Land which is controlled by Tribal Land Boards. Men make the decisions about who should get land, and they usually don't give it to women. Husbands still have almost all the power to register land and make decisions about it (**administer** it), no matter whether they and their wives are married 'in community of property' or 'out of community of property' (see page 7).

### Things that should happen in Botswana:

- **Marital power** over property must end in practice for all marriages. Husbands and wives should own property together, and make decisions about it together.
- The property of a man who was married under customary law and who has died should not be divided among his children if his wife is still alive. His widow should **administer** his property until she dies. When she does administer his property, she should explain things to the children so that their rights are protected.
- A woman who lives for a few years with a man she is not married to should get half of the property if they separate (end their relationship).
- Boys and girls should have the right to inherit the same amount of their parent's property, no matter whether they are married or not.
- Decision-makers and Government officials should be educated that men and women have **equal** rights, including equal rights to land.

### Words you need to know:

- **Documents**

Official written papers

- **Marital power**

When a husband makes legal decisions for his wife

- **Mortgage**

To borrow money from a bank or some other place that lends money up to the value of your house or property (how much it is worth). If you do not pay the money back, the bank can keep your house or property.

- **Estate**

All the things you own

- **Administer**

To control or make decisions about something

- **Equal**

The same as

# Ethiopia



Ethiopia has joined many international human rights agreements which say that it must look after the rights women already have and try to give them more rights (you can read in the margin of this page which ones). Ethiopia has changed many laws so they agree with these international laws. The Constitution of Ethiopia says women have the same rights to property as men, including the right to inherit property. It says that it is wrong to treat women unfairly or badly just because they are women. But these laws are not always obeyed.

Ethiopia has agreed to:

- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The African Charter on Human and People's Rights
- The Convention on the Elimination of all Forms of Discrimination Against Women

This means that Ethiopia has to do what these agreements say.

You can read about all of these on pages 3 - 4.

Ethiopia has both customary law and statutory law (see page 2). Sometimes these laws go against each other. Customary laws often treat women differently or badly just because they are women. There is a lot of confusion about which kind of law rules in some situations. These differences need to be sorted out. Both customary law and statutory law should look after women's rights and say women must be treated the same as men.

The *Family Code* is a statutory law that rules over customary law. It says women cannot be married before they are 18. It says all marriages have to be **registered**. It says women who live with a man without being married still have rights. It also makes all marriages 'in community of property', which means that both the husband and the wife must make decisions about their joint property (see page 7).

But in inheritance, customary law is often used instead of statutory law. Customary law says different things about inheritance in different parts of Ethiopia. In a few areas women can inherit property, but mostly only men own, **control** and inherit property. Husbands even think of their wives as their property, and widows (women whose husbands have died) are often "inherited" by their husband's brothers.

All land in Ethiopia belongs to the Government. The law allows both men and women to **lease** land from the Government. Unmarried women can use, **administer** and control land. But married women and women supported by their families do not have these rights because men are seen as the head of the household. The men have those rights instead.



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## Things that should happen in Ethiopia:

- All the laws in Ethiopia must treat women the same as men. The law must not give ‘marital powers’ (see page 6) to husbands or make them the head of the household.
- There should be only one inheritance rights law, and it must not treat women differently or badly just because they are women. It must be more powerful than customary law and traditions.
- People should be educated about why the *Family Code* is good and about the parts of the Constitution that help with women’s rights.
- The courts should be more helpful to women and easier for women to use, and the Government should provide free legal help for women.
- The Government should make sure that human rights (especially women’s human rights) are **protected**.

### Words you need to know:

- **Registered**

When a marriage is registered it is written on an official list of marriages and the Government treats the people as married

- **Control**

When you rule over and make all the decisions

- **Lease**

to make a legal agreement to pay money so that you can use land for an agreed period of time

- **Administer**

To control or make decisions about something

- **Protected**

Looked after and kept safe. When a government protects people’s rights it makes sure that nobody takes those rights away from the people

# Ghana

Ghana has joined all the main international human rights agreements (you can read in the margin of this page which ones) and the Government is trying to make the laws fit in with these agreements. But the country's customary laws and traditions are still different in many ways from its statutory laws (see page 2).

Ghana's Constitution says that it is wrong to treat women badly just because they are women. It says that a woman can inherit from her dead husband even if he did not write this in a **will** (see page 6).

But customary law is the most powerful law in family matters in Ghana. A man can have one or many wives. In about half of the families in Ghana, the children belong to the mother's family. In other families the children belong to the father's family. But in both these systems under customary law the husband is the owner of the property in the marriage. When a man dies in a family where the children belong to the women's family, the sons of his sister or sisters inherit his property. They often evict the **widow** from the house (they throw her out).

In Ghana, only about one person out of every five people makes a **will**, so what happens to the property of a person who dies without making a will is very important. If a person in Ghana dies without making a will, his or her property is divided in a way written in statutory law called the **Intestate Succession Law** - not in customary law. This law says that the wife or husband of the person who died and their children get most of the property. The widow and children get the house and things in it. A smaller part of the property goes to the other people in the family. Nobody can evict (throw out) a widow or child from the home in the first six months after the husband dies. Anybody who disobeys this law can be sent to jail or get a large fine. The law also says that children's education must be paid for first, before the property is divided up.



Ghana has agreed to:

- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The African Charter on Human and People's Rights
- The Convention on the Elimination of all Forms of Discrimination Against Women

This means that Ghana has to do what these agreements say.

You can read about all of these on pages 3 - 4.

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Many women in Ghana still get thrown out of their homes. A big reason for this is they don't know that the law protects them and they don't know how to use the law to get their rights. The police also don't know enough about women's rights and so do not help them.

Some problems with the *Intestate Succession Law* are that it does not apply to land and housing that is owned by the lineage (a very large family, all with the same ancestors or blood ties). It causes big problems in marriages with more than one wife because only the first wife gets anything. It also doesn't give land and housing rights to women who live with a man without getting married.

### **Things that should happen in Ghana:**

- Customary law and statutory law must be changed so they do not go against each other. It might be better to change the customary laws rather than get rid of them altogether.
- There should be education programmes to tell all people about the *Intestate Succession Law* and how to use it properly.
- The *Intestate Succession Law* should be made clearer and easier to use.
- Legal help should be better and easier to get so that people can use the courts to get their rights

### **Words you need to know:**

- **Will**

An official paper saying what a person has decided should be done with their money and property after their death

- **Widow**

A woman whose husband has died

- **Intestate Succession Law**

A law that says what must happen after someone dies without leaving instructions (a will) about what must be done with his/her property

# Nigeria



Nigeria has a lot of different groups of people and a very complicated legal system. There is a mixture of English common law (from England), Islamic Sharia (religious law) and customary law (which in some places has been written down) (see page 2). There are **federal laws** that are for the whole country and also state, local or clan laws that are only for some parts of the country. Different areas and different tribes have different customary laws. All these laws often go against each other and it is often not clear which kind of law is the one that rules in some situations.

Nigeria has agreed to:

- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The African Charter on Human and People's Rights
- The Convention on the Elimination of all Forms of Discrimination Against Women

This means that Nigeria has to do what these agreements say.

You can read about all of these on pages 3 - 4.

In federal (or country-wide) law, women are not supposed to be treated differently or badly just because they are women. But state, local or customary law often treats women differently or badly just because they are women. In some traditions using violence against women is allowed. For example, **female genital mutilation** is very common, and men are allowed to beat and hurt their wives if they think they did something wrong. Many widows (women whose husbands have died) are made to follow traditional customs that can harm them. Government officials do nothing about these situations.

In two court cases in Nigeria in the last few years the courts have said that women should be treated the same as men, and women should have the right to inherit. This is a good thing, but there is still a lot to be done.

In most of Nigeria, marriages under Muslim religious laws or other customary laws (see page 2) are not **recognised** or protected by the statutory law, even though these are the most common marriages. For example, the federal law says that women must be able to inherit in the same way as men. But this law is only for women who are married under statutory law, and only if there is a **will** (see page 6). It does not apply to women who are married under customary or Muslim law, so some customary law and statutory law in some parts of the country says wives and daughters do not have the right to inherit anything, and the federal law does not stop this. Sharia law says that women can own property and can inherit property, but that women only have the right to inherit a small share.

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Under some customary law when a woman gets married she stops being part of her father's family. But she also does not become part of her husband's family. This means that if she is thrown out of her home, she has nowhere to go.

Land in Nigeria can be held either in a statutory or a customary way. But under both systems land **registration** is usually in the man's name.

### Things that should happen in Nigeria:

- There must be new laws that recognise and protect people married under customary and religious law. There must be only one inheritance law, for all women in Nigeria in all types of marriages.
- Nigeria should ratify (see page 3) the *Optional Protocol to the African Charter* (see page 4) and do what it says, so that women have the right to inherit and the rights to land and housing. Also, Nigeria should bring *CEDAW* (see page 4) into its laws.
- The Government must make sure that more women can become leaders in Nigeria so that they can help change laws and make decisions to help women.
- There should be free legal aid for women who want the courts to help them get their housing, land, property and inheritance rights.

### Words you need to know:

- **Federal laws**

Laws made by the central Government, not the government of only one region of the country

- **Female genital mutilation**

Harming (usually by cutting or sewing) a woman or girl's private parts

- **Recognised**

Have accepted that something is legal, true or important

- **Will**

An official paper saying what a person has decided should be done with their money

- **Registration**

The way something is written down on an official list and recognised by the authorities

# Rwanda



Seven out of every ten people in Rwanda are women. Half of these women are widows (their husbands have died). This is because of the huge numbers of killings (**genocide**) that happened in the 1990s. Because of the genocide many women still live in temporary houses, or in half-ruined buildings. Often male family members tried to, and were able to, take away these women's homes.

In 2003 the new Constitution of Rwanda became law. The Constitution says women should be treated the same as men. It says Rwanda will promote and protect human rights. It says people can still use customary law but only if this does not go against anyone's human rights. It says that all people can own land, but it does not mention equal inheritance rights for women.

Many women do not know about the law and how it can help them to have the same rights as men. Women are taught never to talk about what happens in the family, so they often feel they must be quiet and not fight for their rights.

Most people in Rwanda marry under customary law but the statutory law does not **recognise** these marriages (see page 2). Under customary law, a married woman has no rights to own anything. She is not even allowed to get property from her husband while he is still alive. Land, housing and belongings are the property of the husband and his family.

Rwanda has passed a statutory law called *The Inheritance and Succession Law* to look after the inheritance rights of women who are married under statutory law, if there are no other wives. The law says a widow can inherit her husband's property when he dies. This law also says both boys and girls who are born to a father and mother who are married under statutory law should inherit the same amount of property. It also says a man and a woman can choose from 3 systems of marriage ('in community of property', 'separation of property' and 'limited community of property' (see page 7)). This law says how houses and property can be inherited, but it does not say anything about the inheritance of land. This is because the State owns all land in Rwanda at the moment. The Government is busy writing a new **policy** about land rights.

Rwanda has agreed to:

- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The African Charter on Human and People's Rights
- The Convention on the Elimination of all Forms of Discrimination Against Women

This means that Rwanda has to do what these agreements say.

You can read about all of these on pages 3 - 4.

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## Things that should happen in Rwanda:

- The *Inheritance and Succession Law* must be changed so that it is also for women who are married under customary and religious law. It must also be for children whose parents were not married.
- The new land **policy** must give women the same rights to use and to own land as men.
- There must be education programmes all over Rwanda to tell people about the *Inheritance and Succession Law*.
- The courts must be quicker and easier to use, and the people who work in the courts must have better understanding about the problems of women, widows and children.
- Rwanda is still in an **emergency situation** as a result of the genocide. Thousands of **refugees** are still coming back to Rwanda each month. There is a very big housing problem, because there are not enough houses. Organisations that have been helping Rwanda and giving money should keep giving help to Rwanda.

### Words you need to know:

- **Genocide**

The murder of a very big group of people, for example a whole nation, race or religious group

- **Recognise**

To accept that something is legal, true or important

- **Succession**

Law about inheritance

- **Policy**

A government or other organisation's plan about what to do in some situations

- **Emergency situation**

Something dangerous which happens suddenly and needs immediate action in order to avoid harmful results

- **Refugees**

People who have escaped from their own country for political, religious or economic reasons or because of a war

# Senegal

Senegal's Constitution became law in 2001. It says that men and women should be treated the same. Senegal has agreed to the most important international human rights agreements (you can read in the margin of this page which ones). But even so women are still not treated the same as men, especially in the rural areas. Customary laws and Islamic laws about marriage and inheritance do not treat women the same as men.

Half of all women living in Senegal are in **polygamous** marriages. Violence against women is common. **Female genital mutilation** is done to one girl out of every five girls. In urban areas more than one out of every three people live in **squatter housing**. Women can easily be forced out of these houses because they do not have security of tenure (see page 5).

Tradition makes it hard for women to borrow money from banks to buy land or a house, even though the Constitution says women have the right to own property. Under customary law women have a duty to farm the land, but in most areas they do not own it. Rural Community Councils decide how land must be used. Most Council members are men, and often they give land only to other men, not women. Islamic law says women have no rights to own land or houses.

The *Family Code* is for women who are married under statutory law, or under customary law, or under Muslim religious law. There are 3 different property systems for married people: 'separation of wealth' (the husband and wife each keep their personal property - this is like the 'out of community of property' - see page 7), the 'dowry system' (the wife keeps some personal property), and the 'common property system' (everything is shared - this is like the 'in community of property system' - see page 7). In marriages where there is more than one wife, each wife can be married under a different system. Most marriages where there is only one wife are under the common property system.

Under customary law, women are always **minors**. This means that no matter how old they are, they always have a legal guardian (see page 6). This is their father (or some other male



Senegal has agreed to:

- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The African Charter of Human and People's Rights
- The Convention on the Elimination of all Forms of Discrimination Against Women

This means that Senegal has to do what these agreements say.

You can read about all of these on pages 3 - 4.



relative) until they get married. Then their husband becomes their legal guardian. Their husband has ‘marital power’ (see page 6). If the husband dies, a wife is inherited by a male relative of the husband (this is called ‘**widow** inheritance’), or her son becomes her legal guardian. Widow inheritance happens a lot in Senegal.

By tradition women must farm the land. Women are allowed to own land, but very few do.

## Things that should happen in Senegal:

- Education about women’s rights is needed in all parts of the country.
- People should learn about the bad effects of customary law and traditions on women’s rights to land, housing, inheritance and personal safety.
- The *Family Code* must be changed. It must no longer say that the husband can make decisions over his wife.
- The Government must do something about the squatter housing in towns and cities, because it has agreed that everyone has a right to adequate housing (see page 4).
- There must be programmes to help women so that they do not need land so much.
- **Tax** and inheritance laws must be changed. Women must have the right to inherit all their husband’s property.

### Words you need to know:

- **Polygamous**  
When someone (usually a man) is married to more than one person at the same time
- **Female genital mutilation**  
Harming (usually by cutting or sewing) a woman or girl’s private parts
- **Squatter housing**  
Informal housing. It is usually not planned by the authorities
- **Minors**  
People who are too young to have the legal responsibilities of an adult
- **Widow**  
A woman whose husband has died
- **Tax**  
Money you must pay to the government based on what you earn or what things you buy

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## South Africa

The *Bill of Rights* in South Africa's Constitution **protects** human rights for everyone, including the right to housing, health and education. There is a Human Rights Commission which has the job of making sure people get their human rights. South Africa is part of many international human rights agreements (see the list in the margin).

The Constitution says that men and women are **equal** and must be treated the same. It says that people can use customary law as long as this does not go against the *Bill of Rights*. Many people say customary law must not be used because under customary law women are treated as **minors** and cannot own their own land.

In South Africa, both civil and customary marriages are **recognised** and the statutory law about inheriting applies to both these kinds of marriage. But Muslim marriages are not recognised and the inheritance law does not apply to these marriages. In South Africa, marriages can be 'in community of property' or 'out of community of property' (see page 7) or they can be out of community of property with accrual, which means that the husband and wife agree that anything they get after they are married is divided equally between them.

Before 2004, under customary law, only males in the father's family were able to inherit. Then a court case in 2004 said this went against the Constitution and must change. But this change is slow in coming. Not all customary law is written down, so it can be understood in different ways. Many magistrates (local judges) follow the customary law even if the custom is against the Constitution.

There have been a number of important court cases that have helped women's rights. One court case said that the law about inheriting must apply to the **widow** of a Muslim marriage. Another case said that females can inherit from their parents just like their brothers and any law which says the opposite is against the Constitution.



South Africa has agreed to:

- The International Covenant on Civil and Political Rights
- The African Charter of Human and People's Rights
- The Convention on the Elimination of all Forms of Discrimination Against Women

This means that South Africa has to do what these agreements say.

South Africa has signed, but not yet ratified:

- The International Covenant on Economic, Social and Cultural Rights

You can read about all of these on pages 3 - 4.

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## Things that should happen in South Africa:

- **Judgements** (decisions) by the Constitutional Court that help women's rights must be put into the law so women can actually get these rights.
- Customary **law of succession** must be changed because it goes against the *Bill of Rights* in the Constitution. There should be one inheritance and succession law for everyone.
- All customary marriages (including Muslim marriages) should be recognised in the law about inheritance.
- There should be education to stop women being treated differently or badly just because they are women.

### Words you need to know:

- **Protects**  
Looks after and keeps safe. When a government protects people's rights it makes sure that nobody takes those rights away from the people
- **Equal**  
The same as
- **Minors**  
People who are too young to have the legal responsibilities of an adult
- **Recognised**  
To have accepted that something is legal, true or important
- **Widow**  
A woman whose husband has died
- **Judgements**  
Decisions by a judge or magistrate in court
- **Law of Succession**  
Law about inheritance

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# Swaziland



Swaziland is the only country in the world where there is still a ruling King who has total power. Customary law is very important in Swaziland, but it is not written down. There is also statutory law (see page 2). There is confusion because of these two legal systems. In both systems, women are treated as **minors** (children) who cannot do anything without their husbands' or fathers' permission. Swaziland has agreed to some international laws which say that women must be treated the same as men in law and in practice (you can read in the margin on this page which ones). But Swaziland has not changed its laws to make this happen. Women cannot own property or get property except through a man. Once a woman is married she cannot sign contracts (see page 6). Traditions are very powerful in Swaziland. They are a big problem for women because they often go against women's rights.

A new constitution for Swaziland is being discussed in Swaziland, but it has not yet been agreed on. It would aim to protect women's rights. It would also set up a Human Rights Commission which must make sure that people get their human rights. But this new constitution says that customary law could only be changed by a Council of Chiefs (traditional leaders, who are all men). This means that things are unlikely to change for women in Swaziland.

In Swaziland, poor people cannot get legal help so it is hard for them to ask the courts to help them to get their rights.

People in Swaziland can get married under statutory law or under customary law. Under both systems the husband has marital power (see page 6) and married women are treated as **minors**. When the husband dies, there are many customary practices that the widow must follow. Some of these are harmful. There is a law about the **Administration of Estates**, which is about inheritance in any kind of marriage. But under customary law the wife is seen as an outsider who cannot inherit. This is one of the reasons why there is so much property grabbing by in-laws in Swaziland.

Swaziland has agreed to:

- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The African Charter of Human and People's Rights
- The Convention on the Elimination of all Forms of Discrimination Against Women

This means that Swaziland has to do what these agreements say.

You can read about all of these on page 3 - 4.

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A new land **policy** is being discussed in Swaziland. This policy would support equality for men and women and women's rights to housing, land and inheritance. Most of the land in Swaziland is called Swazi National Land which is given out by the chiefs, to men only, according to custom. There is also some 'Title Deed Land' - land that can be bought by anyone who can pay the high price, which women normally cannot. Women married 'in community of property' (see page 7) cannot own this land anyway.

### Things that should happen in Swaziland:

- Customary law must be changed so that it helps women to be treated fairly and the same as men. Customary law must not go against the statutory law and international law.
- Everyone, including judges, must be educated about women's rights.
- There must be a lot of discussion and learning about the harm caused by traditions like widowhood rites.
- Swaziland should **ratify** the *Optional Protocol to the African Charter* (about women's rights in Africa) and use this to look after women's rights.
- The new Land Policy must allow women to own and **control** land.

### Words you need to know:

- **Minors**  
People who are too young to have the legal responsibilities of an adult
- **Administration of Estates**  
Decisions about what happens to a person's property after they die
- **Policy**  
A government or other organisation's plan about what to do in some situations
- **Ratify**  
To promise to put an agreement into practice
- **Control**  
When you rule over and make all the decisions about someone's actions or behaviour

# Zambia



Zambia has customary and statutory law (see page 2). The Constitution says that customary law can be used in family matters. This is a problem because traditions are very powerful and often harmful to women. So under customary law women are often treated unfairly just because they are women. But Zambia is thinking about ways to change the Constitution and how to include human rights and women's rights in a new constitution.

Zambia has agreed to:

- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The African Charter of Human and People's Rights
- The Convention on the Elimination of all Forms of Discrimination Against Women

This means that Zambia has to do what these agreements say.

You can read about all of these on pages 3 - 4.

There is a lot of poverty in Zambia. This is made worse by **privatisation**. For example, many mines have now been privatised, and they make the air, water or earth dirty or harmful and make people leave the land. This goes against the rights of the people.

Most land in Zambia is customary land. Customary law is used for this land. Customary law often treats women unfairly or badly just because they are women.

Most people marry under customary law. **Polygamy** is allowed. The paying of *lobola* (bride price) is common. After *lobola* is paid, the wife has no right to return to her parent's home after his death. This makes it easier for people like her in-laws to treat her badly. A divorced woman has no right to get any property from the marriage.

'Property grabbing' is very common in Zambia. This is when the family of the husband or other family members take the property of a dead man, and leave his widow with nothing. There is a law, called the **Intestate Succession Act**, which is supposed to stop this. If a man dies without writing a **will**, his property (what he owned) is shared out in fixed amounts. For example, his children get half of his property, and his widow or widows get a fixed part of the rest. The widow has the right to use the house as long as she does not marry again. But this law is not for land held under customary law or 'family property'. There are special police to help women who are **victims** of property grabbing. But even with this law and these police property grabbing goes on and women are frightened to claim their inheritance rights because many people think that women who do this are witches.

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## Things that should happen in Zambia:

- Zambia should change the part of the Constitution that allows customary law to be used in family matters like inheritance, because customary law is not fair to women.
- The inheritance law must be changed so that customary land can be inherited by women, and so that **polygamous** marriages are included in it.
- Government programmes, like the police Victim's Support Unit, which help and protect women, must be helped.
- It is very important to have better education and awareness about how some traditions are against women's rights.
- There should be free legal help to help women to claim their rights in the courts.
- Zambia needs to plan and fight against poverty. **Income-generating** programmes can be part of this.
- The Government must make sure that **privatisation** does not take away human rights.

### Words you need to know:

- **Privatisation**

When things that were paid for out of taxes and used to belong to the State are sold to private companies

- **Polygamy**

When someone (usually a man) is married to more than one person at the same time

- **Intestate Succession Act**

A law that says what must happen after someone dies without leaving instructions (a will) about what must be done with his or her property

- **Will**

An official paper saying what a person has decided should be done with their money and property after they die

- **Victims**

People who suffer because of something that happens to them

- **Income generating**  
Money making



## Zimbabwe

The Constitution of Zimbabwe says that everyone must be treated the same, and the country has agreed to the main international human rights agreements (you can read in the margin of this page which ones). But women in Zimbabwe still do not have their rights, especially in the rural areas. Here are some practices that still happen in Zimbabwe that are against women's rights:

- wife inheritance (when the widow has to marry the brother of her husband who has died)
- offering young girls as payment in arguments between families
- **female genital mutilation**
- violence against women
- **polygamy**.

The Constitution says that customary law (see page 2) must be used for family matters like marriage and inheritance. There are three kinds of marriages in Zimbabwe – civil marriages, registered customary marriages and unregistered customary marriages (see page 6). The statutory law (see page 2) in Zimbabwe gives an unmarried women the right to own property, but if she is married under customary law she cannot own property together with her husband. If they get divorced, the woman has the right to get maintenance (support money) from her ex-husband for herself and her children.

If the husband writes a **will** that does not leave anything for his wife or children, she can ask the court to give her some of the husband's property. There is an important law called the *Administration of Estates Amendment* which says that if the husband dies and does not leave a will his wife has the right to inherit the home and the rest of the husband's property. This law also says that money must be shared between her and the children in a certain way.

But the courts don't always help with women's rights. For example, the Supreme Court (the highest court in the country) has said that land and property should stay in the man's family after his death, and not go to his widow. This is bad for women.

Zimbabwe has agreed to:

- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The African Charter of Human and People's Rights
- The Convention on the Elimination of all Forms of Discrimination Against Women

This means that Zimbabwe has to do what these agreements say.

You can read about all of these on pages 3 - 4.



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Struggles for **land reform** have been going on for many years in Zimbabwe. Recently, land that used to belong to white farmers has been redistributed (shared in a different way). But men have been given nearly all this land.

### Things that should happen in Zimbabwe:

- The Constitution must be changed so that it does not allow customary law to be used for family matters. Women must be treated fairly and the same as men.
- A special court should be set up to deal with family and inheritance.
- Education about the law and about human rights is very important to help women to know about and to get their rights.
- Judges and other people who work with the law must also be trained about human rights. They must do what Zimbabwe has promised to do about human rights.
- The **Deceased Person's Family Maintenance Act** must be made stronger so that a widow and her children can get the right to actually own, and not just to use, property from her dead husband.

### Words you need to know:

- **Female genital mutilation**  
Harming (usually by cutting or sewing) a woman or girl's private parts
- **Polygamy**  
When someone (usually a man) is married to more than one person at the same time
- **Will**  
An official paper saying what a person has decided should be done with their money and property after they die
- **Land reform**  
Improvements in the laws about who owns and uses land
- **Deceased**  
Someone who is dead

**The Centre on Housing Rights and Evictions (COHRE)** is an independent, international, non-governmental human rights organisation. COHRE is committed to ensuring the full enjoyment of the human right to adequate housing for everyone, everywhere.

**The COHRE Women and Housing Rights Programme** works for the housing and land rights of women. The programme is based in Geneva, Switzerland and Accra, Ghana.

**The COHRE Africa Programme** works for the housing and land rights of all people in Africa. The programme is based in Accra, Ghana.



COHRE International Secretariat  
83 Rue de Montbrillant  
1202 Geneva, Switzerland  
Tel: +41.22.734.1028  
Fax: +41.22.733.8336  
Email: [cohre@cohre.org](mailto:cohre@cohre.org)  
Web: <http://www.cohre.org>

COHRE Women and Housing Rights Programme  
83 Rue de Montbrillant  
1202 Geneva, Switzerland  
Tel: +41.22.734.1028  
Fax: +41.22.733.8336  
Email: [women@cohre.org](mailto:women@cohre.org)

COHRE Africa Programme  
P.O. Box A497, LA  
Accra, Ghana  
Tel: +233.21.238.820  
Fax: +233.21.231.688  
Email: [cohreafrica@cohre.org](mailto:cohreafrica@cohre.org)