



The Global Initiative
for Economic, Social and Cultural Rights



Landesa™
Rural Development Institute



Submission to the CESCR for the development of the General Comment on Land and Economic, Social, and Cultural Rights

Written Contribution on Land, Renewable Energy, and Women's Rights

- The Global Initiative for Economic Social and Cultural Rights (GI-ESCR), Landesa, ProDESC and AIDA welcomes the opportunity to make this submission to the UN Committee on Economic, Social, and Cultural Rights (CESCR) for the development of a General Comment on Land and Economic, Social, and Cultural Rights (ESC Rights). We would also like to specially thank Mayra Gomez for her valuable contributions and recommendations in the development of this written submission.
- Our joint submission will focus on the interlinkages between the climate emergency, the transition to renewable energy, and women's rights to land and other productive resources. Although land rights are not expressly recognized in the International Covenant on Economic, Social, and Cultural Rights (ICESCR), land and other key productive resources are implicit in many of the rights enshrined in the Covenant and play a critical role in all meaningful efforts to advance a just transition to low-carbon, sustainable and gender-just societies.
- In recent times, the concept of "just transition" to sustainable societies has been gaining traction, but so far little attention has been paid to the multiple challenges that this global transformation will entail for the energy sector and the fact that it needs to be gender equal.¹ This submission will further develop the relationship between land, gender, and the energy transition and put forward a series of language recommendations in order to deepen the analysis and strengthen key human rights standards that may help guide a just transition to low carbon, sustainable, and more gender-equal societies.

Land, women, and the energy transition

- The climate emergency is one of the greatest risks posed to humanity at this historical crossroads, as well as to the realization of Covenant rights. It has increasingly become evident that an urgent shift from fossil fuels to renewable energies is needed to reduce Green House Gas emissions (GHG) and avoid the most adverse impacts of climate change. As it has been recognized in the current draft of the General Comment, slow-onset phenomena, such as drought and sea level rise, together with extreme weather events, such as hurricanes, wildfires, and heavy rains will have a direct impact on rights-holder's access, use, and control over land and other productive resources. At the same time, measures to phase out fossil fuels and mainstream renewable energy to mitigate climate change all too often fail to fully integrate human rights and gender equality principles and can also negatively impact land rights.²
- As a result, whilst the urgently needed transition to renewable energy has been effective in reducing GHG and combating the climate emergency, renewable energy frameworks and policies commonly fail to consider how energy infrastructure and project development might infringe upon local communities' land uses and property arrangements. Large-scale renewable energy projects rarely adopt robust environmental and human rights safeguards to prevent human rights abuses related to land acquisition and energy generation and distribution

¹ 'Beyond COVID-19: The Feminist Plan for Sustainability and Social Justice', UN Women, (2021), available at: <https://www.unwomen.org/en/digital-library/publications/2021/06/feminist-plan>

² 'Renewable Energy and Gender Justice', GIESCR and FES Geneva, (2020), available at: <https://www.gi-escr.org/latest-news/roundtable-on-renewable-energy-and-gender-justice-a-step-forward-for-womens-rights>

as well as its consequent disproportionate effects on the rights of disadvantaged and marginalized groups. This is a particularly common issue in renewable energy projects (dams, hydro, wind farms, and solar installations) located in rural areas in developing countries where State institutions tend to lack the means and resources to enforce regulations.³

- In this context, the green energy transition risks reinforcing harmful extractive practices commonly seen in the fossil fuel industry which exacerbate structural inequalities and result in misinformation and human rights abuses, such as land-grabbing, unjust compensation, relocation schemes, deforestation, land enclosures, soil degradation, and restricted access to communal lands and territories for local populations.⁴
- In many countries women's equal rights over land and productive resources are already tenuous as a result of gender discriminatory laws and practices. Because of this pre-existing inequality, women, particularly rural and indigenous women, are amongst the groups most disproportionately affected by the compounded effects of both climate change and the renewable energy policies and projects implemented on their land and territories to reduce global GHG and diversify the energy system.⁵
- Due to gender roles and entrenched social patriarchal practices, the gendered impacts of climate change and the energy responses articulated to address this crisis are often the result of intersectional gender discrimination in land rights, women's and girls' lack of participation in key decision-making processes, as well as the restrictions placed on women and girls due to gendered care-giving roles. Furthermore, women are overrepresented amongst the world's poor and are often more dependent on land and other natural resources to sustain their livelihoods.⁶
- To be gender-equal, fair, and human rights compliant, policies and legal frameworks advancing the energy transition should avoid land dispossession for women and other marginalized groups. The rise of land use change due to the increase in large-scale renewable energy projects must consider that **women are key agents for climate action and their meaningful participation is critical** in the preservation of land and natural resources and the articulation of energy solutions to ensure an effective and just transition to sustainable and low-carbon societies.

Mainstreaming gender and climate change issues

- The climate crisis is having a profound impact on all land-issues and is the context in which land related crises or pressures (such as displacement and resettlement, urbanization, agricultural commodities, unsustainable land use, and land speculation/concentration) are not only taking place, but also likely to become worse still in the future.
- The current draft of the General Comment fails to convey the urgency of this problem and make clear that we are entering a new context which will have implications for our understanding of all land related matters. **Climate change should be presented as a more central issue and identified upfront as the 'critical context' in which land issues are unfolding.** For specific ways to strengthen language, in the introduction the Committee could refer to its 2018 statement on "Climate change and the International Covenant on Economic, Social and Cultural Rights" as well as the 2019 Joint Statement on "Human Rights and Climate Change."
- In addition, as mentioned above, **women represent the majority of small and subsistence farmers in many countries and are overrepresented among people living in poverty worldwide, and this reality should be expressly recognized in the General Comment's section on women.** The Social Institutions and Gender Index has found that women have equal legal rights to own and access land in merely 28 States across the world, with

³ 'Renewable Energy and Human Rights Benchmark: Key findings from the wind and solar sectors', Business and Human Rights Resource Centre, (2020), [SS](#).

⁴ Ibid. Also see: '(In)justicia energética en América Latina', Centro de Información de Empresas y Derechos Humanos (2021), [SS](#).

⁵ CEDAW Committee, 'General Recommendation No. 37 on Gender-related dimensions of disaster risk reduction in the context of climate change', (2018), CEDAW/C/GC/37.

⁶ Ibid.

women estimated to make up less than 20% of all landowners globally.⁷ Furthermore, as it has been recognized in CEDAW's General Recommendation No. 37, women's lands "*tend to be of inferior quality and more prone to flooding, erosion or other adverse climatic events*". Increasingly, due to male emigration, women are being left living in precarious and risky conditions with the responsibility for caring for their families and farming and producing food in climate change affected areas.⁸

- Therefore, **there is strong need to integrate a gender and intersectional approach across the document to emphasise the multiple and intersectional forms of discrimination suffered by women in land tenure rights and a greater recognition of the critical role of rural women and others in land conservation and sustainable land use practices.** The General Comment should highlight that woman's rights should be fulfilled and seen as key partners within the context of climate change as those that care and live closest to the land – also often have incredibly important knowledge on how to preserve the land and ecosystems.

Women's access, use, and control over land

- **Paragraph 8 of the draft General Comment should be strengthened by including a reference to Article 3 of the ICESCR**, since the protection of women's rights to land must be seen as a key mean to avoid the negative impacts of mitigation measures, such as the development of large-scale renewable energy projects, as well as to deliver on the rights recognized on the Covenant. Thus, the paragraph should read "The aim of the present general comment is to clarify the specific obligations contained in the Covenant in relation to land, particularly with regard to articles 1, 2, **3**, 11 and 12." Further relevant articles of the ICESCR could also be highlighted at this point (for example article 15 – cultural life; article 6 – work) to ensure a wider scope and in line with subsequent paragraphs of the draft. **The interpretation of Article 3 within the General Comment should be in line with the Committee's established understanding of substantive equality, and the concept of women's rights to substantive equality should be explicitly integrated throughout the General Comment.**
- We welcome the fact that the current draft mentions CEDAW General Recommendation No. 21 (1994) on Equality in Marriage and Family Relations. However, **we would encourage the CESCR to include other relevant CEDAW General Recommendations, such as GC 34 on the Rights of Rural Women, which includes more specific and stronger language around land and should be referenced visibly in the text of the General Recommendation** rather than merely in the footnotes. GC 34 provides specific guidance around various land questions, and it explicitly says that the CEDAW Committee "*considers rural women's rights to land, natural resources, including water, seeds and forests, and fisheries as fundamental human rights*". Additionally, regarding climate change it notes that: "*States parties should address specific threats posed to rural women by climate change, natural disasters, land and soil degradation, water pollution, droughts, floods, desertification, pesticides and agrochemicals, extractive industries, monocultures, biopiracy and the loss of biodiversity, in particular agro-biodiversity*" (para 12). General Recommendation No. 37 on Gender-related dimensions on disaster and risk reduction in the context of climate change also contains specific language in this regard.
- On the draft General Comment's section on non-discrimination and equality, the Committee could also include on a **footnote the expressed reference to the General Comment No. 6 on the Protocol to the African Charter on Human and Peoples Right on the Rights of Women in Africa (Maputo Protocol): the right to property during separation, divorce, or annulment of marriage (article 7(d)) in pparagraph 16 on the draft.** The General Comment adopted in 2020 by the African Commission on Human and People's Rights is a key legal reference tool which further unpacks human rights standards on women's access to an equitable share of matrimonial property after divorce, separation and annulment of marriage and it provides essential guidance to States on this issue.

⁷ 'Social Institutions and Gender Index. Synthesis Report', OCED, (2014), [ss](#). As cited in Ana Rojas, Maria Prebble, and Jackelline Siles, 'Chapter 4: Flipping the Switch, Ensuring the Energy Sector Is Sustainable and Gender-Responsive.' in Roots for the Future, ed. Lorena Aguilar, Margaux Granat, and Cate Owren, IUCN, (2015), [ss](#).

⁸ CEDAW Committee, General Recommendation No. 37 on Gender-related dimensions of disaster risk reduction in the context of climate change, (2018), CEDAW/C/GC/37.

Participation and Free, Prior, and Informed Consent

- One of the most critical areas where vulnerable groups have faced and will likely continue to face, violations of their rights is around the issues of participation and consultation. There is a great danger in disadvantaged and marginalized groups being left behind within the fraught context of climate change and renewable energy projects, with powerful interests taking a superficial approach to consultation and nevertheless using their power at the end of the day to override the wishes of those affected.
- **In this context, paragraph 18 of the draft General Comment should be strengthened to include specific references to protections around participation, consultation, and transparency. The draft does mention the right of free, prior, and informed consent of indigenous peoples, but the CESCR should go further, however, and state that free, prior, and informed consent – FPIC - is the highest standard in dealing with similarly situated communities, including pastoralists, fisherfolk, peasants and small farmers, rural women, and women defending their land and territories, etc.** This is consistent with the Committee’s own Concluding observations. For example, regarding Uganda in 2015 (paragraph 14), the Committee raised concerns within the context of extractive industries and urged that “the State party always to enter into prior and meaningful consultations with the communities concerned before granting concessions for the economic exploitation of the lands, and fulfil the obligation to obtain their free, prior and informed consent, including and in particular that of women and customary landowners.” This was not in relation specifically to only to indigenous groups.
- In addition, it is important to consider that women tend to be specially excluded from consultation processes due to social norms, which may limit their possibilities to voice their views and concerns in local community-decision making and that often place greater care-burdens that restrict the time they have available to engage in these important participatory processes. The Committee could thus consider making the following change to paragraph 18: *“In that regard, States parties should develop relevant laws, policies and procedures to ensure participation and consultation in all land-related policies, including measures to remove barriers that may limit the participation of women and other disadvantaged groups.”* For instance, these measures could encourage consultation meetings to happen at times when women do not have domestic or care duties, allow children to attend the meetings, and coordinate to share the burdens of childcare among consultation participants’, etc.
- In this line, CEDAW’s General Recommendation 34 on Rural Women states that States should *“Ensure that rural development projects are implemented only after participatory gender and environmental impact assessments have been conducted with the full participation of rural women, and after obtaining their free, prior and informed consent.”* (paragraph 54 (e), see also paras 62(d) and 52(e)).
- It should be noted that recent international law developments have expanded and applied the norm of FPIC to both indigenous peoples and local communities as good practice (see, e.g., the Nagoya Protocol, a supplementary agreement to the Convention on Biological Diversity).
- In this sense, the CESCR can clearly include this standard insofar as it most likely to result in better outcomes for indigenous peoples as well as other similarly situated groups and in that way is more consistent with State party obligations under the ICESCR, insofar as a broader application of the FPIC standard can preempt negative scenarios and human rights violations in the context of the energy transition and across a wide range of issues and affected groups.

Large-scale renewable energy projects as overlooked land-intensive mitigation measures.

- Since renewable energy projects require vast areas of land, asymmetries in decision-making power, ownership, and security of tenure can lead to the exclusion of women and other disadvantaged groups from the processes of negotiation, consultation, and compensation between project operators (corporations and/or governments) and local communities, since project operators typically approach male landowners and community leaders. Furthermore, as States and International Financial Institutions seek to encourage the rapid and urgent implementation of renewable energy technologies, investments in land-intensive green energy projects are encouraged through tax exemptions, subsidies, credits, and loans which have resulted in increasing changes in land-use worldwide and significant effects on local livelihoods and food security. **In line with this, paragraph 39**

of the draft General Comment should acknowledge the risks that investments in the global energy transition to renewable energy might imply for Covenant rights related to land if adequate human rights and gender considerations are not fully integrated in energy policies and frameworks (paragraph 39 of the draft). In addition, energy agreements could be included as a specific category amongst the international treaties that must be consistent with Covenant rights to avoid adverse impacts of energy projects on land (paragraph 41 of the draft).

- In the same vein, CEDAW's General Recommendation no. 37 recognizes that "*States should create conducive environments for gender responsive investment in disaster and climate change prevention, mitigation and adaptation, including through sustainable urban and rural development, the promotion of renewable energies and social insurance schemes.*" (paragraph 51 (a). Also see paragraph 51 (b))
- On the brief climate change section, energy transition policies and projects are overlooked as mitigations measures that could encroach upon the Covenant rights related to land. In this light, **the Committee should refer to the need for States to design energy transition policies consistent with the rights of the Covenant by incorporating the following changes in paragraph 54: "Moreover, States have an obligation to design climate change mitigation and adaptation policies at the national level, such as transitioning from fossil fuels to renewable energies, that take into consideration all forms of land use change induced by climate change..."**

Distributed energy models as rights-based mitigation measures

- Even though the dominant energy model has raised human rights concerns as it has prioritized large-scale renewable energy projects and fostered rapid changes in land-use, green energy technologies also allow for alternative sustainable energy solutions with significant structural opportunities for the diversification in management, ownership, and consumption of energy.
- Decentralized and distributed renewable energy models allow for more democratic, less land-intensive, cooperative, and gender-equal models of production and distribution of renewable energy in line with Covenant rights. The modular and potentially decentralized renewable energy system allows for the deployment of small-scale, local, distributed installations with greater participation of the community. Thus, **in paragraph 55 of the draft General Comment, the Committee could consider referring to these alternative models of energy production and distribution** that are less land invasive to protect Covenant rights in climate action and in the broader transition to low-carbon and sustainable societies.

Women Human Rights Defenders

- Women human rights defenders who assert their rights against threats that large scale renewable energy projects pose, are often dismissed as anti-green energy and face violence from both corporations and their own communities. For example, a renewable energy company's decision to negotiate with a small group of landowners in the community of Unión Hidalgo, Mexico, has led to tensions and a climate of violence.⁹ The women that have stood against this and organised to claim their rights, have been harassed and told that their place is at home, taking care of their children. They have also suffered attacks that have put at risk their physical and emotional integrity. In that light, **we would encourage the Committee to explicitly recognize that women human rights defenders often suffer disproportionate levels of violence on the basis of gender discrimination in paragraph 53 of the draft General Comment.**
- Women Human Rights defending their land and territory have expressed their concern over the intersections of state and corporate power abuse that has translated in alarming levels of impunity when their rights are violated. In this regard, **the General Comment could further expand on the responsibility of States to protect and safeguard Women Human Rights defenders safety and security from corporate actors, as well as ensuring an enabling environment to allow them to perform their work in defence of their land and territory.**

⁹ 'Wind farm in Mexico: French Energy Firm EDF disregards indigenous rights: case report', ProDESC, ECCHR, Terre Solidaire, (September, 2020), [SS](#).