

Consultation with CESCR and CEDAW: Women and Economic, Social and Cultural Rights – Current Challenges and Opportunities for Advancement

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[DRAFT] Briefing on women and land

Introduction

Gender inequality when it comes to issues of land is a critical issue which lies at the heart of women's poverty, exclusion and insecurity worldwide. Access to, and control over, land and natural resources can better ensure that women are able to meet their day to day needs and provide for the material needs of themselves and their families. Research also shows that when women have equal rights over land (as well as housing and property), they are better able to cope with life's most difficult challenges, including, for example, mitigating some of the devastating consequences of HIV/AIDS.¹ Indeed, women's access to, and control over land is essential to women's right to equality and their ability to enjoy a range of other rights enshrined in international human rights law.

Women's rights in relation to land are well-established in international human rights law and standards, including under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW Convention) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Despite these protections, however, Food and Agriculture Organization of the United Nations (FAO) reports that "gender inequalities in land rights are pervasive."² Women have less access to land than men and they are also often restricted to secondary land rights, whereby they hold these rights through a male family member (usually a husband, father, brother or son). Women risk losing entitlements in case of divorce or widowhood. Evidence also shows that women's land parcels tend to be of smaller size and lower quality than those provided to men.³ In such circumstances, it is not possible to address women's rights in relation to land without acknowledging the role of customary practice, customary laws, and their roots within patriarchy.

¹ Caroline Sweetman, 'How Title Deeds Make Sex Safer: Women's Property Rights in an Era of HIV,' From Poverty to Power: Background Paper, Oxfam, 2008. See also: Richard S. Strickland, 'To Have and To Hold: Women's Property and Inheritance Rights in the Context of HIV/AIDS in Sub-Saharan Africa,' International Center for Research on Women (ICRW) Working Paper, June 2004. See also: Panda, Pradeep, 'Rights Based Strategies in the Prevention of Domestic Violence,' ICRW Working Paper 344, International Center for Research on Women (ICRW), Washington DC, 2002.

² Statement by the Food and Agricultural Organization of the United Nations (FAO) to the 64th session of the Commission on the Status of Women, 8 March 2010.

³ Ibid.

In addition, despite the centrality of land, particularly to the lives of poor and marginalized communities throughout the world, land pressures are rapidly increasing: land markets have often proven to be exclusionary and land concentration is on the rise.⁴ The question of women's access to productive resources in general, and land in particular, cannot be divorced from the broader context of macro economic policy and the global economic system.

Positive developments

The Committee on the Elimination of Discrimination against Women (CEDAW Committee) and the Committee on Economic, Social and Cultural Rights (CESCR) have each made a number of important comments about women's rights in relation to land in their general recommendations/comments and concluding observations on state reports. To enhance the practical application of such commentary to women's lives, it is useful to consider what approaches the committees have taken, as set out below.

The CEDAW Committee has said that that: "there are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband's or father's property at his death than would widowers and sons. In some instances, women are granted limited and controlled rights and receive income only from the deceased's property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention on the Elimination of All Forms of Discrimination against Women and should be abolished."⁵

CESCR has stated that "women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so"⁶ and has highlighted women's equal inheritance rights.⁷ On the right to adequate food and nutrition, the Committee has said that national strategies should include guarantees of, among other things, the right to inheritance and the ownership of land and other property, as a measure for preventing discrimination in access to food or resources for food.⁸

In addition, the CEDAW Committee has an important track record of addressing women's land and property rights within the context of its Concluding Observations on State party reports, making reference to such intersection more often than CESCR (although CESCR has provided additional commentary on rights related to land generally, not necessarily focused on women). Key commentary from the committees is set out in the table in Annex A, and include statements urging States to:

⁴ Mayra Gómez, 'Good Practices in Realizing Women's Rights to Productive Resources, with a Focus on Land'. Background paper, Expert Group Meeting Good practices in realizing women's rights to productive resources, with a focus on land Geneva, Switzerland 25-27 June 2012.

⁵ Para. 35, Gen. Rec. 21, adopted by the CEDAW Committee at its thirteenth session (1994).

⁶ UN Committee on Economic, Social and Cultural Rights, General Comment 16, Article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights (Thirty- fourth session, 2005), U.N. Doc. E/C.12/2005/3 (2005).

⁷ Ibid.

⁸ UN Committee on Economic, Social and Cultural Rights, General Comment 12, Right to adequate food (Twentieth session, 1999), U.N. Doc. E/C.12/1999/5 (1999), para 26, reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 62 (2003).

- Develop and strengthen a clear legal framework to eliminate discrimination in access to land, with CEDAW adding specificity regarding discrimination with respect to ownership, co-sharing, inheritance, and a ‘heads of household’ framework that favours men
- Address negative customs and traditional practices impacting on women’s rights related to land. In this regard, CESCR has focused on enacting or enforcing prohibiting customary practices restricting access to land, while CEDAW has suggested ‘positive measures’ or ‘a comprehensive strategy’ to address negative customs and traditional practices which affect full enjoyment of the right to land by women
- Address the impact of private and foreign companies
- Collect disaggregated data
- Ensure women’s participation in decision-making and planning related to land issues, with CEDAW further calling for the dissemination of information on women’s land rights
- Take positive measures to increase the enjoyment of women’s rights in relation to land, with CEDAW being more specific regarding such measures
- Develop sustainable solutions for women which incorporate women’s right to have access to productive resources, such as seeds, water, and credit and foster their capacity to earn a living and produce their own food (CEDAW only)
- Ensure equal access by women to resources and nutritious food, noting the connection between access to land and nutrition (CEDAW only)
- address the impact of armed conflict, in terms of increasing discrimination against women and affecting land restitution (CEDAW only)

The CEDAW Committee is also preparing a General Recommendation on Rural Women (based on Article 14) which will outline matters referred in their concluding remarks, as above mentioned, and will particularly emphasize women’s rights to access key productive resources, (only between 10 and 20% of all land holders are women), to ownership and to inheritance; as well the interdependence of the right to land other fundamental rights.⁹

Besides, the UN system has attempted to raise questions related to women’s access to land. For instance: the “*Voluntary guidelines on the Responsible Governance of Tenure of land, fisheries and forests in the context of national food security*” elaborated by FAO where land-grabbing, access to natural resources, and the differential impact on women and girls due to the displacement of communities and the destruction or confiscation of their lands are addressed.¹⁰ The process towards the *Declaration on the Right of Peasants*¹¹ which aims to voice the claims of peasants from different regions for their right to land, right to seeds, right to ecological

⁹ As stated by Ms. Naela Gabr, Member of the CEDAW Committee, General Recommendation on Article 14 of CEDAW Rural Women.

<http://www.ohchr.org/Documents/HRBodies/CEDAW/30thAnniversaryCEDAW/GeneralRecommendationOnArticleNaelaGabr.pdf>

¹⁰ <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>, officially endorsed by the Committee on World Food Security on 11 May 2012

¹¹ Open-ended intergovernmental working group on a United Nations declaration on the rights of peasants and other people working in rural areas <http://www.ohchr.org/EN/HRBodies/HRC/RuralAreas/Pages/WGRuralAreasIndex.aspx> and <http://viacampesina.org/en/>

diversity and their rights to water and health. The Declaration also addresses the right to equality, including gender equality, and refers to Article 14 of the CEDAW Convention.¹²

There is also an ongoing request to the CEDAW Committee to adopt a General Recommendation on Indigenous Women based on the indigenous groups needs to specifically address the various layers of discriminations based on racism and discrimination on the base of sex. Such document would also address the entrenched relationship between indigenous women and access to their land for the realization of their fundamental rights.

Issues to consider

Building on the existing foundation and taking these advancements into account, it is important to continue to consider the following issues:

- Access to land for women is complex and intricate as women access land in such vastly different situations and contexts. The obstacles which prevent women from effectively enjoying land rights are complex, and at times context specific. They range from inadequate legal standards and implementation, to discriminatory attitudes and barriers at the local and community level which prevent women's access to productive resources, to international economic policies and private sector acquisition or use of land.
- In some parts of the world, for most rural women land is acquired within the context of marriage and within the family, within the context of inheritance (being able to, in terms of laws or practice, retain some land previously owned by a deceased husband), through government or other social programs which makes access a reality but often not ownership, and to a lesser extent through access to markets.
- Women in urban settings are subject to ownership linked to government policies which reduces them to dependents of their husbands and male relatives, tenancy within urban settings with exorbitant property prices, living in unsecure tenure (shacks, shanty towns) which spring up as a result of employment opportunities or rural land displacements as a result of development projects.
- Culture and religious restrictions or limitations more often than not place women within the position of a minor who is unable to access communal land, unable to own land without her husband's consent and unable to retain ownership of land. Indeed, in many communities, gender disparities with regard to productive resources are linked to notions of men being the sole stakeholders -- including ideas that productive resources given to women are "lost to another family" in the event of marriage or divorce, that men will provide for women's economic security, or that women are simply incapable of managing productive resources such as land effectively.¹³ Regardless of how women lose land, or are excluded from accessing it, inequality in this area leads to deepened

¹² Article 14 of the CEDAW Convention specifically protects the rights of women living in rural areas against discrimination in their access to resources, including land, and in their access to work, adequate housing and programmes for social security, health and education

¹³ Canadian HIV/AIDS Legal Network, 'Respect, Protect and Fulfill: Legislating for Women's Rights in the Context of HIV/AIDS — Vol. Two: Family and Property Issues,' 2009. Available online at: <http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=1537> [last accessed 4 April 2012].

poverty, lower social status, decreased autonomy, and vulnerability to exploitation and abuse.

- Cultural and religious practices if not addressed will continue to frustrate and delay women's equal enjoyment of the right to property. There is therefore a need to interrogate the understanding, interpretation and preference that is given to cultural rights. The key to analyzing the intersectionality between women's right to land and the right to custom and religious belief is to acknowledge and address the existing power structure(s), as driven by patriarchy, in order to realize the right to land through substantive rather than formal equality means. It should be recognized that customary practices and cultural belief cannot be used as justification to violate the right to equality, and economic, social and cultural rights. Custom and culture after all are living concepts and capable of adapting and growing to accept and embrace human rights.

Policy implications and possible recommendations to States can therefore include:

1. Where states do not adequately provide for distribution and access to land for women – States must be encouraged to adopt the necessary policies and measures to ensure and to advance women's access and ownership of land in order to ensure recognition of their rights, redistribution of land as well as reduction of poverty and discrimination.
2. Public policies must position women in the forefront, as part of a social and collective group within society, taking into account individual circumstances rather than States seeking to address rights violations on an ad hoc basis.
3. Policies must be focused on implementation, with sufficient planning, and budgetary allocations in order to allow rights realization rather than simply rights recognition.
4. Policy development must be participatory in nature and have women at the heart of development. It must also include accountability and redress mechanisms with the objective of meaningful empowerment of women.
5. Mainstreaming in terms of policy content should not give effect to gender neutrality as this will not advance women's rights to land.
6. The need to enact legislation that addresses discrimination and which allows access to justice for women in cases where their rights in relation to land have been violated is critical to address rights violations.

Useful resources

ActionAid: [*Action on Land Grabs: Supporting Women*](#). 2014.

FAO Gender and Land Rights Database: <http://www.fao.org/gender-landrights-database/en/>
[*Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*](#). 2012.

Landesa. Amanda Richardson: [*International Agreements and How to Build a Legal Case for Women's Land Rights*](#). 2014

___Elisa Scalise, Renee Giovarelli. [*Women's Land Tenure Framework for Analysis: Land Rights*](#). 2014

___ Elisa Scalise, Renee Giovarelli. [Women's Land Tenure Framework for Analysis: Inheritance.](#) 2014

Jass Associates- [Agresiones Contra Defensoras de Derechos Humanos en Mesoamérica Informe 2012-2014.](#) 2015.

Office of the High Commissioner for Human Rights. [Forced Evictions](#) Factsheet No. 25/Rev.1. 2014.

___ [Report of the United Nations High Commissioner for Human Rights on human rights analysis of land-related issues.](#) 2014.

[Report of the Special Rapporteur on adequate housing Raquel Rolnik. Guiding Principles on security of tenure for the urban poor.](#) 2014.

___ [The Human Right to Adequate Housing \(Rev.1\)](#) Factsheet 21. 2009

___ [Report of the special Rapporteur on adequate housing, Miloon Kothari. Forced Evictions.](#) 2004.

Open Society Foundations: [Securing Women's Land and Property Rights: A Critical Step to Address HIV, Violence, and Food Security.](#) 2014

Swedish International Development Cooperation Agency (SIDA): [Quick Guide to What and How: Increasing Women's Access to Land.](#) 2009.

UN- Women/ OHCHR: [Realizing Women's Rights to Land and Other Productive.](#) 2013

United Nations Development Programme and Open Society Foundations: [Tools for Change: Applying UN Standards to Secure Women's Housing, Land, and Property Rights in the Context of HIV/AIDS.](#) 2012

ANNEX A: CEDAW/CESCR references to women and land in concluding observations (non-exhaustive):

CEDAW	CESCR
Ensuring a clear legal framework to eliminate discrimination	
<p>Called upon States to:</p> <ul style="list-style-type: none"> eliminate all forms of discrimination with respect to ownership, co-sharing and inheritance of land¹⁴ establish a clear legislative framework to protect women’s rights to inheritance and ownership of land¹⁵ <p>Expressed concern that registration of land to male ‘heads of household’ discriminates against women¹⁶</p>	<p>Called upon States to ensure:</p> <ul style="list-style-type: none"> equality between women and men in particular by taking effective measures to combat discrimination in access to land¹⁷ that domestic land policies comply with the provisions of the Covenant with regard to allocation of land to women¹⁸
Addressing negative customs and traditional practices	
<p>Expressed concern that customs and traditional practices, prevalent in rural areas, prevent women from inheriting or acquiring ownership of land and other property,¹⁹ particularly for women who face multiple forms of discrimination because they are indigenous, from scheduled castes and tribes, or Afro-descendant²⁰</p> <p>Called upon States to:</p> <ul style="list-style-type: none"> introduce measures to address negative customs and traditional practices, especially in rural areas, which affect full enjoyment of the right to property by women²¹ adopt positive measures/ ‘a comprehensive strategy’ to address negative customs and traditional practices, especially in rural areas, which affect full enjoyment of the right to land and property by women²² 	<p>Called upon States to:</p> <ul style="list-style-type: none"> enact or enforce legislation prohibiting customary practices and restricted ownership by women of land and family property, which violate rights of women and girl children and take measures to combat such practices by all means, including educational programmes²³ enact legislation prohibiting discriminatory customary practices (or revise provisions in domestic law) which restrict access by women to land, property, housing and credit facilities and inability to inherit land and to take measures to combat such practices by all means²⁴
Addressing the impact of private and foreign companies	

¹⁴ South Africa, 2011; Chad, 2011

¹⁵ Kenya, 2011; Zambia, 2011

¹⁶ Mongolia, 2008, Sri Lanka 2011

¹⁷ Guatemala, 2003; Bolivia, 2008

¹⁸ Zambia, 2005; Cameroon, 2012

¹⁹ Burkina Faso, 2000 and 2010; DRC, 2000; Guinea, 2001; Uganda, 2002 and 2010; Kenya, 2003 and 2011; Kyrgyzstan, 2004; Bangladesh, 2011, South Africa, 2011; Zambia, 2011; Chad, 2011; Lesotho, 2011; Paraguay, 2011; Samoa, 2012; Comoros, 2012; Equatorial Guinea, 2012

²⁰ Colombia, 2007; India, 2007; Nepal 2011; Paraguay, 2011; and Mexico, 2006 and 2012.

²¹ Kenya, 2011; South Africa, 2011

²² Uganda, 2010; Bangladesh, 2011; Kenya 2011; Chad, 2011; Zimbabwe, 2012; Samoa, 2012; Comoros, 2012; Equatorial Guinea, 2012

²³ Nepal, 2001

²⁴ Senegal, 2001; Gabon, 2013

CEDAW	CESCR
<p>Expressed concern that confiscation of land by private and foreign companies, as well as the implementation of megaprojects, have disproportionate impact on women²⁵</p> <p>Noted extra-territorial obligations in regard to projects' impact on women's livelihood, housing, and food security in Nepal²⁶</p> <p>Called upon States to ensure that:</p> <ul style="list-style-type: none"> • land lease contracts with foreign companies do not result in forced eviction and internal displacement or the increased food insecurity and poverty of local populations, including women and girls, and that the company concerned and/or the State party provide the affected communities with adequate compensation and alternative land²⁷ • the protection of [women's rights to land and productive resources] prevail over the profit interests of third parties involved in the mega-agricultural and mining projects by <i>inter alia</i> promoting public-private partnerships²⁸ 	<p>Called upon States to strengthen the legal framework governing extraction and mining activities and to always enter into prior and meaningful consultations with the concerned communities before granting concessions for the economic exploitation of the lands, and fulfill the obligation to obtain their free, prior and informed consent, including and in particular of women (and customary land owners)²⁹</p>
Collection of disaggregated data	
<p>Expressed concern over lack of comprehensive data on women's land access and encourage States to collect and provide such data³⁰</p>	<p>Called upon States to provide additional information during the next periodic report on the situation of women and the extent to which they enjoy the right to own land and property independent of their male relatives³¹</p>
Ensuring women's participation in decision-making and planning	
<p>Called upon States to:</p> <ul style="list-style-type: none"> • take the necessary measures to increase and strengthen the participation of women in designing and implementing local development plans, and to pay special attention to the needs of rural women, by ensuring that they participate in decision-making processes and have improved access fertile land³² • guarantee the participation of indigenous and Afro-Colombian women in decision-making processes which directly affect their ESCR, such as those related to the establishment of mega-development projects in their territories³³ 	<p>Called upon States to ensure that women in rural areas, and in particular those who are heads of household, participate in decision-making processes and have improved access to ownership of land³⁵</p>

²⁵ Cambodia, 2006; India, 2007; Ethiopia, 2011; Togo, 2012

²⁶ India, 2014

²⁷ Togo, 2012

²⁸ Colombia, 2013

²⁹ Uganda, 2015

³⁰ Uzbekistan, 2010

³¹ India, 2008

³² Kenya, 2011; South Africa, 2011; Chad, 2011; Republic of Korea, 2011

³³ Colombia, 2007.

³⁵ Tanzania, 2012

CEDAW	CESCR
<ul style="list-style-type: none"> disseminate information on women's land rights and ensure legal literacy³⁴ 	
Positive measures	
<p>Called upon States to adopt of temporary special measures to accelerate the advancement of women's land ownership and expand access by women to land³⁶</p> <p>Underscored the importance of ensuring outreach of agricultural programmes and extension services to women³⁷</p> <p>Urged States to strengthen initiatives aimed at encouraging sustainable economic empowerment of women, including the promotion of women's access to land and credit³⁸</p>	Called upon States to speed up land reform processes which benefit women ³⁹
Confirming connection between access to land and livelihood	
Called upon States to develop sustainable solutions for women to whom land has been returned which, inter alia, incorporate women's right to have access to productive resources, such as seeds, water, and credit and foster their capacity to earn a living and produce their own food, and ensure that adequate compensation is provided when land is requisitioned ⁴⁰	
Confirming connection between access to land and nutrition	
Called upon States to ensure equal access by women to resources and nutritious food by eliminating discriminatory practices, guaranteeing land ownership rights for women and facilitating women's access to safe drinking water and fuel ⁴¹	
Addressing the impact of armed conflict	
<p>Expressed concern about armed conflict (in conjunction with negative impact of mega-agricultural and mining projects) are deepening prevailing discrimination, inequalities and poverty⁴²</p> <p>Urged States to take effective protection measures for women who are victims of threats and violence by armed groups, including post-demobilized armed groups, in relation to land restitution⁴³</p>	

³⁴ Namibia, 2007; Kenya 2007; Tanzania, 2008; Cameroon, 2009.

³⁶ Nepal, 2011; Côte d'Ivoire, 2011; Mexico, 2012

³⁷ Ghana, 2006; Kenya 2007; Tanzania, 2008

³⁸ Nepal, 2011; Côte d'Ivoire, 2011

³⁹ Zambia, 2005; Cameroon, 2012

⁴⁰ Colombia, 2013

⁴¹ Nepal, 2011

⁴² Colombia, 2013

⁴³ Colombia, 2013