

Mandate of the Working Group on discrimination against women and girls

Inputs on the Committee on Economic, Social and Cultural Rights' Draft General Comment No. 26 (2021) on Land and Economic, Social and Cultural Rights

(August 2021)

The Working Group on discrimination against women and girls welcomes the opportunity to share its inputs on the Committee on Economic, Social and Cultural Rights' draft General Comment No. 26 (2021) on Land and Economic, Social and Cultural Rights (draft General Comment). In a global context of persistent gender inequality and severe backlashes against women's and girls' rights which is being exacerbated by the COVID-19 pandemic, as international human rights experts, we all have a pressing duty to ensure that women's hard won rights are upheld and to contribute to advancing women's empowerment and gender equality, including with regard to access to land. The Working Group considers that secure rights over resources, including land, housing and other property, are essential to women's equality and well-being, and to their economic independence and autonomy.

We welcome the attention given under the draft General Comment to women's land rights and the recognition of the particular challenges women face in the realization of equal land rights (paragraphs 16-17). In view of the persistent and pervasive *de jure* and *de facto* discrimination faced by women and its impact on women's ability to access and own land in many parts of the world, we strongly recommend an enhanced attention to the specific situation of women throughout the document. Women's access to land merits a standalone section and integration in other sections. This is in line with the approach adopted by the SDGs, which has included achieving gender equality and empowering all women and girls as a standalone goal, but also the cross-cutting principle of leaving no one behind in all other goals, which ensures that gender issues are duly mainstreamed. We believe that it would be relevant for the draft General Comment to incorporate a section on gender and land rights that addresses pertinent issues in a nuanced manner while gender perspectives are brought into context in the different sections of the document.

The Working Group has stressed in its work that women are not just another vulnerable group, but half of the world population who are structurally disadvantaged due to the cultural construction of gender and sex as commonly reflected in law, policy and practice, which is conducive to generalized discrimination against women in all cultures based on their sex, gender and harmful stereotypes. Among women, there are various groups who are themselves facing multiple and intersecting forms of discrimination depending on geographic, cultural, economic, political, religious, social and individual contexts and identities. Therefore, we consider that, throughout the document, it would be more accurate not to list or refer to women as "another group" or part of other groups (see paragraphs 16 and 45). Further, giving due recognition to the fact that women are not a homogeneous group living within a specific context, we also propose that the experiences and concerns of different groups of women are reflected in the relevant sections of the document through an intersectional and life-cycle approach

considering the implications of the interaction between gender and other identities and contexts for women's land rights.

Discriminatory laws

The Working Group notes that discriminatory laws, often emanating from personal law or customary law systems, create barriers and restrictions to women on owning land and other productive assets, and inheriting family property. Discriminatory family laws, inheritance laws, property or land laws that contradict international human rights norms continue to weaken and even deny women's and girls' access to land owing to their status as a female child, a married woman, a wife without children, or a widow. In parts of the world where plural legal systems operate, we observe the exclusion of matrimonial land, family land, or customary land from the protection of the formal legal regime in deference to customary law which often excludes women and girls from acquiring equitable shares of land. Family laws that discourage joint ownership and equal right of spouses over common property have proved to perpetuate both direct and indirect discrimination against women with respect to the enjoyment of equal rights over land. Discriminatory legislation or implementation of legislation often impede women's access to loans and credit schemes, including by requiring a male co-signer or guarantor, which have significant bearings on women's opportunities to gain access to land and other property. It would be crucial that the draft General Comment denounce such legal barriers to equal right to land and insists on the necessity of repealing all laws that restrict the rights and opportunities of women to access assets and lands, and monitoring and regulating discriminatory customary laws.

Family and culture

In spite of the recognition by international human rights mechanisms, including the Committee, to the importance of women's equal right to inheritance, women and girls are often denied equitable shares of land belonging to deceased husbands, fathers, sons, or other relatives on the basis of custom and tradition. This has important implications for women's and girls' economic and social status given that inheritance is a primary means for the transfer of wealth and resources in many societies. Some customary practices condition women's succession to use rights or title to land on forced marriage to a deceased spouse's brother or close relative, or on the existence or absence of minor children of the marriage. Further, in many traditional communities in which ownership or leasing of land is reserved for married couples, unmarried women face restrictions in accessing land because of patriarchal norms that treat them as minor children under the control of either their fathers or male relatives. It is crucial to call for the abolition of practices concerning inheritance and land ownership that deny or limit women's and girls' rights to equal treatment. Strong accountability mechanisms should also be in place to sanction those who perpetuate such practices and to secure the equitable distribution of land ownership.

There needs to be awareness that a patriarchal concept of family has pervaded all secular, religious, customary, and indigenous laws and institutions and that some States and groups are now trying, in a retrograde manner, to subject women to the most oppressive forms of patriarchy, particularly in the context of cultural and religious extremism with far-reaching impediments to women's access to resources and economic empowerment. There should also be recognition of the fact that the transition towards gender equality in the family and in the culture is a prerequisite for a democratic and fair society and an obligation of the State under the CEDAW. The State has also an obligation to eliminate discrimination against women in economic and social life by private persons or entities including members of family and community.

The draft General Comment should urge States to act as agents of change with respect to women's place in cultural and family life, by fostering or creating a culture free of all forms of discrimination against all groups of women and girls. A transformative approach to women and girls' status in the family is crucial to ensure gender equality in secure and equitable access to, control over, and governance of land.

Matrimonial property

Property regime determined by marriage constitutes one of the important contexts to consider in relation to women's land rights. Women suffer from unequal rights to property both during marriage and divorce or separation. Gender discriminatory marriage laws and practices, which generally prohibit or discourage women from acquiring or owning land and property jointly with their spouse, or which give preference for registration of land and property in the name of the male spouse significantly hinder women's control over marital property. Family laws in several countries recognize men as the head of the household conferring them full control and decision-making with respect to matrimonial property, resulting in *de facto* discrimination in terms of women's access to the products of cultivated lands as well as the control and use of those lands.

Further, while in marriage, they exercise limited or no economic decision-making power in the household, women's vulnerability increases during separation or dissolution of marriage. In most cases customary land and family land are automatically excluded from property women can share upon dissolution of marital union despite their significant efforts invested on the land during their marriage. Due to the lack of recognition of valuable contributions made by wives to the development of land through their unpaid labour, they are denied an equitable share of land and the resources accruing on the land in case of termination of marital union. We recommend that the draft General Comment emphasizes the necessity of ensuring recognition and full protection to land and resources acquired during marriage through the direct or indirect contributions of women, and effective enforcement in cases of separation, divorce, or annulment of marriage. Discriminatory laws, legal processes, social norms, and practices resulting in the infringement of women's land rights during separation, divorce, or annulment of marriage and their impacts negate not only well established international human rights standards on equal protection of the law and equal property rights but also progresses to eliminate economic inequality between women and men.

Furthermore, due to the lack of effective protection to *de facto* unions in several jurisdictions, women living in cohabiting unions, polygamous unions, unregistered marriages, or customary marriages face difficulties in ascertaining their rights over common property despite the prevalence and wider acceptance of such unions in their communities. Women's property rights in such unions should be protected from violation and discrimination through the design of appropriate measures fitting the context and in line with human rights standards.

Widowed women also face particular vulnerability in ascertaining their matrimonial property at the time of dissolution of marriage upon the death of their husbands. Some customary practices are observed that lead to dispossession of widows from their matrimonial house and land as they have 'temporary' status on family land that is attached to their marriage (see further below). States must ensure the protection of widows from any discriminatory laws and practices limiting their access to land, regardless of having no children or having remarried.

Gender based violence

In several jurisdictions, the lack of recognition of economic violence as a form of gender based violence poses a significant challenge to women's and girls' secure land rights. Gender based violence can impair

a woman's right to equality in the family and community in general and equality in the enjoyment of property rights (ownership, use and control over assets). Domestic violence affects women's land rights from prohibiting access and use of land to curtailing decision-making power and control over land. In communities where there is pervasive tolerance to or less legal protection from domestic violence, women's vulnerability to abuse and dependence are heightened and their access to land remains significantly diminished. We consider that the link between gender-based violence and land rights as well as the personal and collective dimensions of gender based violence merit special attention.

Older women, widows, women with disabilities and women without children (male children) face particular vulnerabilities to economic abuse within their own family and community, and face significant challenges to ensure their right over land and other property derived from marriage or inheritance. The plight of widows in some jurisdictions is manifest in situations where they are subjected to economic violence in the form of 'forced eviction' or 'land grabbing' perpetrated by relatives of deceased husbands. Such dispossessions from land acquired during marriage occur in the name of claiming family land under customary law. In some communities, elderly women and women with disabilities, often accused of being 'witches', also face similar challenges of dispossession by members of their community or family and may further be subjected to physical attacks in 'hunts' against them. It is important to emphasize the obligation of States to repeal laws that reinforce discrimination against these particular groups of women, and to adopt specific laws that criminalize property grabbing and dispossession by private persons and communities. States also need to take further steps to ensure the accountability of perpetrators through proper investigation and prosecution and guarantee restitution to victims of such acts of violation.

We also reiterate the Committee's assertion in General Comment No. 7 that women face special vulnerability and suffer disproportionately from forced evictions due to statutory and other forms of discrimination which often apply in relation to property rights and the different forms of violence they may often experience while evicted. It would be appropriate for the draft General Comment under consideration to build on this and incorporate a robust call for the legal protection of both rural and urban women against forced evictions from their land and house, particularly perpetrated against women, by both public and private actors.

Customary land tenure

Women's secure land rights continue to be challenged in a rural context where land is often either communally held or controlled and subject to customary norms and practices that are mostly characterized by male preference and dominance. It is important that States should take appropriate measures to monitor and regulate customary systems which embody an important mechanism governing land tenure in several parts of the world in order to secure women's land rights.

We appreciate the emphasis given by the draft General Comment to the recognition of and respect to communal or collective tenure as well as customary tenure systems and existing forms of self-governance of tenure that strengthen the land rights of traditional communities, indigenous people, peasants, etc. (e.g. paragraphs 15, 20 and 24). This should further consider and address the barriers women face in ensuring fair representation of their interests and their meaningful participation in such tenure systems. It is important to take into account existing gender inequalities and discrimination against women in such communities and the prevalent trends in the application of customary or communal land title in a discriminatory manner. In view of this, it would be appropriate for the draft General Comment to include a gender perspective to this communal and customary dimension of land tenure and emphasize that such tenure systems shall ensure gender equality and women's equitable benefit from land and resources thereof and equal participation in decision-making.

Land titling and land redistribution

While the positive outcomes of ‘modern’ or ‘formal’ forms of land titling in strengthening tenure protection are welcomed, in some cases, the introduction of such titling systems has weakened women’s customary claims to land. In view of this, emphasis should be given that states should ensure that formal titling systems are not implemented to the prejudice of women’s established customary rights to land. States must rather promote the positive aspects of customary systems for women, and protect women’s rights in land titling and registration, including supporting them not just to secure land titles but also to maintain effective control over the land and its resources.

Furthermore, it is important to underline the obligation of the States to ensure that the implementation of land redistribution or agrarian reform programs respects and protects the right of women to share reallocated land on equal terms with men, regardless of their marital status. Such programs should have effective monitoring systems to guarantee that relocation processes do not disadvantage women or render them vulnerable, and should also integrate mechanisms for granting preferential treatment to women when appropriate.

Participation, consultation and transparency

The Working Group has highlighted in its work the gender based barriers for women’s equal participation at all levels (family, community, local government, etc.). Women’s disproportionate burden of household work, gender based violence and gender stereotypes about women’s roles limit their capacity and opportunities to engage in community and family decision-making in relation to the control and governance of land on equal footing with their male counterparts. Although women make up the majority of agricultural workers who till the land are female and yet they are deprived a significant share in land governance in a context of normalized exclusion of women from decision-making. States must take measures to eliminate violence and discrimination limiting the participation of women in family, community and public decision-making with respect to land governance.

It must be emphasized that states need to consult and engage with women from diverse groups and take into account their experiences, perspectives and concerns in processes of legal, policy and institutional reform and development pertaining to land. This calls for designing and implementing targeted measures to support and ensure the participation and leadership of women in land governance which should include the equal representation of women in forums and mechanisms on land rights and the allocation of adequate resources for building women’s capacity for their meaningful engagement and leadership in the formulation, implementation and monitoring of policy at all levels of governance. Land governance systems should put in place mechanisms that facilitate the inclusion of a diverse group of women in a manner sensitive to the respective social, cultural and religious contexts. States must facilitate an enabling environment for women’s organizing and collective voice by supporting the formation of associations and the engagement of organizations and advocates promoting women’s land rights.

Women’s access to information (to seek, receive, develop, and impart information) is key for ensuring the transparency of and meaningful participation in structures and processes that concern land rights. To guarantee this, it is important to address all dimensions of access to information as accurately elaborated in the UNDROP i.e. access to relevant, transparent, timely, and adequate information in a language, form and means appropriate to their context to ensure their effective participation in decision-making in matters that may affect their lives, land, and livelihoods. This will enable taking into account the different needs of women with limited literacy, women with disabilities, women from indigenous, minority and rural communities, etc. It must also be underlined that women’s right to be informed about

matters concerning their land including about land valuation, expropriation, compensation, redistribution, etc. should be guaranteed even if the title is not in their name.

Groups requiring special attention

Drawing on elaborated standards on rural women under the CEDAW (article 14) and the UNDROP (article 4), it would be appropriate for the draft General Comment (paragraph 53) to give special emphasis to *peasant women and other women working in rural areas*. In particular, states should be urged to adopt pertinent measures to eliminate all forms of discrimination against peasant women and other women working in rural areas in the fulfilment of their right to equal access to, use of and management of land, and to adopt special measures to ensure appropriate preferential treatments towards them in land and agrarian reforms as well as in land redistribution or resettlement schemes.

Indigenous women are among those that need special attention with respect to land rights. The provisions of the draft General Comment to indigenous people (e.g. paragraphs 14, 23 and 34) would need to be further elaborated from a gender lens as these communities are not homogenous and there are gender dimensions that are of particular concern to women in such communities with respect to their land rights. The Working Group has highlighted in its work land-grabbing and the operations of extractive industries in indigenous peoples' land are experienced by women and girls as a crisis threatening their very survival. The gendered impacts of the loss of land are evident in situations where indigenous women lose their traditional livelihoods dependent on food gathering, farming, herding and experiences of violence, including in the form of sexual exploitation and trafficking.

It is also important to devote attention to certain groups of marginalized women such as *migrants, stateless, poor, minority, or racialized groups* who may be forced into informal settlements without access to alternative land. *Women with disabilities* may also experience denial of equitable access to land tenure systems or may often be exposed to violence and dispossession from land. They face barriers to exercise control over their own property and financial affairs and are mostly excluded from decision-making processes concerning land.

The particular experiences and concerns of *women human rights defenders* would need to be addressed under the section of the draft General Comment on human rights defenders (paragraph 53). There should be recognition of gender based violence and discrimination women and girls face in defence of land and the environment, including sexual and physical and sexual violence, enforced disappearances and killings reinforced by widespread impunity. This is deserving attention considering the rise of women's and girls' activism on land and environmental rights and against corporate interests and extractive industries, on one hand, and the perpetual backlash against women's rights in many parts of the world, on the other. States must protect women and girl human rights defenders by investigating violations of their rights, punishing perpetrators, providing remedies and reparations, and facilitating an enabling environment for their work on land rights. This entails enacting relevant legislative and policy frameworks to establish effective national protection programs for women human rights defenders including those defending land rights. This is essential taking into account the increasing incidences of missing and murdered women land and environmental rights defenders.

Trends requiring attention

Accelerating *land commercialization* trends in the global south through the leasing, concessions, or sale of public and communal lands to big, often foreign, corporations for land-intensive agricultural and development projects. Mass land acquisitions for large-scale investments that displace communities have greater impact on women's tenure security. Private and public sector investment and development often disadvantage and dispossess women small-holder farmers with no substitute land or compensation

for their lost livelihood. women remain vulnerable to violent land appropriations and face greater security risks than men when reclaiming their land. Furthermore, evidence shows that agricultural commercialization has generated inequalities in access to land and employment with significantly gendered impacts. It has sharpened gender divisions of labour as well as disparities in paid work opportunities, subjecting women and girls to dangerous forms of labour including exploitation and trafficking, and harmful work risking their reproductive health. States need to integrate gender perspectives in the planning, implementation and monitoring of all development projects affecting land through a comprehensive gender analysis.

Rapid urbanization is another trend in many parts of the world increasing the competition for and scarcity of land, severely affecting access to land in urban and peri-urban areas with substantial gender impacts. While urbanization offers several advantages to women and girls, they suffer disproportionately from the ever-growing urban poverty that manifests severe impacts on their access to land. They generally experience greater difficulty in accessing resources and decision-making opportunities. Some are often pushed further to slums and informal settlements where they face multiple violations of their human rights due to lack of land rights, limited access to livelihood, and greater risks to property and personal security. Urban development should incorporate a proper understanding of gender equality issues in urbanization that takes into account the special needs of women and girls, and ensure their participation in urban governance. States must, therefore, develop and implement gender-responsive policies and laws on human settlements that address women's particular challenges with access to urban land and that foster sustainable urbanization in line with their commitment under the SDGs and the New Urban Agenda.

Access to justice

Non-discriminatory and effective access to justice is crucial to ensure women's and girls' equal rights to land which entails equal access to both state and traditional justice, consistent with human rights standards. This should include access to fair procedures for dispute resolution, access to information and legal assistance, and effective remedies including reparations for infringements of rights. We recommend that the section of the draft General Comment on 'remedies' (paragraphs 56-57) gives due recognition to the structural barriers women face at family, community and national levels in terms of their access to justice institutions and effective remedies in general and in relation to land claims. Certain groups of women and girls such as young girls, women with limited literacy, rural women, women with disabilities, etc. face multiple challenges to enjoy access to justice that merit special attention.

It must be emphasized that all justice systems, both formal and informal or judicial and quasi-judicial, be secure, physically and culturally accessible, and affordable to all women and any discrimination against women perpetuated by justice institutions or dispute resolution mechanisms be monitored, regulated and sanctioned. The capacity of these institutions should also be strengthened through relevant training and other technical support.

Special measures

Considering women's and girls' unequal position in society rooted in structural discrimination they experience, the fulfilment of land rights needs to be addressed through a lens of substantive equality. This requires the implementation of special measures that aim at addressing the historical and systemic gender injustice related to land. It would be appropriate that relevant parts of the General Comment on the 'obligation to fulfil' integrate pertinent principles and guidance on this front. It's observed that laws and policies are often drafted in a gender-neutral manner, the implementation of which, though may

achieve formal equality, often results in reinforcing pre-existing inequalities and discrimination. The Committee, in its General Comment No. 20 on non-discrimination has already emphasized the obligation to ensure substantive equality and the importance of special measures to achieving that. The draft General Comment under consideration could appropriately strengthen further the normative standard by stressing that states must develop and implement legislative and policy frameworks providing for special measures that address the different needs and experiences of women and the multiple forms of discrimination faced by them with the view to achieving substantive equality in access to, control over and governance of land. This will enable the integration of an intersectional approach in order to properly consider and respond to the particular interests and concerns of different groups of women (e.g. head of households, youth, women with disabilities, rural and indigenous women, etc.) in the realization of their land rights. Additionally, with respect to assessment and monitoring measures (paragraph 49) states should incorporate gender sensitive data collection, budgeting, monitoring and evaluation, and budgeting systems.

In the end, recognizing that land is not just an economic resource but also a social and cultural good, we consider that the lack or the insecurity of access to land goes to the core of social inequality and discrimination. Accordingly, the denial of land rights does not only affect women and girls in terms of their immediate economic needs, and rather it translates into their weaker or lower social status by relegating them to a subordinate position within their society. The respect, protection and fulfilment of women's land rights is important to ensure that every woman is able to enjoy an adequate standard of living and a life with dignity as envisioned under the ICESCR. Henceforth, our strong call is for the draft General Comment to consider a nuanced integration of relevant gender dimensions throughout the provisions as well as in a separate section.

The Working Group has addressed the issue of women's access to land in its communications, country visits and thematic reports. In particular, we would like to bring to the attention of the Committee our Position Paper entitled "[Insecure land rights for women threaten progress on gender equality and sustainable development](#)". The paper highlights how discriminatory laws and social norms undercut women's access to the transformative power of land, which is essential to women's equality and enjoyment of other rights, and to their economic independence and autonomy. The Committee may also find the joint publication of OHCHR and UN Women on "[Realizing Women's Rights to Land and Other Productive Resources](#)" as a useful reference. It provides an overview of the relevant normative, legal and policy frameworks at international and regional levels and clarifies how women's rights to land and other productive resources are relevant to the achievement of the 2030 Agenda for Sustainable Development.

The Working Group on discrimination against women and girls appreciates this opportunity to contribute to this powerful work of standard-setting. We are at the Committee's disposal to provide further inputs and look forward to strengthening future collaboration with the Committee with regard to women's and girls' rights and gender equality.