**SUBMISSION TO THE COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL RIGHTS ON THEIR DRAFT GENERAL COMMENT ON LAND**

1. The Women’s Legal Centre[[1]](#footnote-1) (‘the Centre’) welcomes the efforts by the Committee on Economic, Social and Cultural Rights (ESCR) in seeking to develop a General Comment on Land and ESCR. We thank you for the opportunity to make submissions on the draft general comment on Land and ESCR[[2]](#footnote-2).
2. While we note that no explicit human right to land has been recognised in our international human rights framework, our international, regional and often national legal frameworks all speak to a bundle of intersectional rights, which speak to the recognition, protection and realisation of right that relate to the enjoyment of and access to housing, land and property1. We welcome a General Comment by the CESCR Committee that would enable greater clarity and provide normative content in respect of a right that directly impacts on so many womxn[[3]](#footnote-3) in many ways.
3. Our submission focuses on the rights of womxn to land and ESCR. Gender inequality in accessing land is a critical issue which continues to negatively impact on women’s ability to live free from poverty, exclusion and insecure land tenure worldwide.

**AN INTERSECTIONAL APPROACH TO RIGHTS REALISATION AND SUBSTANTIVE EQUALITY**

1. The Centre is an African feminist public interest law centre which seeks to advance substantive equality[[4]](#footnote-4) for womxn in South Africa. We aim to develop feminist jurisprudence, laws and policies that recognises and advances womxn’s rights. The Centre drives a feminist agenda that appreciates the impact that discrimination has on womxn within their different classes, race, ethnicity, sexual orientation, gender identity and disability.
2. Over the past year where the COVID 19 pandemic has reaped havoc the world over the Centre has consulted over 100 womxn who experienced difficulty in accessing adequate and suitable housing, face eviction or a violation of their constitutional rights in relation to land and housing. This has been the challenge for womxn in a rural and urban context. We can only anticipate that the land, housing and tenure security challenges will increase as the effects and impact of COVID 19 takes its toll on financial systems and the economy.
3. From the outset, the Centre emphasises the importance of using a gendered lens and intersectional[[5]](#footnote-5) approach to accessing land, property and related rights. An intersectional approach recognises the interaction between gender, race, geographical location, sexual orientation, gender identity and sex characteristics, and other categories of difference in individual lives, social practices, institutional arrangements, and cultural ideologies, and how their intersection yields outcomes that impact negatively on womxn in navigating access to land, property and rights generally.  An intersectional and gendered lens recognises that womxn are not a homogenous group and that womxn, black womxn, face multiple forms of discrimination based on their race, sex, identity, socio economic background, culture and religion amongst other social factors.
4. ESCR have a particular significance for womxn because as a group, womxn are disproportionately affected by poverty, and by social and cultural marginalisation. Womxn’s poverty is a direct result of womxn’s lesser social, economic and political power within societies as a result of ongoing patriarchal stereotypes[[6]](#footnote-6). Gender discrimination and inequality lie at the heart of womxn’s poverty, exclusion and tenure insecurity across the world. Our experience is that womxn, although very differently situated, often face similar challenges associated with access to land, housing and property rights. These include being denied access because of their memberships to a particular cultural or religious grouping within society, their sexual orientation or gender identity and expression, their race or disability, as well as their marital status among others.

**WLC SUBMISSIONS ON THE DRAFT COMMENT**

1. We welcome the recognition by the draft general comment illustrating in its introduction that access to land is an important precondition for the realization of several Covenant rights, particularly the rights to adequate food, water and housing as part of the right to an adequate standard of living, as well as the right to health and the protection against non-discrimination contained in several of the Covenant rights.

 *Equality and Non-Discrimination*

1. When considering women’s access to land, **we recommend that the starting point for the Committee must be an acknowledgment that womxn are not a homogenous group living within a specific or even a normative context.**Womxn acquire, own and use land in vastly different ways based on their geographic location, their socio-political context, and often simply because of where they are situated within their communities or familial or financial context.
2. Paragraph 16 of the draft comment acknowledges that womxn are a group that is often discriminated against and are disproportionately affected by the adverse impact of violations and abuses of Covenant obligations relating to land and they are vulnerable to intersecting forms of discrimination.
3. Paragraph 17 recognises that land is a pivotal resource to womxn in meeting subsistence needs and for accessing other goods and services, such as credit. We wish to emphasise that land is also important to enhance womxn’s engagement in household decision-making and for their participation in rural and communal institutions. Within these context land ownership strengthens decision-making power and leverage over collective rights to natural resources. This is especially important within a rural context where land if often either communally held or controlled and subject to customary or religious believes and practices.
4. Womxn’s property ownership addresses poverty and influences the cycles of poverty in which womxn often raise children. It improves children’s welfare and increases access for womxn to family planning services and prenatal care within a specific community.  It also reduces womxn’s exposure to violence, in part because womxn who have security in access to tenure can flee domestic violence more easily by seeking access to protection and recourse against perpetrators. ,
5. We also welcome paragraph 34 that provides that State Parties have an obligation to facilitate secure, equitable and sustainable access to, use of and control over land for those who are landless or live-in poverty, especially women and marginalized sectors of society, who depend on them to realize their economic, social, and cultural rights, such as the rights to food, housing, and an adequate standard of living. While we acknowledge the attempts made to specifically highlight the plight of womxn in relation to land and housing, our fear is that these provisions without further obligations, clarity and an intersectional approach will not result in substantive equality for black womxn.
6. **Recommendation:**Our recommendation would be that the general comment goes further to ensure that there is an obligation on the State to develop legislative and policy frameworks that are gendered and contains the necessary language to ensure proper implementation such as intersectionality and substantive equality. In our experience, laws and policies are often drafted in a gender-neutral manner, the implementation thereof results in further discrimination and provides formal equality. **We therefore urge the Committee to strengthens the provisions in the draft General Comment in relation to the obligation on States to ensure adequate and suitable access to land that takes into account womxn’s lived reality and intersectional discrimination, so that these obligations give effect to substantive equality and bring about systematic change.**
7. Furthermore, **we recommend that the Committee add provisions to the text of the draft comment which indicate the necessity of community consultation and public participation that ensures that those most affected by the lack of laws, policies and other legal frameworks are able to give input in ensuring that policy and legislative developments speak to and are informed by the lived experience of those who hold the rights.**
8. The draft comment **should also encourage the state parties to centre womxn’s experiences and voices in the processes of law reform and development and take account of how patriarchy and other systems of power are silencing the voices of womxn.**
9. **Lastly, we recommend that the draft comment should adopt an intersectional approach to each topic as this recognises the diverse needs and rights of womxn, highlight the need for womxn voices to be centred and ensure substantive equality in each of the issues raised in section IV which deals with the specific topics of relevance to the implementation of Covenant rights in land-related contexts.**

 *Evictions and Forced Removals*

1. The WLC acknowledges the inclusion and recognition of the impact that evictions and forced removals have on the access to land in paragraph 26 by stating that where people have been relocated and given alternative accommodation, those circumstances must allow for access to the broader needs of a livelihood. The standards for alternative accommodation must require that the accommodation be safe and that it provide accessible access to public services, including education, health care, community engagement and livelihood opportunities. Every effort must be made not to break up families and communities, given their crucial role in supporting and sustaining neighbour networks and livelihood support.
2. This recommendation is imperative as we continue to see womxn being evicted and displaced. We are mindful of increased cases of womxn and children becoming unhoused and where options of alternative accommodation often place them on the urban periphery with little to no access to opportunities to improve their financial situation and secure their family livelihoods. In preserving these rights to land and other related rights in the context of evictions the draft comment does not adequately address the necessary standards that must be complied with when addressing evictions and the conditions under which they can and should be legally permissible. **Our recommendation is that the draft comment provides minimum standards and definitions for safety and adequate housing in instances where eviction is warranted and alternative housing is being made available and that these are cognisant of the violence that womxn experience within their homes and society at large.**

 *Access to land and food security and poverty alleviation*

1. We welcome the recognition of the interconnectivity between land and food security in paragraphs 1, 10, 11 and the critical role played by food in alleviating poverty in paragraphs 35. We are however concerned that the Draft General Comment does not in any ways consider nor recognise the disproportionate burden that is placed on women because of cycles of poverty that is often repeated in families.
2. In Africa and other regions across the world women are largely responsible for harvesting and post harvesting activities. This is the case in the agriculture sector as well as instances of small and subsistence farming activities[[7]](#footnote-7). Access to land and water as a natural resource for food production and the eradication of poverty are critically important rights to promote and protect within the framework of the realisation of the Sustainable Development Goals. Private interest often override such interest and womxn face the brunt of stepping into the void left when natural resources are contaminated or destroyed through extractive industries in rural or communal held land.
3. Most womxn farmers in Africa combine their role as seed custodian and small-scale subsistence farmer with their role as primary family caretaker. Women as a result undertake 85 – 90% of the unpaid care-work in their households and 65% of the work related to fetching water and collecting firewood.11 The gender nature of food security, care and livelihood is a critically important factor in access to land.
4. Women’s multiple, heavy and unequal care as well as work burden do not allow them sufficient time to engage in community and family decision making in relation to the control of the land. In turn this leads to women being unable to reach their true potential as farmers on equal footing with their male counterparts.
5. It is therefore **our recommendation that the General Comment be revised and ensure that it speaks to importance of land, its usage and the rights of women to food security and the efforts to alleviate the burdens of poverty on women to achieve substantive and systematic gender equality.**

 *Access to land and marital status*

1. The African Commission in General Comment 6 explained that womxn in Africa are vulnerable including in terms of their ability to enjoy socio-economic rights on an equal basis as men. As the African Commission has explained, *womxn suffer from unequal rights to property both in time of marriage and of divorce or separation. While in marriage, they exercise limited or no economic decision-making power in the household. Where much of their contribution comes from their household and reproductive roles, neither these roles are taken as having economic value nor any account is given to the economic values of these roles. The vulnerable position of womxn increases at the point of the breakup of marriage.12*
2. In our experience the prevalence of discriminatory laws and legal processes resulting in womxn’s property rights violation during separation, divorce or annulment of marriage and their impacts hinder all efforts to achieve substantive gender equality. Gender discriminatory registration of marriage laws and practices, which generally  prohibit or discourage women from owning housing, land and property jointly with their spouse, or which give preference for registration of housing, land and property in the name of the male spouse only significantly hinder women’s contribution in the acquisition of marital property.[[8]](#footnote-8) Additionally, property laws in many countries, treat men as the head of the household who enjoy complete and unfettered control of decisions in respect of family property.
3. Further in many traditional communities ownership or leasing of land is reserved for married couples. Within these traditional communities single womxn face prejudice in accessing land because of patriarchal value systems and how womxn are perceived and treated as minor children under the control of either their fathers or husbands.
4. We note with concerned that the General Comment does not deal with this issue despite the protections in Article 10(1) which states that the *widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.*
5. **Recommendation: we therefore recommend that the Committee call upon state parties to fully acknowledge and recognize the many forms of womxn’s contribution to the economic well-being of their families. Specifically ensure that state parties recognise the contribution made by wives to the development of land and property through their unpaid labour as well as childcare and ensure that this contribution is fully recognized and protected in cases of separation, divorce or annulment of marriage to promote womxn’s access to land and ESCR.**
6. **Further, the Committee should encourage state parties to define marital property or property generally to include any land or personal property which is acquired during the marriage by the direct or indirect efforts of one or both spouses as way to ensure that access to land and by extension ESCR are not limited through marriage and the conception of marital property.**

**CONCLUSION**

1. We express our gratitude and remain available for further engagement to ensure a strong general comment on land.
2. This submission was prepared by Charlene May (Charlene@wlce.co.za) Mandivavarira Mudarikwa (Mandi@wlce.co.za) and Chriscentia Blouws (Chriscy@wlce.co.za)

\*\*\**ENDS\*\*\**

1. [www.wlce.co.za](http://www.wlce.co.za) [↑](#footnote-ref-1)
2. The Women’s Legal Centre also made submissions to the CESCR Committee in 2019 and have also in collaboration with our partners at the Network for Economic Social and Cultural Rights (ESCR – Net) made submissions on this current draft. We therefore recommend that these submissions should be considered with reference to both those engagements with the Committee. [↑](#footnote-ref-2)
3. The Women’s Legal Centre uses the inclusive term “womxn” throughout these written submissions as we recognize all womxn in their full diversity. [↑](#footnote-ref-3)
4. Substantive equality is the recognition of the connection between status and disadvantage, where status refers to race, gender, disability or other prohibited ground, and disadvantage is concerned with socio-economic disadvantage. Whereas formal equality addresses discrimination based on status, substantive equality highlights the fact that it is not status per se which is problematic, but the disadvantage which attaches to status and is sensitive to outcomes rather than just to treatment - Facing the Future: Substantive Equality under the Spotlight by Sandra Fredman  [↑](#footnote-ref-4)
5. See article by Kimberle Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics  [↑](#footnote-ref-5)
6. A Women’s home is her Castle? – Poor women and housing inadequacy in South Africa, Lilian Chenwi and Kirsty Mclean  [↑](#footnote-ref-6)
7. Elfrieda Pschorn – Strauss *African Food Sovereignty: Valuing Women and the seed they keep: Right to Food and Nutrition Watch: Keeping Seeds in People’s Hands*2016 Issue 8 pp. 48 - 51  [↑](#footnote-ref-7)
8. General Comment 6, para 6.  [↑](#footnote-ref-8)