****

1. **INTRODUCTION**
2. We refer to the call for written submissions by the call for written submissions by the Committee on Economic, Social and Cultural Rights (CESCR) on the General discussion on land and the International Covenant on Economic, Social and Cultural Rights (ICESCR).
3. We note that during its 66th session, the CESCR Will hold a day of general discussion on land and the ICESCR. The day of general discussion is part of a consultative process in the context of the drafting of a general comment. We welcome and appreciate this opportunity to make submissions and to engage with issues related to land and the ICESCR which will inform the discussion as well as the drafting of the general comment.
4. 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. Access to, and control over, land and naturals resources can better ensure that women are able to meet their day to day needs and the material needs of their families. Access to land and natural resources has the possibility to impact on substantive gender equality, reduce the number of women living in poverty and contribute to women being financially independent.
5. Accordingly, we posit that 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. Our submission will therefore focus on women’s access to land and the ICESCR.
6. **INTRODUCTION TO THE ORGANISATIONS MAKING THIS SUBMISSION**
7. The Legal Resources Centre (‘LRC’) is a public interest, non-profit law clinic in South Africa that was founded in 1979. The LRC uses the law as an instrument of justice to facilitate the ability of vulnerable and marginalised persons and communities to assert and develop their rights; promote gender and racial equality and oppose all forms of unfair discrimination; as well as contribute to the development of human rights jurisprudence and to the social and economic transformation of society. A significant proportion of the LRC’s work has been in the sphere of gender equality, non-discrimination and addressing the disproportionate burden faced by women in poor service delivery. Website: [www.lrc.org.za](http://www.lrc.org.za)
8. The Women’s Legal Centre (“The Centre”) is an African feminist legal centre that advances women’s rights and equality through strategic litigation, advocacy and education and training. We aim to develop feminist jurisprudence that recognises and advances women’s rights. The Centre drives a feminist agenda that appreciates the impact that discrimination has on women within their different classes, race, ethnicity, sexual orientation, gender identity and disability. The Centre does its work across five programmatic areas including the right to be free from violence, women’s rights in relationships, and women’s rights to land, housing property and tenure security, women’s sexual and reproductive health rights and women’s rights to work and at conditions of work. Website: [www.wlce.co.za](http://www.wlce.co.za)
9. **GENERAL COMMENTS**
10. 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 rights, which relate to the enjoyment of and access to housing, land and property[[1]](#footnote-1). 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 women in many different ways.
11. When considering women’s access to land, we recommend that the starting point for the Committee must be an acknowledgment that women are not a homogenous group living within a specific or even a normative context. Women 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. Women’s right to land must be viewed through a feminist lens of intersectionality race, ethnicity, religion, belief, tradition and customs, economic status, disability, sexual orientation, gender identity and expression and sex characteristics (SOGIESC). It is therefore critically important that the General Comment on Land speaks to the intersectional lived realities of women in their diversity.
12. Gender discrimination and inequality lie at the heart of women’s poverty, exclusion and tenure insecurity across the world. Our experience is that women, 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 among others.
13. The ICESCR specifically speaks to the following in relation to the right to land:
    1. Article 1(2): “*All people may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principles of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence*”
    2. Article 11(2): “...*the right of everyone to an adequate standard of living ... including adequate ... housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent ...”*
    3. Article 2(2) and 3: “... *undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” “... ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant*.”
14. A number of other relevant instruments also speak to the right to land, housing and property and we draw attention specifically to the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination[[2]](#footnote-2), the Convention on the Rights of Persons with Disabilities[[3]](#footnote-3) and the International Convention of the Protection of the Rights of All Migrant Workers and Members of Their Families.[[4]](#footnote-4) In addition we draw the attention of the Committee to The CEDAW Committee General Recommendation No. 34 on the rights of rural women.
15. **SPECIFIC RECOMMENDATIONS**

**Legislative and policy development[[5]](#footnote-5)**

1. Our organisational experience is that legislative and policy frameworks are often developed without a gendered lens and lead to indirect forms of discrimination against women. These laws and policies normally seek to mainstream gender and are drafted in a gender-neutral language. The experience of women is that such laws and policies will often directly and indirectly discriminate against women.
2. Policies that often formally differentiate between men and women and which relies on stereotypical wording such as “breadwinner” and ascribing such terms to men lead to exclusion of women from housing allocations and land (for agricultural or subsistence farming) as they fail to meet the gendered criteria. Unmarried women, widows and women who are childless are often excluded through the language of these policies.
3. In rural and traditional communities, customary laws and practices often discriminate against women in allocation and tenure security. Allocation traditionally benefits men, and women are often beneficiaries through their marital relationships and not in their own right. These practices and laws entrench women in both poverty and vulnerability as their welfare is dependent on their male partner.
4. We recommend that the General Comment must speak to these forms of discrimination in law and policy and remind the Committee of its comment 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]](#footnote-6) ...”
5. States must foreground policy and legislative developments within the lived experience of those who hold the rights. Women’s experiences and voices must therefore be considered in these processes and account should be taken of how patriarchy at community level and engagement level very often silences the voices of women.

**Customary laws, culture and religion as well as gendered stereotypes[[7]](#footnote-7)**

1. Customary laws and traditions are steeped in patriarchy. The impact of patriarchy on women’s access to land, housing and property is immense because of harmful stereotypes entrenched in customs and religion.[[8]](#footnote-8)
2. Discriminatory practices mean that women are often excluded from important decision - making processes at community and family level. These include decisions around land and housing within the control of community ownership and management.[[9]](#footnote-9) In many rural areas women do acquire land and housing rights based on their husband’s employment in the agricultural sector and because their tenure is insecure they often face eviction in the event where their husband is dismissed or dies.
3. The General Comment will need to interrogate and expressly make provision for States to address the preference that is given to cultural rights, and expressly state that States should not accept cultural and religious practices as a justification to violate women’s rights to equal access to land, housing and property rights. In order to address women’s rights an intersectional lens is required that preferences substantive equality over formal equality.
4. As stated women, occupy and use land within varying context and frameworks. Provision therefore needs to be made for an approach that does not favour one solution above others. Where in some instances individual ownership of land must be promoted and protected, in other instances the land usage within a communal ownership model may require strengthening.

**Tenure security, evictions, displacements and other rights violations as a result of economic policies[[10]](#footnote-10)**

1. Women in especially rural and peri-urban areas live in circumstances of insecure tenure. These include women who live on communal land owned or administrated by traditional authorities or in terms of customary laws and practices[[11]](#footnote-11).
2. Of particular concern is the manner in which the extractive industries and the agricultural sector has dealt with poor and marginalised groups that occupy land that is sought for the advancement of these economic sectors. Without strong policies and implementation of these policies, communal rights to properties (where women’s voices are traditionally not heard) are often violated in favour of corporations. Increasingly as the economies of the world struggle, there is pressure placed on rights realisation and protection. Policy and legislative development is often by design intended to attract foreign investment at the expense of communities.
3. In Africa, and other developing countries particularly urban[[12]](#footnote-12) and indigenous communities are displaces to advance economic policies put in place by the State. Such policies exacerbate the poverty within which many communities function and provide for themselves.[[13]](#footnote-13) Such policies place those with insecure tenure rights to land and property in particular vulnerability as they are at risk of forcible evictions and relocations. The communities (and especially women’s) reliance on the land and connection to the land for farming, financial independence and as well as spiritual, religious and cultural needs are overlooked and disregarded.
4. The General Comment on Land will need to address the issue of what has commonly become known as ‘land-grabbing’ for the purposes of large scale development projects, mining and extractive industries and must speak to a culture of entrenching business and human rights.

**Food security and poverty within available resources[[14]](#footnote-14)**

1. 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.[[15]](#footnote-15) Inequality within these communities because of patriarchal value systems is a major barrier to women’s enjoyment of food security and the utilisation of land as an available resource to address poverty.[[16]](#footnote-16)
2. Most women farmers in Africa combine their role as seed custodian and small-scale subsistence farmer with their role as primary family care-taker. 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.[[17]](#footnote-17) The gender nature of food security, care and livelihood is a critically important factor in access to land.
3. Further gender inequality and discrimination leads to farming inefficiencies that contribute to malnutrition and exacerbates poverty. 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.
4. 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. It is therefore important that the General Comment speaks to importance of land, its usage and the right thereto from this perspective.

**Drafted by:**

Mandivavarira Mudarikwa (Legal Resources Centre) [Mandy@wlce.org.za](mailto:Mandy@wlce.org.za)

Charlene May (Women’s Legal Centre) [Charlene@wlce.co.za](mailto:Charlene@wlce.co.za)

1. UN Office of the High Commissioner on Human Rights (OHCHR) Land and Human Rights: Standards and Applications (2015), UN Doc HR/PUB/15/5/Add.1 [↑](#footnote-ref-1)
2. Article 3 and Article 5(e) in particular [↑](#footnote-ref-2)
3. Article 5(3), 9(1), 19(1), 22(1), 28(1) and 28(2) in particular [↑](#footnote-ref-3)
4. Article 43(1) in particular [↑](#footnote-ref-4)
5. The Committee has in the past enforced this issue calling for equality between women and men in particular by taking effective measures to combat discrimination in access to land (Guatemala in 2003, Bolivia in 2008); Further calling on states to ensure that domestic land policies comply with the provisions of the Covenant with regard to allocation of land to women (Zambia in 2005 and Cameroon in 2012). [↑](#footnote-ref-5)
6. CESCR Genera Comment No 16: Article 3: The Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (2005) UN Doc E/C.12/2005/3, para.28. [↑](#footnote-ref-6)
7. The Committee has in the past enforced this issue by calling on states to enact or enforce legislation prohibiting customary practices and restricted ownership by women of land and family property, which violates rights of women and girl children and take measures to combat such practices by all means, including education programmes (Nepal in 2001, Senegal in 2001, Gabon in 2013) [↑](#footnote-ref-7)
8. Ann Whitehead and Dzodzi Tsikata *Policy Discourse on Women’s Land Rights in sub-Saharan Africa: The Implications for the return to the Customary (2003)* 3 Journal of Agrarian Change p. 57 [↑](#footnote-ref-8)
9. CASE Women, Land and Customary Law (2011) also within the South African context see Nolundi Luwaya “*Women’s Strategies in Accessing in Rural South Africa”* (2014) A paper presented at the New York School of Law Reviews ‘Conference on 20years of South African Constitutionalism’ [↑](#footnote-ref-9)
10. The Committee has in the past enforced this issue by calling on member 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. (Uganda in 2015) [↑](#footnote-ref-10)
11. Aninka Claasens and Sizani Ngubane *Women, Land and Power: The Impact of the Communal Land Rights Act* (2008) in *Land Power and Custom: Controversies Generated by the South African Communal Land Rights Act* Aninka Claasens and Ben Cousins pp. 154 – 183 [↑](#footnote-ref-11)
12. Human Rights Council: *Report of the Special Rapporteur on adequate housing Raquel Rolnik. Guiding Principles on security of tenure for the urban poor* (2014) [↑](#footnote-ref-12)
13. Camilla Toulman Gueye Bara *Transformations in West African agriculture and the role of family farms* International Institute for Environment and Development www.pups.iied.org/pdfs/9309IIED.pdf [↑](#footnote-ref-13)
14. The Committee has in the past enforced this issue by calling on member States to ensure that women in rural areas, and particular those who are heads of households participate in decision making processes and have improved access to ownership of land (India in 2008) [↑](#footnote-ref-14)
15. 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-15)
16. UN Water as a United Nations Agency has recognised the important role of women in women in food production by stating that *‘...rural women produce between 60 and 80 percent of the food...”* UN Water *Gender, Water and Sanitation: Policy Brief* (2006) p.4 [↑](#footnote-ref-16)
17. FAO *The State of Food and Agriculture 2010 – 11: Women in Agriculture: Closing the Gender Gap for Development* 2011. [↑](#footnote-ref-17)