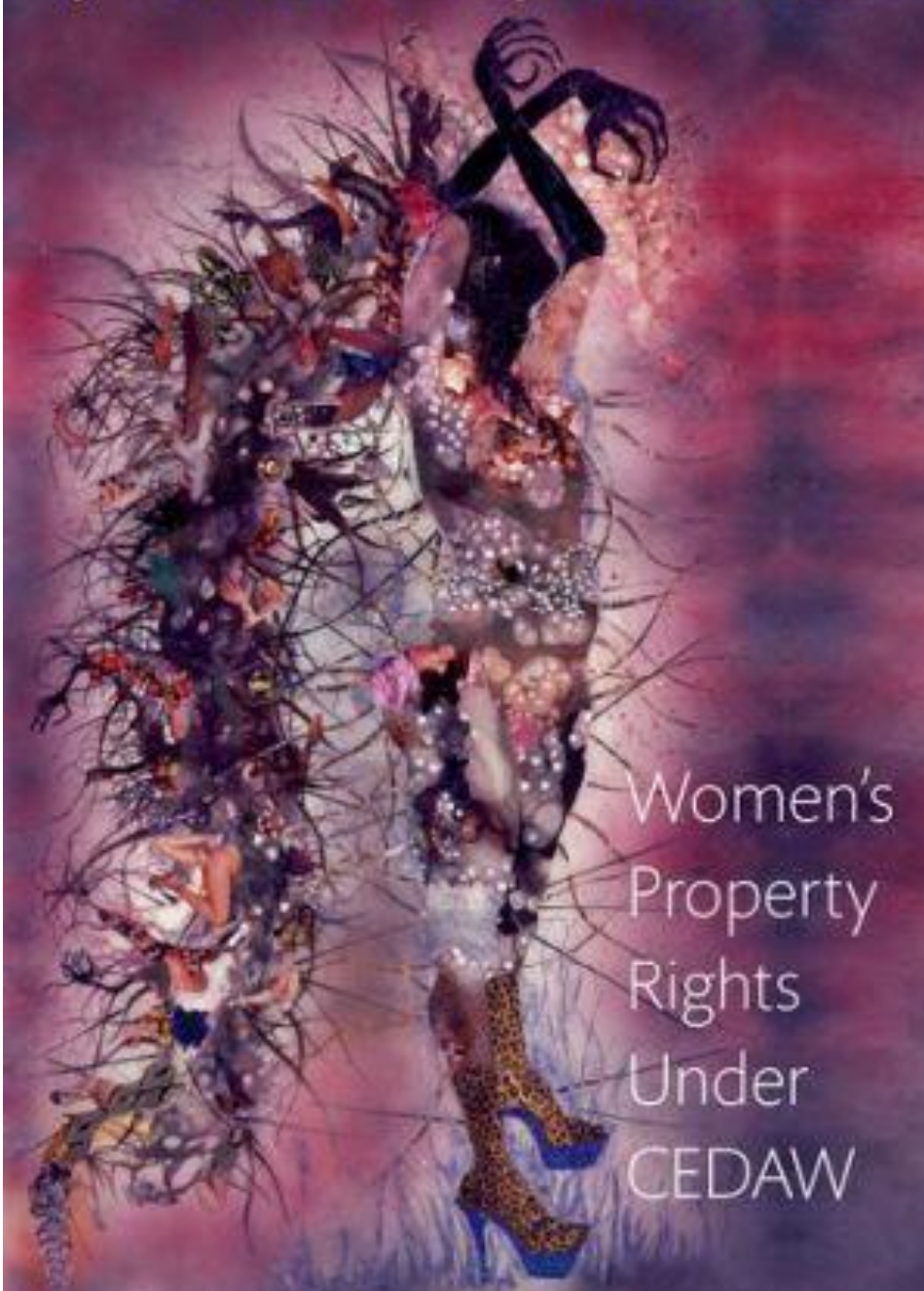


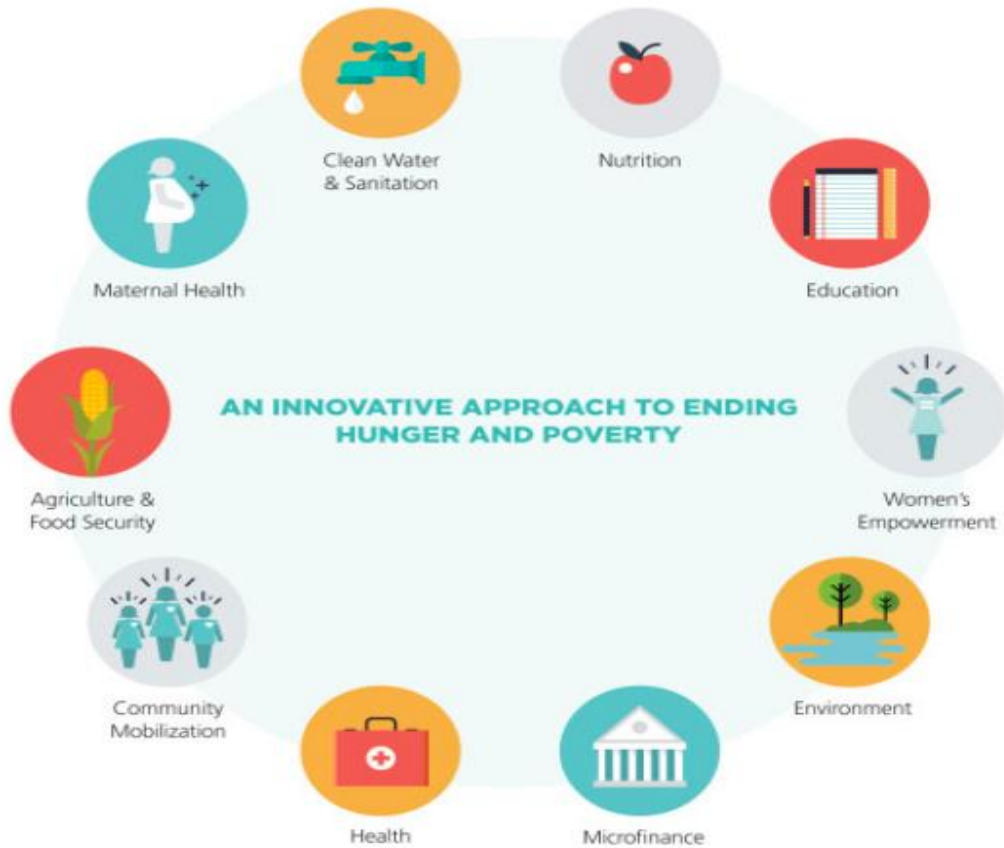
JOSÉ E. ALVAREZ & JUDITH BAUDER



Women's
Property
Rights
Under
CEDAW



Different Ways to Address Gendered Property Gaps



The goal of SDG 5 is to achieve gender equality and empower all women and girls

WHAT?

- 5.1 End discrimination against all women and girls
- 5.2 Eliminate violence against women and girls
- 5.3 Eliminate all harmful practices such as child marriage
- 5.4 Recognize and value unpaid care and domestic work
- 5.5 Ensure women's participation and leadership in decision-making
- 5.6 Ensure universal access to sexual and reproductive health and rights

HOW?



5a. Undertake reforms to give women equal rights to economic resources including land



5b. Enhance the use of information and communications technology



5c. Adopt and strengthen policies and legislation



CEDAW goes beyond formal equality by . . .

Requiring all appropriate measures by the state to advance de facto and not just de jure *substantive equality*

Addressing *direct and indirect* discriminatory distinctions, exclusions, restrictions, practices or omissions

That affect the equal enjoyment of human rights and fundamental freedoms in the *political, economic, social, cultural, civil or any other field*

Whether by *public authorities or any private actor*, including actions *taken outside the state's territory* by such actors

Requiring modification of *social, cultural patterns of conduct, elimination of all prejudices, customary or other practices, or stereotypes* (including inside the family or by religious groups such as polygamy)

Authorizing *temporary special measures* to accelerate de facto equality

CEDAW's Requirements to respect, protect, and fulfill equal rights to . . .

- Article 11 (e) **social security** and (2) **maternity leave with pay** and comparable social benefits
- Article 13 in **other areas of social life** and (a) **social security** programmes; (b) bank loans, mortgages, and other forms of **financial credit**
- Article 14 to eliminate discrimination against **women in rural areas** and with respect to (c) **social security**; (g) **agricultural credit** and loans, marketing facilities, **appropriate technology** and **equal treatment in land, agrarian reform and land resettlement**; (h) **adequate living conditions in relation to housing . . .**
- Article 15 (1) **equality before the law** and with respect to (2) civil matters, legal capacity, rights to **conclude contracts and administer land**
- Article 16 (1) in **all matters relating to marriage and family relations** and (1)(h) **same rights in respect to ownership, acquisition, management, administration, enjoyment, and disposition of property**

CEDAW's Property Jurisprudence (through GRs, COs, Views, Inquiry Reports)

- Property Rts in Marriage and Family Relations
- Civil and Political Rts
- Land Rts
- Adequate Housing
- Intellectual Property and Seed Rts
- Access to Credit/Economic Empowerment
- Social Benefits
- Property Rts in relation to Gender-based violence

Selective **Views** in Response to Communications

- Property Rights in Marriage/Family Relations: E.S. and S.C. v. Tanzania
- Adequate Housing: Communications involving North Macedonia
- Social Benefits: Ciobanu v. Moldova (also Blok v. The Netherlands)
- Need for safe housing in wake of gender-based domestic violence: Communications directed at Hungary, Austria, Bulgaria, Finland, and Russia; also Inquiry Reports on Canada and South Africa

[Photo by Jessica Philips, The San Antonio Express News]



Lessons from CEDAW's Property Jurisprudence

- The interpretation of CEDAW has evolved over time
- Its property jurisprudence **rejects** the 'neo-liberal' agenda that privileges private property, emphasizes titling, and favors commodification, privatization, business deregulation, and economic globalization
- CEDAW's recognition of intersectional discrimination avoids universalizing conceptions of women and girls
- The CEDAW Committee does not ignore the nature and root causes of structural discrimination and need for structural changes
- There is a continuing need for CEDAW's supranational, potentially transformative, scrutiny

CEDAW's Continuing and Growing Institutional Challenges



- UN-imposed constraints before, in, and after Geneva
- Sovereign backlash against human rights: treaty reservations and beyond
- Fragmented 'property rights' among IL's sub-regimes
- The CEDAW Committee's own bureaucratic pathologies and jurisprudential gaps