

**Inputs on Indigenous Women and Girls’ Land Rights**

**Submitted to the 79th Session (June 2021) of the Committee on the Elimination of All Forms of Discrimination against Women**

*Submitted by the Landesa Center for Women’s Land Rights*

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This submission provides inputs specific to Indigenous women and girls’ land rights (**IWLR**)for the Committee’ consideration. It focuses on their collective and individual land rights (Section I), IWLR as foundational for gender equality under CEDAW (Section II) and as aligned with UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention No. 169 (ILO 169) (Section III), and recommendations (Section IV). It is based on analysis and outreach conducted by Landesa, a leading INGO dedicated to securing gender-responsive land rights for those living in poverty in rural areas, with experience in 50+ countries.

1. **Collective and individual land rights of Indigenous women and girls**

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| *Indigenous women in the Asia-Pacific Region and sub-Saharan Africa total ~310 million,[[1]](#endnote-2) and land rights are essential to their well-being.*  |

Globally, there are an estimated 370 to 500 million Indigenous Peoples,[[2]](#endnote-3) located in approximately 90 countries, spanning all regions.[[3]](#endnote-4) An estimated 238 million are Indigenous women, according to the International Indigenous Women’s Forum (FIMI).[[4]](#endnote-5) Indigenous women and girls comprise part of the 2.5 billion people who rely on land and resources collectively held, managed, or used that cover 50 to 65 percent of the world’s land mass.[[5]](#endnote-6)

**Secure tenure over Indigenous land – held collectively and individually – is critical to the survival, dignity, well-being, and rights of Indigenous women and girls.** Lack of land rights and land dispossession are directly associated with poverty, ill-health, violence, armed conflict, and human rights and environmental violations.[[6]](#endnote-7)

While Indigenous Peoples hold an estimated “one-half to one-third of the world’s collectively-held land,” only 10% of the world’s land is legally owned by Indigenous Peoples and local communities, according to the World Resource Institute (WRI).[[7]](#endnote-8)

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| **Types of collective and private tenure arrangements** 1. Collectively-held lands covering the entire community domain with set-asides for individual land rights (common in Asia, Africa, and Latin America)
2. Forests, rangelands, and other commons plus a separate tenure arrangement for members’ private farms
3. Community land comprised exclusively of discrete individual parcels but governed under customary laws (less common but found in the Pacific Islands)[[8]](#endnote-9)
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Indigenous women should enjoy equal rights to both collective and individual land in all tenure arrangements where they reside. Collectively-held lands often provide individual land rights (such as for private use like homesteads) (see box).[[9]](#endnote-10) Individual land rights are critical for homes and livelihood activities.

In the face of tenure insecurity under both collective and individualized arrangements, lack of legally recognized land rights enables external land appropriations that destroy Indigenous women’s traditional land-based livelihoods (e.g., food gathering and agriculture)[[10]](#endnote-11) and often result in no compensation.[[11]](#endnote-12) Community norms and governance often discriminate against Indigenous women and exclude them from decision-making.[[12]](#endnote-13) This discrimination is compounded by exclusion at national and local levels of governance.[[13]](#endnote-14) Community rules regulating land control/management, membership, marriage, inheritance, and family may reflect inequitable gender norms favoring males over females. Even when Indigenous land rights are recognized, women’s rights are systematically overlooked.[[14]](#endnote-15)

These lived inequalities impact Indigenous women’ survival, dignity, and well-being. It is therefore vital to adopt a specific General Recommendation whose text interprets their **land rights** derived from CEDAW in accordance with UNDRIP and ILO 169.

1. **IWLR are Key to Gender Equality**

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| **CEDAW, intersectionality, & IWLR**General Recommendation 28 encapsulates State parties’ obligations to Indigenous women who face intersecting forms of discrimination based on sex/gender, race, and ethnicity. State parties must recognize and prohibit intersecting forms of discrimination[[15]](#endnote-16) that impede IWLR to collective and individual land. |

CEDAW provides the basis for promoting women’s rights and freedoms, eliminating discrimination, and realizing gender equality. Indigenous women fall under the scope of CEDAW and moreover require additional attention from State parties to address the intersecting forms of discrimination they experience. (See box.)

Ensuring Indigenous women’s rights to the land they inhabit and subsist on constitutes a foundational aspect of gender equality as envisioned by CEDAW (Arts. 14, 15, 16). Secure land rights are a precondition for women’s ability to realize a multitude of rights enshrined in CEDAW and other international human rights treaties,[[16]](#endnote-17) including greater sustainable development, economic livelihood, equality, adequate living conditions, housing, education, health, freedom from violence, and participation in decision-making.[[17]](#endnote-18)

CEDAWArticle 14 instructs State parties to eliminate discrimination against rural women, facilitate equal participation in and benefits from rural development, and ensure women’s right to equal treatment in land reform. Article 15(2) mandates women’s equal rights to administer property. Article 16(1)(h) extends equal rights to both spouses to acquire and own property. Article 5(a) stipulates that State parties must modify social and cultural norms to eliminate gender bias in customary practices,[[18]](#endnote-19) which should include those limiting women’s access and control over land and resources.

The Committee has linked land rights, the rights of Indigenous Peoples and ethnic groups, and the rights of women in the context of agrarian reform programs and marriage and family laws, and it declares rural and Indigenous women’s land and natural resource rights “fundamental human rights.”[[19]](#endnote-20) General Recommendation 34 instructs State parties to ensure that Indigenous women have rights equal to Indigenous men over traditional lands and resources.[[20]](#endnote-21)

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| **Additional guidance on women’s rights to land relevant for IWLR**Land and property rights include the right to own, use, access, control, transfer, exclude, inherit, and otherwise make decisions concerning land-related resources.Women’s land rights are generally considered secure if they are: 1) clearly defined, 2) socially and legally legitimate and recognized, 3) unaffected by changes in women’s social status (such as dissolution of marriage by divorce or death), 4) long-term, (5) enforceable and appropriately transferable, and (6) exercisable without an additional layer of approval that applies only to women.[[21]](#endnote-22) The UN Working Group on Discrimination Against Women recently released a statement on women’s land rights, emphasizing these aspects of secure legal land tenure for women, and calling for women’s participation in land governance.[[22]](#endnote-23) |

1. **IWLR alignment with UNDRIP and ILO 169**

IWLR recognized under CEDAW should align with UNDRIP and ILO 169. UNDRIP establishes minimum standards[[23]](#endnote-24) and seeks to redress the “persistent denial of basic human rights” of Indigenous Peoples.[[24]](#endnote-25) UNDRIP recognizes their right to fully enjoy—“as a collective or as individuals”—all human rights and fundamental freedoms.[[25]](#endnote-26) It recognizes their right to own, use, and control their traditional lands, territories, and resources,[[26]](#endnote-27) which States are obligated to legally recognize and protect.[[27]](#endnote-28) UNDRIP also recognizes the right to self-determination,[[28]](#endnote-29) which is inextricably linked to the substantive right to land and the right to free, prior, and informed consent (FPIC).[[29]](#endnote-30)

Critically, UNDRIP’s recognized rights and freedoms, including to land, “are equally guaranteed to male and female indigenous individuals.”[[30]](#endnote-31)

UNDRIP requires States to take effective measures towards improving Indigenous Peoples’ economic and social conditions and implementing UNDRIP—paying particular attention to the rights and special needs of Indigenous women, youth, and children.[[31]](#endnote-32) It also instructs States to work with Indigenous Peoples to fully protect Indigenous women and children against all forms of discrimination and violence.[[32]](#endnote-33)

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| **UNDRIP and legally binding ICERD**Although non-binding, UNDRIP is “the most comprehensive international instrument” on Indigenous Peoples’ rights.[[33]](#endnote-34) The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is legally binding and applies to Indigenous Peoples.[[34]](#endnote-35) Similar to UNDRIP, the ICERD Committee calls on State parties to (i) recognize and protect Indigenous Peoples’ rights to communal lands, territories and resources;[[35]](#endnote-36) (ii) move to return land where deprived without FPIC; [[36]](#endnote-37) and (iii) ensure equal rights to participate in public life.[[37]](#endnote-38) |

ILO 169 is a binding legal instrument that recognizes Indigenous and Tribal Peoples’ human rights and fundamental freedoms and requires all its provisions to apply “without discrimination to male and female members of these peoples.”[[38]](#endnote-39)

ILO 169 therefore requires State parties to recognize and protect, without discrimination, female members rights to lands, territories, and natural resources—including protecting them against authorized intrusion and relocation and fulfilling required safeguards like FPIC, full compensation, and the right to return (Arts. 13-19).[[39]](#endnote-40) State parties must also ensure no discrimination against women in their rights to (i) decide their own priorities for development processes that affect their lives and lands;[[40]](#endnote-41) (ii) maintain subsistence economies and traditional activities;[[41]](#endnote-42) and (iii) consultation, consent, and participation in decision-making.[[42]](#endnote-43)

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| **Indigenous girls’ rights**UNDRIP and the Convention on the Rights of the Child (CRC) require State parties to recognize Indigenous children’s rights. UNDRIP requires States to fully protect Indigenous girls from any form of discrimination;[[43]](#endnote-44) this should extend to their land and inheritance rights. The CRC recognizes their right to life, survival, development, and their culture,[[44]](#endnote-45) and CRC General Comment 30 notes the close links with their relationship to traditional lands.[[45]](#endnote-46) |

Female members of Indigenous and Tribal Peoples must enjoy, without discrimination, all ILO 169-recognized land rights.

1. **Recommendations**

Given the centrality of land to Indigenous women and girls and the rights and protections enshrined in CEDAW, UNDRIP, and ILO 169, this Committee should urge State parties to:

* Recognize and protect Indigenous women’s rights across all regions by ensuring collective and individual land rights equal to Indigenous men, across all tenure arrangements.[[46]](#endnote-47)
* Implement CEDAW’s rural women and land provisions (Art. 14, 15, 16) as applied to Indigenous women, ensuring gender equality in land reforms benefiting Indigenous Peoples.
* Meet CEDAW obligations to Indigenous women by implementing UNDRIP and ratifying ILO 169 to progressively realize secure, equal land rights for Indigenous women and men.
* Legally recognize and protect the lands and resources that Indigenous women inhabit and subsist on possessed by reason of traditional rights and include explicit recognition for women’s collective and individual rights to land and resources.
* Recognize equal land and inheritance rights for Indigenous girls and boys.
* Uphold gender equality in land rights for Indigenous Peoples, and where there is tension with the right to self-determination, work in conjunction with Indigenous Peoples/women to resolve the tension without discriminating against Indigenous women.
* Collaborate with Indigenous communities/women and women’s organizations to modify social and cultural norms to eliminate gender bias in customary land practices.
* Translate into indigenous languages and disseminate the specific General Recommendation on Indigenous women and girls’ rights focused on land.

1. Asia and the Pacific Islands have over 260 million Indigenous Peoples (70 percent), and SSA, an estimated 50 million, *see,* Food and Agricultural Organization of the United Nations (FAO), Indigenous Peoples in the Asia-Pacific Region, 2018, p. 1, <http://www.fao.org/3/CA2045EN/ca2045en.pdf>; International Labour Organization (ILO), Indigenous and Tribal Peoples, (n.d.), <https://www.ilo.org/asia/areas/WCMS_100364/lang--en/index.htm>; United Nations (UN), Press Conference on New Legal Frameworks for Africa’s Indigenous People, 23 May 2013, <https://www.un.org/press/en/2013/130523_Indigenous.doc.htm>. [↑](#endnote-ref-2)
2. United Nations Development Programme (UNDP), 10 things to know about indigenous peoples, 25 January 2019, para. 1, <https://stories.undp.org/10-things-we-all-should-know-about-indigenous-people>. [↑](#endnote-ref-3)
3. *Id.*; UN Economic and Social Council, Twenty-year review of the Beijing Declaration and Platform for Action and beyond: a framework to advance indigenous women’s issues, 4 February 2015, para. 1, <https://undocs.org/E/C.19/2015/2>. [↑](#endnote-ref-4)
4. International Indigenous Women’s Forum (FIMI), Global Study on the Situation of Indigenous Women and Girls, 2020, p. 12 <https://fimi-iiwf.org/wp-content/uploads/2020/09/GlobalStudyFIMI_20-englishRGB-2.pdf>. [↑](#endnote-ref-5)
5. World Resources Institute (WRI), By the Numbers: Indigenous and Community Land Rights, 20 March 2017, [wri.org/insights/numbers-indigenous-and-community-land-rights](https://www.wri.org/insights/numbers-indigenous-and-community-land-rights). [↑](#endnote-ref-6)
6. FIMI, 2020, at 35, *supra* note 4. [↑](#endnote-ref-7)
7. WRI, 2017, *supra* note 5*.*  [↑](#endnote-ref-8)
8. Liz Alden Wily, “Collective Land Ownership in the 21st Century: Overview of Global Trends,” Land 2018, 7, 68, 29 May 2018, p. 14, <https://rightsandresources.org/wp-content/uploads/2018/06/Collective-Land-Ownership-in-the-21st-Century_Liz-Alden-Wily_May-2018.pdf>. [↑](#endnote-ref-9)
9. *Ibid.* [↑](#endnote-ref-10)
10. *See e.g.*, UN Human Rights Council (OHCHR), Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz, 6 August 2015, para. 16, <https://undocs.org/A/HRC/30/41.> [↑](#endnote-ref-11)
11. *See e.g.*, UN Women and OHCHR, Realizing Women’s Rights to Land and Other Productive Resources (second edition), 2020, HR/Pub/13/04/Rev.1 at 66, 90, <https://www.ohchr.org/Documents/Publications/RealizingWomensRightstoLand_2ndedition.pdf>. [↑](#endnote-ref-12)
12. OHCHR, Special Rapporteur Corpuz, at para. 38, *supra* note 11 (“indigenous power structures and self-governance agreements tend to be patriarchal and exclude the involvement and perspectives of women”). [↑](#endnote-ref-13)
13. *Id.*  [↑](#endnote-ref-14)
14. Note: For example, legal definitions of community membership may limit or exclude women’s membership. Rights may be formalized under male heads of household, stripping women who may have held user rights under customary tenure. Upon patri-local marriage, Indigenous women and girls may lose land rights to their natal lands, without being fully accepted as members of their marital communities. Upon dissolution of marriage, Indigenous women (and their children) many also lose rights to land in their marital communities. [↑](#endnote-ref-15)
15. CEDAW Committee, General Recommendation No. 28 (2010) on the core obligation of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December 2010, para 18, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/472/60/PDF/G1047260.pdf?OpenElement. (Stating that, “discrimination of women based on sex and gender is inextricably linked with other factors that affect women” that include race, ethnicity, and age. Indigenous women face discrimination based not only sex and gender, but also race and ethnicity, and Indigenous girls additionally face discrimination based on age. This General Recommendation makes clear that “States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences.”) [↑](#endnote-ref-16)
16. The Committee on Economic, Social and Cultural Rights has produced an overview of international bodies’ statements establishing the links between land rights and human rights in the ICCPR, ICESCR, and CEDAW and other instruments, *see* UN Women and OHCHR, 2020, HR/Pub/13/04 at 5-8 at 5-8, *supra* note 16, and OHCHR, Land and Human Rights: Standards and Applications, 2015, HR/PUB/15/5/Add.1 at 11-14, and E/2014/86 at http://www.ohchr.org/Documents/Publications/Land\_HR-StandardsApplications.pdf. [↑](#endnote-ref-17)
17. Note: The Committee, in its General recommendation No. 21, clarified that “[t]he right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family.” CEDAW Committee General Recommendation No. 21 (1994) on Equality in marriage and family relations, 1994, para. 26, [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\_Global/A\_49\_38(SUPP)\_4733\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/A_49_38%28SUPP%29_4733_E.pdf). However, “loss of a culture, land and insecure access to lands, territories and natural resource” experienced by Indigenous Peoples are key drivers of food insecurity, and violations of the right to food disproportionately impact Indigenous women due to their “their roles as food and water providers, caregivers and managers of resources.” OHCHR, Special Rapporteur Corpuz, at para. 22, *supra* note 11. [↑](#endnote-ref-18)
18. Even where State parties have adopted progressive laws, they must still – under Article 5(a) – “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary . . . practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” *See also*, CEDAW Committee, General Recommendation No. 28 at para. 31, *supra* note 16 (“States parties have an obligation to take steps to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”) [↑](#endnote-ref-19)
19. CEDAW Committee, General recommendation No. 34 (2016) on the rights of rural women, 7 March 2016, UN Doc. CEDAW/C/GC/34, at paras. 15, 56, 59 (Directly instructing States parties to ensure that rural women belonging to Indigenous groups are protected from intersecting forms of violence and to uphold rural women’s rights to land and natural resources, and declaring rural women’s rights to land and natural resources “fundamental human rights.”); CEDAW Committee, General Recommendation No. 21 at para. 27, *supra* note 18 (Stressing that “[i]n countries that are undergoing a programme of agrarian reform or redistribution of land among groups of different ethnic origins, the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed.”). Note additionally that Numerous Concluding Observations have subsequently affirmed the Committee mandate to instruct State parties to ensure legally enforceable land rights for women facilitated by meaningful participation of rural women in land reforms, effective monitoring mechanisms for the implementation of land reforms, adequate remedies for land disputes involving women, and abolition of all barriers restricting women’s access to land, particularly in rural areas. [↑](#endnote-ref-20)
20. CEDAW General Recommendation No. 34 at para. 59, *supra* note 20 (Instructing State parties to “ensure that indigenous women in rural areas have equal access with indigenous men to ownership and possession of and control over land, water, forests, fisheries, aquaculture and other resources that they have traditionally owned, occupied or otherwise used or acquired, including by protecting them against discrimination and dispossession”). [↑](#endnote-ref-21)
21. Landesa, Women’s Land Tenure Framework for Analysis: Land Rights, 2013, at 4, <http://cdn.landesa.org/wp-content/uploads/Land_Rights_Framework_2013March.pdf>. Note also that land rights perceived as secure afford some of these guarantees, even in the absence of formal rights recognition. For example, if a family has lived in a rural area for years without formal documentation, yet they have no threat of being asked to leave, they are said to have perceived tenure security. [↑](#endnote-ref-22)
22. UN Working Group on the issue of discrimination against women in law and in practice (2017), Position Paper: *Insecure land rights for women threaten progress on gender equality and sustainable development*, available at: https://www.ohchr.org/Documents/Issues/Women/WG/Womenslandright.pdf. [↑](#endnote-ref-23)
23. UN Declaration on the Rights of Indigenous Peoples (UNDRIP), 13 September 2007, art. 43. <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.> [↑](#endnote-ref-24)
24. #  Echo-Hawk, Walter R., In the Light of Justice: The Rise of Human Rights in Native America and the UN Declaration on the Rights of Indigenous Peoples. Golden, Colorado: Fulcrum, 2013.

 [↑](#endnote-ref-25)
25. UNDRIP, art. 1. [↑](#endnote-ref-26)
26. *Id.* at art. 26. [↑](#endnote-ref-27)
27. *Id.* atart. 26(3). [↑](#endnote-ref-28)
28. *Id.* at art. 3. [↑](#endnote-ref-29)
29. *Id.* at art. 10. [↑](#endnote-ref-30)
30. *Id.* at art. 44. [↑](#endnote-ref-31)
31. *Id.* atart. 21(1), (2). [↑](#endnote-ref-32)
32. *Id.* at art. 22 (2). [↑](#endnote-ref-33)
33. UN Department of Economic and Social Affairs: Indigenous Peoples, United Nations Declaration on the Rights of Indigenous People, <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>. [↑](#endnote-ref-34)
34. Committee on the Elimination of All Forms of Racial Discrimination (ICERD), General recommendation on the rights of indigenous people, 1997, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7495&Lang=en>. [↑](#endnote-ref-35)
35. *Id*. at para. 5 (“[R]ecognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources”). [↑](#endnote-ref-36)
36. *Id*. at para. 5 (“[T]ake steps to return those lands and territories” in cases “where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent”). [↑](#endnote-ref-37)
37. *Id.* at para. 4(d) (“Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent”). [↑](#endnote-ref-38)
38. International Labour Organization, Indigenous and Tribal Peoples Convention (No. 169), 1989, art. 3, <https://www.ilo.org/global/topics/indigenous-tribal/lang--en/index.htm>. [↑](#endnote-ref-39)
39. *Id.* at art. 13-19. Article 13 requires State parties to respect collective cultural and spiritual values associated with land. Under Article 14, State parties must recognize Indigenous and Tribal Peoples’ ownership and possessory rights over land traditionally occupied and identify and effectively protect these lands, including against unauthorized intrusion or use of such land, and under Article 15, must safeguard their natural resources rights. Under Article 16, Indigenous and Tribal Peoples must not be relocated from their traditional lands—unless as a necessary, exceptional measure, with relocation occurring only after observing safeguards like FPIC, the right to return whenever possible, and full compensation. Under Article 17, they should also be consulted when considering their capacity to transfer land outside their own community. Article 19 requires national agrarian programs to treat Indigenous and Tribal Peoples equivalently to other demographics, and to provide means for developing their land. [↑](#endnote-ref-40)
40. *Id.* at art. 7. [↑](#endnote-ref-41)
41. *Id.* at art. 23. [↑](#endnote-ref-42)
42. *Id.* at art. 6. [↑](#endnote-ref-43)
43. *See* UNDRIP art. 21(2); art. 22 (requiring States to make sure that indigenous children “enjoy the full protection and guarantees against all forms of violence and discrimination.”) [↑](#endnote-ref-44)
44. Convention on the Rights of the Child, 20 November 1989, arts. 6(1), (2), 30, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx.> [↑](#endnote-ref-45)
45. CRC Committee, General Comment No. 11 (2009), Indigenous children and their rights under the Convention, 12 February 2009, paras. 16, 35, <https://www.un.org/esa/socdev/unpfii/documents/CRC.GC.C.11_EN.pdf.> [↑](#endnote-ref-46)
46. This includes collective, individual, hybrid land tenure arrangements as well as statutory and customary land tenure arrangements. [↑](#endnote-ref-47)