



ESCR-Net



Women and ESCR Working Group briefing paper: the intersection between land and women's economic, social and cultural rights¹

March 2016

The Women and ESCR Working Group briefing paper series

ESCR-Net's Women and ESCR Working Group briefing paper series focuses on the intersection between women and specific economic, social and cultural rights (ESCR) issues. The papers present specific and systemic challenges to the realisation of women's ESCR in practice and explore progressive approaches to the application of a substantive equality perspective. The papers draw primarily upon ESCR-Net members' work in different areas, and are further informed by and enhanced through dialogue with other experts in this field. This paper was prepared for, and informed by, the Working Group's consultation with members of the CEDAW Committee and CESCR on 'Women and economic, social and cultural rights: current challenges and opportunities for advancement', held in Geneva on 7 November 2015. For more information and the meeting report, see: <https://www.escr-net.org/node/368261>.

Taking a substantive equality perspective

In foregrounding a substantive equality analysis in its collective projects and activities, the Women and ESCR Working Group encourages a shift from a gender-neutral approach limited to ensuring similarity of treatment, to one that considers the effects of particular (in)action. To start, substantive equality requires consideration of indirect discrimination against women, where an apparently neutral law, policy or practice affects women adversely in a disproportionate way, because of biological difference and/or the ways in which women are situated or perceived in the world through socially and culturally constructed gender differences. More broadly, the achievement of substantive equality in practice requires a multifaceted approach which: **redresses disadvantage** (based on historical and current social structures and power relations that define and influence women's abilities to enjoy their human rights); **addresses stereotypes, stigma, prejudice, and violence** (with underlying change in the ways in which women are regarded and regard themselves, and are treated by others); **transforms institutional structures and practices** (which are often male-oriented and ignorant or dismissive of women's experiences); and **facilitates social inclusion and political participation** (in all formal and informal decision-making processes).²

¹ We would like to acknowledge with appreciation the members of ESCR-Net's Women and ESCR Working Group who took a lead role in drafting and reviewing this paper, including: Global Initiative for Economic, Social and Cultural Rights (international); Legal Resources Centre (South Africa); and FIAN International (international), as well as other members who provided valuable input.

² For more information on this framework, see Sandra Fredman and Beth Goldblatt *Gender Equality and Human Rights* (2015) UN Women Discussion Paper No. 4, <http://www.unwomen.org/en/digital-library/publications/2015/7/dps-gender-equality-and-human-rights>.

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. Protecting and strengthening the rights of women to access, use and control land and natural resources helps to ensure women's ability to provide for their own material needs, as well as the needs of their families and communities.³ Research also indicates 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/AIDS⁴ and some of the consequences of domestic violence.⁵ Indeed, women's access to, and control over, land is essential to women's equality and ability to enjoy a range of other rights enshrined in international human rights law, in particular the right to adequate food and nutrition.

Various human rights instruments guarantee women's equal rights to access, use and control land.⁶ In particular, women's rights in relation to land are well-established in international human rights standards and guidelines, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Despite these protections, the UN Food and Agriculture Organization (FAO) reports that

³ See UN Food and Agricultural Organization (FAO) *The State of Food and Agriculture: 2010-2011* (2011); International Centre for Research on Women (ICRW) *Reducing Women's and Girls' Vulnerability to HIV/AIDS by Strengthening their Property and Inheritance Rights* (2006); and Open Society Foundations (OSF) *Securing Women's Land and Property Rights: A Critical Step to Address HIV, Violence and Food Security* (2014), pp. 7-8.

⁴ See, generally, Caroline Sweetman *How Title Deeds Make Sex Safer: Women's Property Rights in an Era of HIV* Oxfam International, Poverty to Power Background Paper (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* ICRW Working Paper (2004); Pradeep Panda *Rights Based Strategies in the Prevention of Domestic Violence* ICRW Working Paper No 344 (2002); and ICRW *Reducing Women's and Girls' Vulnerability to HIV/AIDS by Strengthening their Property and Inheritance Rights* (2006).

⁵ OSF *Securing Women's Land and Property Rights: A Critical Step to Address HIV, Violence and Food Security* (2014), pp. 5-7.

⁶ For a comprehensive list of international and regional human rights instruments that guarantee women's equal rights to access, use and control land, see UN Office of the High Commissioner on Human Rights (OHCHR) & UN Women *Realizing Women's Rights to Land and other Productive Resources* (2013), pp. 5-13.

“[g]ender inequalities in land rights are pervasive”.⁷ Even where women's rights to land are protected formally in law, widespread gender discrimination – including in education and women's lack of legal literacy – acts as a substantial barrier to the enjoyment of equal rights in relation to land in practice.

This briefing paper sets out some positive developments at the intersection of land and women's rights and introduces the approaches taken by the Committee on the Elimination of Discrimination against Women (CEDAW Committee) and the Committee on Economic, Social and Cultural Rights (CESCR). It then discusses a number of significant issues in this area, as informed by the experience and work of members of ESCR-Net's Women and ESCR Working Group and related dialogue with various UN and other experts. These key issues cover: intersectionality; culture and religion; education, engagement and policy development; poverty and food security; and prevailing macro-economic policies and practices. Finally, some recommendations by the Women and ESCR Working Group are offered, with a view to enhancing a substantive equality approach to a consideration of issues arising in connection with women's rights and land.

Positive developments

The CEDAW Committee and CESCR have each made strong General Recommendations/General Comments and issued important guidance to States about women's rights in relation to land. For example, the CEDAW Committee has noted 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

⁷ FAO *Gender and Land Rights: Understanding Complexities, Adjusting Policies* Economic and Social Perspectives Policy Brief No 8 (2010), p. 1.

*of property acquired during marriage. Such provisions contravene [CEDAW] and should be abolished.*⁸

The CESCR has also made a number of important comments. It has, for example, confirmed 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"⁹ and has highlighted women's equal inheritance rights.¹⁰ On the right to adequate food and nutrition, CESCR 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.¹¹

In addition, the CEDAW Committee has an important track record of addressing women's land and property rights in its Concluding Observations on State party reports, making explicit reference to such intersection more often than CESCR. The CESCR has, however, provided additional commentary on rights related to land more generally, rather than commentary focused on women's experiences specifically.

Key commentary from both committees is set out in the Annex to this paper, and includes statements urging States to:

- Develop and strengthen a clear legal framework to eliminate discrimination in access to land, with CEDAW further noting discrimination with respect to ownership, co-sharing, inheritance, and a 'heads of household' framework that favours men.
- Take positive measures to increase the enjoyment of women's rights in relation to land, with CEDAW being more specific regarding such measures.
- Address negative customs and traditional practices impacting on women's rights related to land, in

⁸ CEDAW Committee *General Recommendation No 21: Equality in Marriage and Family Relations* (1994), para 35.

⁹ CESCR *General Comment No 16: Article 3: The Equal 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.

¹⁰ *Ibid*, para 27.

¹¹ CESCR *General Comment No 12: Right to Adequate Food* (1999) UN Doc E/C.12/1999/5, para 26.

particular as it pertains to women who face multiple forms of discrimination, such as indigenous and Afro-descendant women and women from scheduled castes. In this regard, CESCR has focused on enacting or enforcing prohibitions on 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 women's right to land.

- Protect women's rights from 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.
- Develop sustainable solutions 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).
- Ensure equal access by women to resources and nutritious food, noting the connection between access to land and nutrition (CEDAW).
- Address the impact of armed conflict, which increases discrimination against women and affects land restitution (CEDAW).

The CEDAW Committee is currently finalizing a new General Recommendation on rural women, to provide more specific guidance to States concerning their obligations under Article 14 of CEDAW, and to give greater visibility and priority to rural women and their rights.¹² Some of the issues that are expected to be addressed in the General Recommendation include: women's rights to access key productive resources (recognizing that only 10 to 20 per cent of all land holders are women); land ownership and inheritance; large-scale land acquisitions and changes in land use; and the interdependence of the right to land with other rights.¹³ In the development

¹² Expected publication in the March 2016 session.

¹³ Naela Gabr 'Introduction of the General Recommendation on Rural Women: General Recommendation on Article 14 of CEDAW' (7 October 2013), a statement delivered at the CEDAW General Discussion on Rural Women held in Geneva on 7 October

of the General Recommendation, the CEDAW Committee highlighted that:

*[w]omen's access to and control over land is a key factor in rural women's economic empowerment and can potentially lead to gender equality, better incomes and food and nutrition security. In many parts of the world, the main obstacles to rural women's access to land and their ability to enhance productivity are institutional barriers to their social recognition.*¹⁴

In addition, various stakeholders have proposed other potential General Comments/General Recommendations of relevance to women and land, including: a request to the CEDAW Committee to adopt a General Recommendation on Indigenous Women (which could address, among other issues, indigenous women's access to their land); and a request to CESCR to adopt a General Comment on the right to land (recognizing that CESCR has already made multiple references to rights connected with land).

Other recent texts reference women's rights in relation to land, and offer useful interpretative support for these rights. For instance, the FAO's *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* address the issues of land-grabbing, access to natural resources, and the differential impact that the displacement of communities and the destruction or confiscation of land has on women and girls.¹⁵ Another key initiative is the development of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas,¹⁶ which is aimed at voicing the claims

2013. The statement is available online at: <http://www.ohchr.org/Documents/HRBodies/CEDAW/30thAnniversaryCEDAW/GeneralRecommendationOnArticleNaelaGabr.pdf>.

14 CEDAW Committee Concept Note for the General Recommendation on Article 14 of CEDAW (prepared with support of FAO, IFAD, WFP and UN Women) (2013), para 2.

15 FAO *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (2012), available at <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>. The Committee on World Food Security officially endorsed the Voluntary Guidelines on 11 May 2012.

16 On 11 October 2012, the UN Human Rights Council (HRC) adopted Resolution 21/19 which establishes the Open-ended Intergovernmental Working Group (IWG) on a UN Declaration on the Rights of Peasants and other People Working in Rural Areas. The Working Group is mandated to negotiate, finalize and submit a draft of UN Declaration on the Rights of Peasants. See HRC Resolution 21/19: *Promotion and Protection of the Human Rights of Peasants and Other People Working in Rural Areas*

of peasants from different regions and providing international law recognition to their rights to land, seeds, food, sovereignty over natural resources, development, food sovereignty, ecological diversity, water, and health. The Declaration also seeks to address the right to equality, including gender equality, and makes reference to Article 14 of the CEDAW Convention.¹⁷

Key issues to consider

Women are not a homogenous group within a specific or normative context, and therefore the manner in which a woman acquires, owns and uses land differs greatly based upon her geographical location, the political-legal context, and where she is positioned within her community and society at large. As such, this paper does not attempt to address every situation but instead raises a number of key issues, drawing upon the Working Group members' expertise and experience over recent years, that will be important to consider when seeking to address issues connected with women and land from a substantive equality perspective.

Intersectionality:

- Access to land for women is complex and intricate, as women access land in such vastly different situations and contexts. As a result, the enjoyment of women's rights in relation to land must be considered not only as a gender issue, but also with reference to a variety of intersecting characteristics including residence, race, ethnicity, religion or belief, health or economic status, disability status, sexual orientation and gender identity, and so on.
- In some parts of the world, many *rural* women acquire land: within the context of marriage and within the family, or the context of inheritance

(11 October 2012) UN Doc A/HRC/RES/21/19, p. 2. For more information on the IWG's activities, see: <http://www.ohchr.org/EN/HRBodies/HRC/RuralAreas/Pages/WGRuralAreasIndex.aspx>. See also the Geneva Academy of International Humanitarian Law and Human Rights (Geneva Academy) *Negotiation of a United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas* (2015).

17 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.

(being able to, in terms of laws or practice, retain some land previously owned by a deceased husband);¹⁸ through government or other social programs which often extends only to access and not ownership; and to a lesser extent through access to markets.

- Land acquisition for women in *urban* settings is often linked to: government policies which reduce them to dependents of male relatives; tenancy within urban settings subject to exorbitant property prices; insecure tenure living arrangements (e.g. shanty towns, slums), which spring up as a result of employment opportunities; and displacements as a result of land grabbing through development projects or resource extraction.

Culture and Religion:

- In many parts of the world, 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).¹⁹ Women risk losing their entitlements to land in cases of divorce or widowhood.²⁰ Evidence also shows that women's land parcels tend to be of smaller size and lower quality than those provided to men.²¹ In such circumstances, it is not possible to address women's rights in relation to land without acknowledging the role of customary laws and practice, societal gender constructs, and their roots within patriarchal relations of power.²²

18 See CASE *Women, Land and Customary Law* (2011), pp. 24-30. See also Nolundi Luwaya 'Women's Strategies in Accessing in Rural South Africa' (2014), p. 2, a paper presented at the New York Law School Law Review's Conference on 'Twenty Years of South African Constitutionalism' held in New York on 14-16 November 2014, where the author argues that the normative assumption that women access land through their husbands or families remains problematic as women frequently remain excluded from decision-making in relation to land. These sources also refer to instances of unmarried women accessing rural land (at least in a South African context).

19 FAO *Gender and Land Rights: Understanding Complexities, Adjusting Policies Economic and Social Perspectives Policy Brief* No 8 (2010), p. 1.

20 Ibid.

21 Ibid.

22 See Elizabeth Daley & Birgit Englert 'Securing Land Rights for Women: Changing Customary Land Tenure and Implementing Land Tenure Reform in East Africa' (2010), p. 5 and n. 19, a paper presented at a conference on the '(In)visibility of African Culture' hosted by the African Studies Association, Oxford University in Oxford on 16-19 September 2010. It should also be noted that

- Cultural and religious restrictions often place women in the position of a minor who is unable to access communal land, own land without a husband's consent, or retain ownership of land. In many communities, gender disparities with regard to productive resources are linked to gender stereotypes based on men as 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.²³ Inequality is linked with deepened poverty, lower social status, decreased autonomy, and vulnerability to exploitation and abuse.²⁴
- There is a need to interrogate the understanding, interpretation and preference that is given to cultural rights, and not accept them as a justification to violate women's equality and rights. The key to analyzing the intersectionality between women's right to land and rights related 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.²⁵ Custom and culture are, after all, living concepts that are capable of adapting to, and harmonizing with, human rights.²⁶

a wealth of recent literature has emerged which recognizes the evolving and adaptable nature of customary laws and practice, and the potential that changing customary laws and practices have to contribute to the protecting and strengthening the land rights and tenure security of women. See, in this respect, Elizabeth Daley & Birgit Englert 'Securing Land Rights for Women: Changing Customary Land Tenure and Implementing Land Tenure Reform in East Africa' (2010); and Community Agency for Social Enquiry (CASE) *Women, Land and Customary Law* (2011).

23 See, generally, Canadian HIV/AIDS Legal Network *Respect, Protect and Fulfill: Legislating for Women's Rights in the Context of HIV/AIDS Vol 2: Family and Property Issues* (2009), available at: <http://www.aidslaw.ca/site/respect-protect-and-fulfill-legislating-for-womens-rights-in-the-context-of-hiv-aids-volume-two-family-and-property-issues/>.

24 UN *Beijing Declaration and Platform for Action* (1995), Women and Poverty Diagnosis.

25 See Ann Whitehead & Dzodzi Tsikata 'Policy Discourses on Women's Land Rights in Sub-Saharan Africa: The Implications of the Re-turn to the Customary' (2003) 3 *Journal of Agrarian Change*, p. 75, who argue that those already in positions of cultural or religion power - usually men or traditional leaders - are able to leverage their power in constructing customary or religious practices that disproportionately benefit men.

26 In South Africa, research has indicated that customary law and practice has, in some instances, developed in line with human rights norms. See, for example, Aninka Claassens 'Recent

Education, Engagement and Policy Development:

- The widespread lack of education, in general, and the preference given to boys' education, specifically, have serious implications in respect of women's access to land and tenure security, and also intersect with a lack of awareness and understanding by many women about existing laws and policies relevant to their rights.
 - In most parts of the world, women are not included or are underrepresented in decision-making structures, and so participatory power rests with males who, often through reinforcement of patriarchal principles, make decisions detrimental or indifferent to women's experiences. Women's rights must be at the heart of development and their protection must take precedence over profit interests of third parties.
 - The existence of systemic discrimination by institutions that are recognized by governments, for example tribal authorities, limits women's enjoyment of their rights to land and property.
 - The relationship between how land rights are characterized and vested, on the one hand, and how power and authority is delineated and exercised, on the other, is a significant factor for women's access and enjoyment of land rights as a key component of land rights is the ability to make decisions about the land.²⁷
- The lack of awareness of women's role in agricultural production means that their tenure security is often not examined nor is their role in alleviating poverty, despite the fact that in most developing countries rural women are the mainstay of small scale agriculture, food security, farm labour and day-to-day family subsistence.²⁸
 - Access to resources such as land, water and equipment will be critical in the future implementation of the Sustainable Development Goals, particularly in respect of alleviating poverty and ensuring gender equality.²⁹

Prevailing Macro-Economic Policies and Practices:

- Despite the centrality of land to people's lives, particularly in poor and marginalized communities throughout the world, land pressures are rapidly increasing; land markets have often proven to be exclusionary³⁰ and land concentration is on the rise.³¹ Therefore, issues related to women's access to productive resources in general, and land in particular, must be considered within the context of macro-economic policies and practices such as land-grabbing, large-scale development projects and resource extraction, and the different impact that these phenomena have on women's daily lives and the enjoyment of their rights (women's right to work, to food, to autonomy, etc).³²

Poverty and Food Security:

- Despite an increasing focus on women's roles in agricultural production and food security, there is a persistent lack of adequate data about women's contribution in such areas. This is partially due to the fact that much of women's work remains invisible. For example, information about women working on a family or communal plot, tending to livestock, or producing crops is often not captured during data collection.

Changes in Women's Land Rights and Contested Customary Law in South Africa' (2013) 13 *Journal of Agrarian Change*, pp. 71-92; CASE *Women, Land and Customary Law* (2011).

²⁷ See, generally, Aninka Claasens & Sizani Ngubane 'Women, Land and Power: The Impact of the Communal Land Rights Act' in Aninka Claasens & Ben Cousins (eds) *Land, Power and Custom: Controversies Generated by the South African Communal Land Rights Act* (2008), pp. 154-183.

²⁸ A number of UN agencies have recognized that, in developing regions, food security is often dependent on women's subsistence production. For example, UN Water notes that "women are responsible for half the world's food production (as opposed to cash crops) and in most developing countries, rural women produce between 60 and 80 per cent of the food". See UN Water *Gender, Water and Sanitation: A Policy Brief* (2006), p. 4.

²⁹ Further information available at: <https://sustainabledevelopment.un.org/sdgs>.

³⁰ See Shahra Razavi 'Liberalisation and the Debates on Women's Access to Land' (2007) 28(8) *Third World Quarterly*, pp. 1485-1488; and Ann Whitehead 'The Gendered Impacts of Liberalization Policies on African Agricultural Economies and Rural Livelihoods' in Shahra Razavi (ed) *The Gendered Impacts of Liberalization: Towards "Embedded Liberalism"?* (2008).

³¹ Emelita P Salamanca *Good Practice in Realizing Women's Rights to Productive Resources, with a Focus on Land in the Philippines* UN Women Expert Background Paper (2012). The expert paper was developed in the wake of an expert meeting held in Geneva, Switzerland on 25-27 June 2012.

³² For further information on the linkages between women's rights to land, to work and to food, see ESCR-Net *Women and ESCR Working Group Briefing Paper: The Intersection between Work and Women's Economic, Social and Cultural Rights* (2016).

Recommendations by ESCR-Net's Women and ESCR Working Group:

In considering issues at the intersection of land and women's economic, social and cultural rights, we recommend the following:

1. States must be encouraged to enact laws, policies and measures to ensure women's access to, and control over, land – both in their formal legal frameworks and in reality through a substantive equality approach to the implementation of such frameworks, addressing gender as well as intersectional discrimination more broadly. This will also contribute to the recognition of women's other human rights, the equitable redistribution of land, and a reduction of poverty and discrimination.
2. States must facilitate access to justice for women, particularly impoverished rural women, in cases where their rights in relation to land have been violated.
3. Public policy development and reform relating to land must:
 - a. foreground women's experiences and issues of concern, rather than States seeking to address rights violations experienced by women on an ad hoc basis;
 - b. include women in the formulation stages and be participatory in nature, to ensure that they are based upon women's needs and rights, and that unintended and potentially discriminatory outcomes for women are noted and addressed;
 - c. avoid mainstreaming of women's concerns through a gender neutral approach, as this is likely to simply hide such concerns; and
 - d. take into account women's contexts in respect of urban ownership and rural user rights – while not seeking to advocate in favour of either of these forms of access, it is important to note that context is critical in determining whether proposed land usage and access models are appropriate for the actual circumstances in which different women find themselves. Although individual *ownership* is important within a specific context there might be a greater need to strengthen women's rights relating to *use* of land in other contexts.
4. Substantive equality approaches to laws and practices relating to women and land:
 - a. require systematic and focused implementation, an enabling environment, and sufficient planning and budgetary allocations in order to allow rights realization rather than simply rights recognition; and
 - b. are enhanced through the enactment of legislation, policies and measures which acknowledge existing contexts of unequal power and property relations, and which seek to increase women's bargaining positions and address negative gender stereotypes, as required for women to enjoy rights related to land in practice.

Conclusion

While a number of important advances have been and continue to be made at the intersection of land and women's economic, social and cultural rights, the issues outlined above reflect continued direct and indirect discrimination in women's access to, control over and use of land. Taking a substantive equality approach to women's enjoyment of their rights in relation to land requires careful consideration of the manifestations of, and strategies for dealing with, such interrelated issues.

Selected additional resources

- ActionAid, *Action on Land Grabs: Supporting Women* (2014).
- ESCR-Net, *Global Economy, Global Rights: A practitioners' guide for interpreting human rights obligations in the global economy* (2014).
- ESCR-Net, *Seeding Hope? Land in the International Human Rights Agenda: Challenges and Prospects*, Working Paper by Thea Gelbspan and Vijay K. Nagaraj (2012).
- ESCR-Net and Terra de Direitos, *Land in the Struggle for Social Justice: Social Movement Strategies to Secure Human Rights* (2013).
- FAO, *Gender and Land Rights Database*.
- FAO, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (2012).
- Renee Giovarelli and Elisa Scalise, *Women's Land Tenure Framework for Analysis: Land Rights*, Resource Equity Practice Guide (2015).
- Renee Giovarelli and Elisa Scalise, *Women's Land Tenure Framework for Analysis: Inheritance*, Resource Equity Practice Guide (2015).
- Human Rights Council, *Report of the Special Rapporteur on adequate housing Raquel Rolnik. Guiding Principles on security of tenure for the urban poor* (2014).
- Jass Associates and others, *Agresiones Contra Defensoras de Derechos Humanos en Mesoamérica Informe 2012-2014* (2015).
- Minority Rights Group International and Centre on Human Rights in Conflict, University of East London, *Moving towards a Right to Land: The Committee on Economic, Social and Cultural Rights' Treatment of Land Rights as Human Rights* (2015).
- OHCHR and UN Habitat, *Forced Evictions* Fact Sheet No. 25/Rev.1 (2014).
- OHCHR and UN Habitat, *The Human Right to Adequate Housing* Fact Sheet No. 21/Rev. 1 (2009).
- Open Society Foundations, *Securing Women's Land and Property Rights: A Critical Step to Address HIV, Violence, and Food Security*, (2014).
- Amanda Richardson, *International Agreements and How to Build a Legal Case for Women's Land Rights*, Resource Equity Practice Guide (2015).
- Swedish International Development Cooperation Agency (SIDA), *Quick Guide to What and How: Increasing Women's Access to Land* Women's Economic Empowerment Series (2009).
- 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).
- UN Women and OHCHR, *Realizing Women's Rights to Land and Other Productive Resources* (2013).

ANNEX: 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 land³³ establish a clear legislative framework to protect women's rights to inheritance and ownership of land³⁴ <p>Expressed concern that registration of land to male 'heads of household' discriminates against women³⁵</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 land³⁶ that domestic land policies comply with the provisions of the Covenant with regard to allocation of land to women³⁷
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,³⁸ particularly for women who face multiple forms of discrimination because they are indigenous, from scheduled castes and tribes, or Afro-descendant³⁹</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 women⁴⁰ 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 women⁴¹ 	<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 programmes⁴² 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 means⁴³

33 South Africa, 2011; Chad, 2011.

34 Kenya, 2011; Zambia, 2011.

35 Mongolia, 2008; Sri Lanka 2011.

36 Guatemala, 2003; Bolivia, 2008.

37 Zambia, 2005; Cameroon, 2012.

38 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.

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

40 Kenya, 2011; South Africa, 2011.

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

42 Nepal, 2001.

43 Senegal, 2001; Gabon, 2013.

CEDAW	CESCR
Addressing the impact of private and foreign companies	
<p>Expressed concern that confiscation of land by private and foreign companies, as well as the implementation of megaprojects, have disproportionate impact on women⁴⁴</p> <p>Noted extra-territorial obligations in regard to projects' impact on women's livelihood, housing, and food security in Nepal⁴⁵</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 land⁴⁶ 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 inter alia promoting public-private partnerships⁴⁷ 	<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)⁴⁸</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 data⁴⁹</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 relatives⁵⁰</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 land⁵¹ 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 territories⁵² disseminate information on women's land rights and ensure legal literacy⁵³ 	<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 land⁵⁴</p>

42 Nepal, 2001.

43 Senegal, 2001; Gabon, 2013.

44 Cambodia, 2006; India, 2007; Ethiopia, 2011; Togo, 2012.

45 India, 2014.

46 Togo, 2012.

47 Colombia, 2013.

48 Uganda, 2015.

49 Uzbekistan, 2010.

50 India, 2008.

51 Kenya, 2011; South Africa, 2011; Chad, 2011; Republic of Korea, 2011.

52 Colombia, 2007.

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

54 Tanzania, 2012.

CEDAW	CESCR
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 land⁵⁵</p> <p>Underscored the importance of ensuring outreach of agricultural programmes and extension services to women⁵⁶</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 credit⁵⁷</p>	<p>Called upon States to speed up land reform processes which benefit women⁵⁸</p>
Confirming connection between access to land and livelihood	
<p>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.⁵⁹</p>	
Confirming connection between access to land and nutrition	
<p>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 fuel⁶⁰</p>	
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 poverty⁶¹</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 restitution.⁶²</p>	

54 Tanzania, 2012.

55 Nepal, 2011; Côte d'Ivoire, 2011; Mexico, 2012.

56 Ghana, 2006; Kenya 2007; Tanzania, 2008.

57 Nepal, 2011; Côte d'Ivoire, 2011.

58 Zambia, 2005; Cameroon, 2012.

59 Colombia, 2013.

60 Nepal, 2011.

61 Colombia, 2013.

62 Colombia, 2013.

ESCR-Net and its Working Group on Women and ESCR

The International Network for Economic, Social and Cultural Rights (ESCR-Net) unites over 270 NGOs, grassroots groups, and advocates across 70 countries, facilitating strategic exchange, building solidarity, and coordinating collective advocacy to secure social and economic justice through human rights. ESCR-Net members define common strategies and advance joint action foremost through international working groups, including the Working Group on Women and ESCR which is made up of about 40 members – NGOs, social movements, and individual advocates – working across regions to advance women’s ESC rights and substantive equality. Through engagement with UN bodies, capacity building, and advocacy at multiple levels, the Working Group works collectively to ensure women’s experiences and analyses are at the center of domestic and international policy-making and legal developments.

To comment on this briefing paper or to find out more about the Women and ESCR Working Group, please contact wescr@escr-net.org or visit <https://www.escr-net.org/women>



International Network for Economic, Social & Cultural Rights
Red Internacional para los Derechos Económicos, Sociales y Culturales
Réseau international pour les droits économiques, sociaux et culturels
الشبكة العالمية للحقوق الاقتصادية والاجتماعية والثقافية



370 Lexington Ave Suite 700 10017 NYC (NY)

info@escr-net.org



+1-212-681-1236

www.escr-net.org