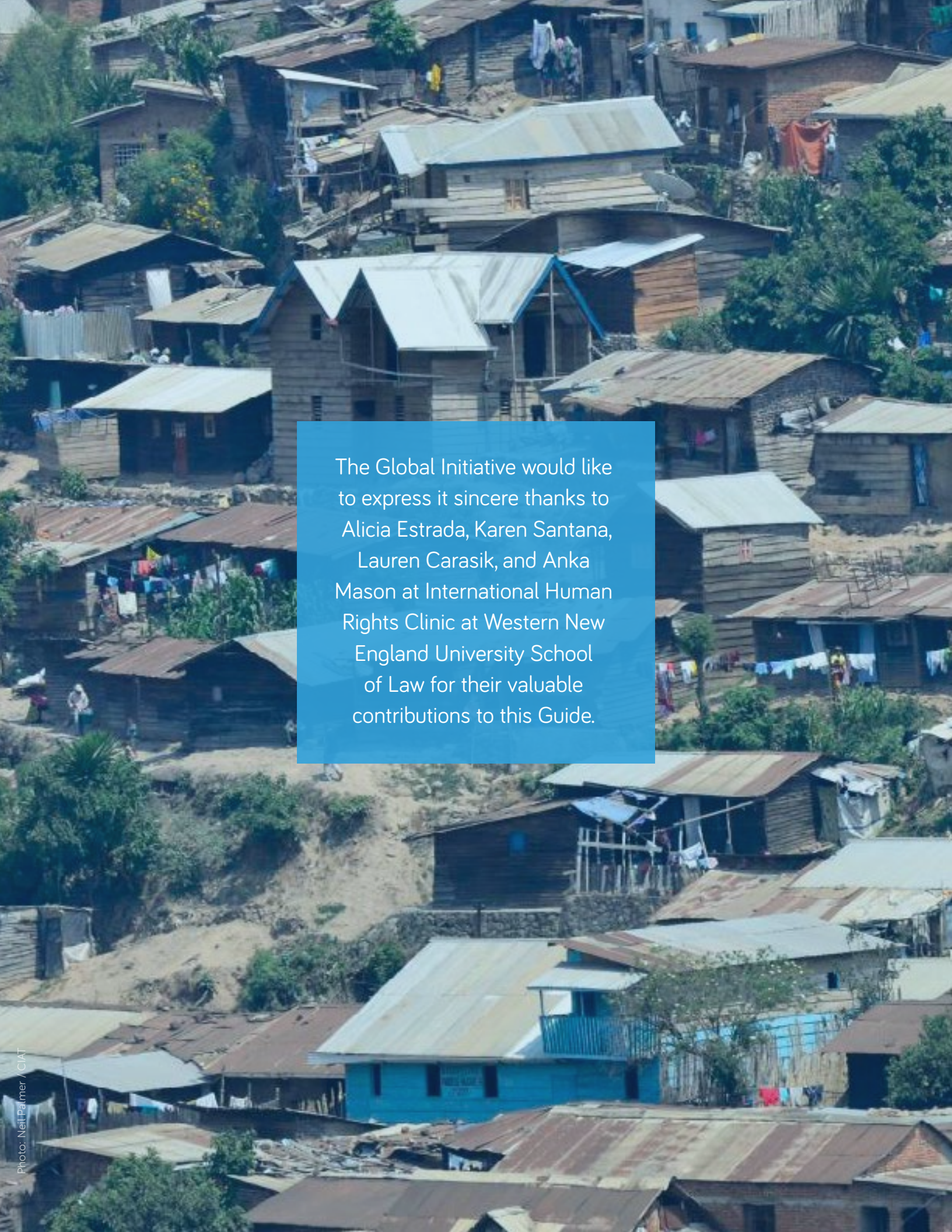


# Using CEDAW to Secure Women's Land and Property Rights

## A Practical Guide





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Photo: Neil Palmer / CIAT

# Introduction

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is a critical tool to achieve the full realization of equal rights for women around the world, by addressing both de jure and de facto discrimination against women in civil, cultural, economic, political and social domains. Adopted in 1979, this treaty, with its thirty articles and subsequent Optional Protocol, provides a framework which enshrines women's rights and outlines the duties of States and the role of the CEDAW Committee.

The rights contained in CEDAW apply to all women everywhere, and CEDAW has been used to identify and redress discrimination against women in a range of settings, including for example: the right to quality sexual and reproductive health

care for Dominican women; the right of Mexican women to be free from gender based violence; prohibiting sexual harassment in the workplace for Bangladeshi women; protecting the housing rights of women in Canada; and removing discriminatory evidentiary Court rules in the Solomon Islands, which discredited the uncorroborated testimony of women.

We would like to encourage the greater use of CEDAW to advance the land and property rights of women because we consider that through engagement with international human rights mechanisms on these crucial issues, there is the clear opportunity to transform the lives of women, their families and communities, for the better.

# 1

## Why Focus on Women's Land & Property Rights?

Land is a critical issue for women; in many cases it can even be said that the question of land itself is a prism through which structural patterns of gender inequality can be revealed. Throughout the world, it is women who overwhelmingly work on the land, producing food for themselves, their families and communities. Fifty per cent of food globally is cultivated by women and this figure increases to 60-80% for countries in the developing world.<sup>1</sup>

We know that women rely on the land not only to produce food, but also to generate family income and therefore to support the health care, educational and nutritional needs of their families. This relationship is vital for women in general, but becomes all the more significant when women become the single head of the household due to men's migration, divorce, abandonment or death of a spouse or male relative. Thus, the livelihoods and welfare of women is inextricably linked to their secure rights to land and when they lack secure rights to land women are vulnerable to eviction (at the hands of State, business actors or family members) and dispossession and then fall into poverty and are unable to work their way out of poverty. Further, we can see that women's secure rights to land are a precondition for their ability to enjoy many of the other rights enshrined in the CEDAW and other international human rights treaties (such as health, housing, education, participation in political and economic life, etc.).

Yet, discrimination against women in the area of land is pervasive:

- In many countries, women do not have equal legal rights to own or use land and often women are restricted to secondary land rights, whereby they hold their rights through a male family member;
- Under many systems of customary law around the world, widowed women are not permitted to inherit land and property from their deceased husbands, and continue to be subject to 'property-grabbing' by in-laws;
- When women do have access to land, their parcels are usually of a smaller size and lower quality than men's land parcels.<sup>2</sup>

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1 Preliminary study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas, 19 February 2011, A/HRC/16/63, p. 7.

2 Statement by the Food and Agricultural Organization of the United Nations (FAO) to the 64th session of the Commission on the Status of Women, 8 March 2010.

In addition, with the pressure on land globally increasing because of the growing instances of land-grabbing and forced evictions to make way for development projects or large scale agricultural industry or extractives industry projects, without secure rights to land, women are particularly vulnerable to eviction and dispossession.

Secure rights to land for women also helps to raise the status of women within their families and communities which is an important step to achieving gender equality, as it leads to women's increased decision-making power, greater autonomy and economic independence, and greater participation in the community. Research evidence suggests that secure land rights for women may help prevent the spread of HIV by promoting women's economic empowerment, thereby reducing their vulnerability to some forms of gender-based violence and exploitation, unsafe sex, and other AIDS-related risk factors.<sup>3</sup> Research also suggests that women with secure rights to land are also much less likely to report experiencing physical and psychological violence within the context of their intimate partner relationships.<sup>4</sup>

“It is important to emphasize that in order for the transformative potential of these rights to take root, it is not enough for households to have secure rights to land; women themselves must hold these rights”

For women, secure land and property rights has become increasingly important in the fight to alleviate extreme poverty in some of the poorest regions of the world, through equalizing control and access to land including through inheritance rights. This includes rights to own, use, and make decisions regarding the disposition, development, and economic benefits of resources in connection with land and its use in agriculture production and natural resource output.

It is important to emphasize that in order for the transformative potential of these rights to take root, it is not enough for households to have secure rights to land; women themselves must hold these rights. This is crucial first and foremost in order to ensure women's equality and empowerment, and it has other beneficial effects in terms of lifting households out of poverty.

For example, there is evidence demonstrating that securing formal and substantive equality between women and men in rights and access to land, property and productive resources has significant broader impacts on a number of development goals and on alleviating the poverty of women and their communities. Specifically, we know that achieving equal and secure rights to land, property and productive resources for women, has a positive impact on:

- Family food security, for instance giving women the same access to productive resources as men can deliver a 20-30% increase in agricultural yields;

<sup>3</sup> Strickland, R. (2004). To Have and To Hold: Women's Property and Inheritance Rights in the Context of HIV/AIDS in Sub-Saharan Africa. International Center for Research on Women (ICRW) Working Paper. See also: Panda, P., (2002). Rights Based Strategies in the Prevention of Domestic Violence. ICRW Working Paper No. 344

<sup>4</sup> Gupta, J. (2006). Property Ownership of Women as Protection for Domestic Violence: The Best Bengal Experience, in ICRW (2006) Property Ownership and Inheritance Rights of Women for Social Protection – The South Asia Experience, at 45.

- Improving family and child nutrition and education outcomes for children;<sup>5</sup>
- Improved risk management and mitigation for poor families and communities, for instance in relation to climate related shocks or food price volatility; and
- Improving natural resource management and environmental sustainability, including specifically by reducing land degradation.<sup>6</sup>

In these ways, secure land rights for women have the potential to transform the lives of women, their families, and their communities.

International human rights law and CEDAW in particular, have a critical role to play in tackling these issues. Women's equal rights to land are well-established in international human rights laws and standards, including specific protection for rural women under Article 14 of CEDAW. The CEDAW Committee has also articulated State obligations in relation to women's land rights in many Concluding Observations on State party reviews under the Convention.

CEDAW and its implementation processes can be powerful mechanisms for highlighting violations relating to land and property rights for women, encouraging good State practices and holding States to account when violations occur.

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<sup>5</sup> Smith, L., Ramakrishnan, U., Ndiaye, A., Haddad, L. & Martorell, R. (2003). The importance of Women's Status for Child Nutrition in Developing Countries. International Food Policy Research Institute Research Report 131, 58, 60, 79; Gomez, M. and Tran, D.H. (2012), Women's Land and Property Rights and the Post-2015 Agenda, Official Back-ground Paper – Global Thematic Consultation on Addressing Inequalities, p.10.

<sup>6</sup> Gomez, M. and Tran, D.H. (2012), Women's Land and Property Rights and the Post-2015 Agenda, Official Back-ground Paper – Global Thematic Consultation on Addressing Inequalities, p.10.

## 1.2

### Purpose of this Guide

## Securing Women's Land & Property Rights

The purpose of this Guide is to provide those wishing to use the Convention and its Optional Protocol to secure the land and property rights of women, with advocacy information, advice and tools. Our Guide is directed at NGOs and advocates working on these specific issues. Many very good general guides on engaging with CEDAW are available online.<sup>7</sup> We do not intend to repeat the material that can be found in those Guides, but to provide a more targeted resource that provides substantive and practical guidance particular to the land and property rights of women.

**Some examples of how women and their advocates together may consider utilizing CEDAW and its Optional Protocol in their campaigns to secure women's land and property rights include:**

- Drawing the CEDAW Committee's and States' attention to the situation of women and their struggles to gain secure rights to land and other productive resources and to the potential for secure rights in these areas to transform lives by alleviating poverty and inequality;
- Advocating that States develop campaigns based on CEDAW to highlight and remove cultural and gendered practices prohibiting women from enjoying secure rights to land;
- Advocating for the allocation of State budget/monetary resources for programs and services aimed at the implementation and monitoring of CEDAW at local and national levels;
- Calling on States to develop measures to raise awareness about and address inequality of access to legal mechanisms for settling land disputes and structures for recording the transfer, sale and distribution of land (through initiatives such as processes for filing complaints, fees for complaint process, and physical access to courts and government offices);
- Advocating for the ratification and integration of CEDAW within existing State and local land laws and policies;
- Calling on States to properly regulate business entities involved in large scale land acquisitions and development projects to ensure that women's human rights are protected and respected, including requiring increased transparency in the process and monitoring the effects of such land transactions.

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<sup>7</sup> See, for example, the CEDAW Knowledge Resource from IWRAP-Asia & Pacific, available online at <http://www.iwraw-ap.org/cedaw/using-cedaw/for-ngos/>



**PART II of this Guide** will provide a brief overview of CEDAW, the rights contained in it (particularly those relevant to women’s secure rights to land and property), the CEDAW Committee and its functions, the role of States, and the role of NGOs and advocates.

**PART III of this Guide** will discuss how NGOs and advocates can engage with CEDAW and utilize its processes to advance the land and property rights of women. Specifically, PART III will explain how NGOs and advocates can input into the State reporting process, utilize the individual and group complaints processes, and engage with and influence the thematic priorities of the Committee, including the development of General Recommendations



# 2

## Overview of CEDAW and key actors

### 2.1

#### The CEDAW Convention and its Optional Protocol

CEDAW is an international treaty created by States as part of the UN system of international human rights laws. The Convention was adopted by the UN General Assembly on 19 December 1979, and came into force on 3 September 1981. The treaty becomes binding on States when they 'ratify' the treaty and become what is known as a 'State party' to the Convention. This means the State undertakes to fulfill legal obligations under international law to implement the provisions of the treaty. It does not necessarily mean that the provisions of CEDAW become domestic law, as this depends on the Constitution and domestic laws of the State, which may require a separate process for incorporating international treaties into domestic law. When a government ratifies a treaty/Convention it can enter 'reservations' which identify provisions of the treaty which the State will not be bound by (exclusions), however the CEDAW Committee has discouraged such reservations.

CEDAW sets out the obligations on States to eliminate all forms of discrimination against women starting from the foundational principles of equality and non-discrimination. CEDAW defines discrimination and emphasizes both formal or de jure and de facto discrimination. This means that women should be treated equally with men both in law and in practice.

The Convention requires States to ensure women's rights to equality and non-discrimination on a range of key areas such as trafficking and prostitution, political and public life, nationality, education, employment, healthcare and family planning, marriage and family law. The text of the Convention can be accessed here:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

Finally, the Convention establishes and sets out the functions and powers of the Committee on the Elimination of all forms of Discrimination against Women (CEDAW Committee).

The rights in CEDAW are supplemented by another treaty called the Optional Protocol to CEDAW. This partner treaty establishes an individual complaints procedure, called the ‘Communications Procedure’ and a group or systemic complaints procedure, called the ‘Inquiry Procedure.’ These procedures are intended to provide enforcement of CEDAW at the international level, so that individuals (in respect of the Communications Procedure) and groups (where there are systematic and grave violations, using the Inquiry Procedure) whose rights under the Convention have been violated, can complain about their State’s failure to implement CEDAW at the domestic level. The text of the Optional Protocol to CEDAW can be accessed here: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCEDAW.aspx>

The Optional Protocol must be separately ratified by States before they will be subject to its jurisdiction. Whilst there are 187 State Parties to CEDAW, only 99 of those are also State Parties to the Optional Protocol.<sup>8</sup>

The role of beneficiaries, advocates and NGOs in relation to the Optional Protocol is described in [section 4](#) below.

## 2.2 The CEDAW Committee

CEDAW contains many Articles which bear directly on women’s rights to land and property and which advocates can refer to in their work. Some are general provisions such as Article 2, which obliges States to *“take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”* Other Articles relate specifically to women’s land rights, such as Article 14 on rural women: *“States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy....”*

**Table 1**, below, sets out the main provisions of CEDAW that relate to women’s secure rights to land and property. Advocates should also study the text of the Convention to determine whether any other Articles relate to the specific issues with which they are concerned.

The Articles set out in the Convention are elaborated upon in statements by the CEDAW Committee called ‘General Recommendations.’ These are authoritative statements of the Committee which discuss and define the Convention rights in more detail. All the General Recommendations of the CEDAW Committee can be found here. The General Recommendations that advocates might find useful for advocacy on the land and property rights of women include those provided in **Table 2**, below.

<sup>8</sup> These are events organized by the Committee gathering experts and advocates to discuss particular thematic issues. Often they are the precursor to the development of a General Recommendation on that topic.

Table 1.  
CEDAW Articles Relevant to Women’s Land and Property Rights

Article	Excerpt
1	The term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.
2	States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: ...  (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.
3	States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.
5	States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other 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.
14.2	State Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development...  (a) To participate in the elaboration and implementation of development planning at all levels; ....  (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;  (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.
15	1. States Parties shall accord to women equality with men before the law. 2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men .... they shall give women equal rights to conclude contracts and to administer property.
16	1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: ...  (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

Table 2.

## Provisions from CEDAW General Recommendations Relevant to Women's Land and Property Rights

Rec.	Subject matter	Provisions related to women's land and property rights
3	<b>Role of education and public information programs to reduce stereotypical representations of women</b>	Urges "all States parties effectively to adopt education and public information programs, which will help <b>eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women.</b> "
9	<b>Statistical data concerning the situation of women</b>	Recommends that "States parties should make every effort to ensure that their national statistical services responsible for planning national censuses and other social and economic surveys formulate their questionnaires in such a way that <b>data can be disaggregated according to gender, with regard to both absolute numbers and percentages, so that interested users can easily obtain information on the situation of women in the particular sector in which they are interested.</b> "
19	<b>Violence against women</b>	Highlights that " <b>lack of economic independence forces many women to stay in violent relationships.</b> "
21	<b>Equality in marriage and family relations</b>	Highlights that: <ul style="list-style-type: none"> <li>• "<b>When a woman cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband's or a male relative's concurrence or guarantee, she is denied legal autonomy.</b> Any such restriction prevents her from holding property as the sole owner and precludes her from the legal management of her own business or from entering into any other form of contract. Such restrictions seriously limit the woman's ability to provide for herself and her dependents."</li> <li>• The rights provided in Article 16(1)(h) "overlap with and complement those in article 15(2) in which an obligation is placed on States to give women equal rights to enter into and conclude contracts and to administer property. Article 15 (l) guarantees women equality with men before the law. <b>The 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.</b>"</li> <li>• In countries that are "undergoing a programme of agrarian reform or redistribution of land among groups of different ethnic origins, <b>the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed.</b>"</li> </ul>

- In most countries, “a significant proportion of the women are single or divorced and many have the sole responsibility to support a family. Any discrimination in the division of property that rests on the premise that the man alone is responsible for the support of the women and children of his family and that he can and will honourably discharge this responsibility is clearly unrealistic. Consequently, **any law or custom that grants men a right to a greater share of property at the end of a marriage or de facto relationship, or on the death of a relative, is discriminatory and will have a serious impact on a woman’s practical ability to divorce her husband, to support herself or her family and to live in dignity as an independent person.**”
- There are countries that “do not acknowledge that **right of women to own an equal share of the property with the husband during a marriage or de facto relationship and when that marriage or relationship ends.** Many countries recognize that right, but the practical ability of women to exercise it **may be limited by legal precedent or custom.** Even when these legal rights are vested in women, and the courts enforce them, **property owned by a woman during marriage or on divorce may be managed by a man.** In many States, including those where there is a community-property regime, there is no legal requirement that **a woman be consulted when property owned by the parties during marriage or de facto relationship is sold or otherwise disposed of. This limits the woman’s ability to control disposition of the property or the income derived from it.**”
- In some countries, on division of marital property, “greater emphasis is placed on financial contributions to property acquired during a marriage, and other contributions, such as raising children, caring for elderly relatives and discharging household duties are diminished. Often, such contributions of a non-financial nature by the wife enable the husband to earn an income and increase the assets. **Financial and non-financial contributions should be accorded the same weight.**”
- In many countries, “property accumulated during a de facto relationship is not treated at law on the same basis as property acquired during marriage. Invariably, if the relationship ends, the woman receives a significantly lower share than her partner. **Property laws and customs that discriminate in this way against married or unmarried women with or without children should be revoked and discouraged.**”
- Reports of States parties should include “comment on the legal or customary provisions relating to inheritance laws as they affect the status of women,” as “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 of property acquired during marriage. Such provisions contravene the Convention and should be abolished.**”

25	<b>Temporary special measures</b>	<p>Provides guidance on the concept of substantive equality, highlighting that <b>“a formal legal or programmatic approach is not sufficient to achieve women’s de facto equality with men,</b> which the Committee interprets as substantive equality. In addition, the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. Pursuit of the goal of substantive equality also calls for an effective strategy aimed at overcoming under-representation of women and a redistribution of resources and power between women and men.” The General Recommendation <b>encourages States to adopt temporary special measures to accelerate the equal participation of women in, inter alia, economic, social, and cultural fields.</b></p>
27	<b>Older women and protection of their human rights</b>	<p>Highlights that:</p> <ul style="list-style-type: none"> <li>• Under some statutory and customary laws, women do not have the right to inherit and administer marital property on the death of their spouse. Some legal systems justify this by providing widows with other means of economic security, such as support payments from the deceased’s estate. However, in reality, such provisions are seldom enforced, and widows are often left destitute. Some laws particularly discriminate against older widows, and some widows are victims of “property grabbing.”</li> <li>• States parties should enable older women to seek redress for and resolve infringements of their rights, including the right to administer property, and ensure that older women are not deprived of their legal capacity on arbitrary or discriminatory grounds.</li> <li>• Laws and practices that negatively affect older women’s right to housing, land and property should be abolished. States parties should also protect older women against forced evictions and homelessness.</li> <li>• States parties have an obligation to repeal all legislation that discriminates against older women in the area of marriage and in the event of its dissolution, including with regard to property and inheritance.</li> <li>• States parties must repeal all legislation that discriminates against older widows in respect of property and inheritance, and protect them from land grabbing.</li> </ul>



### Economic consequences of marriage, family relations and their dissolution

This General Recommendation contains a number of provisions relevant to women's land and property rights in the context of marriage and its dissolution, including:

- **States parties should provide for equal access by both spouses to the marital property and equal legal capacity to manage it.** They should ensure that the right of women to own, acquire, manage, administer and enjoy separate or non-marital property is equal to that of men.
- **States parties are obligated to provide, upon divorce and/or separation, for equality between the parties in the division of all property accumulated during the marriage.** States parties should recognize the value of indirect, including nonfinancial, contributions with regard to the acquisition of property acquired during the marriage.
- **States parties should provide for equal formal and de facto legal capacity to own and manage property.** To achieve both formal and substantive equality with respect to property rights upon the dissolution of marriage, States parties are strongly encouraged to provide for:
  - » *Recognition of use rights in property related to livelihood or compensation in order to provide for replacement of property-related livelihood.*
  - » *Adequate housing to replace the use of the family home.*
  - » *Equality within the property regimes available to couples (community property, separate property, hybrid), the right to choose property regime, and an understanding of the consequences of each regime.*
  - » *Inclusion of the present-value computation of deferred compensation, pension or other post-dissolution payments resulting from contributions made during the marriage, such as life insurance policies, as part of the marital property subject to division.*
  - » *Valuation of non-financial contributions to marital property subject to division, including household and family care, lost economic opportunity and tangible or intangible contributions to either spouse's career development and other economic activity and to the development of his or her human capital.*
  - » *Consideration of post-dissolution spousal payments as a method of providing for equality of financial outcome.*

**Economic  
consequences of  
marriage, family  
relations and their  
dissolution**

(cont.)

- States parties are obligated to adopt laws of intestate succession that comply with the principles of the Convention. Such laws should ensure:
  - » *Equal treatment of surviving females and males.*
  - » *That customary succession to use rights or title to land cannot be conditioned on forced marriage to a deceased spouse's brother (levirate marriage) or any other person, or on the existence or absence of minor children of the marriage.*
  - » *That disinheritance of the surviving spouse is prohibited.*
  - » *That "property dispossession/grabbing" is criminalized, and that offenders are duly prosecuted.*

## 2.3

# The CEDAW Committee

The Committee on the Elimination of Discrimination against Women (CEDAW Committee) is a UN body of experts whose function it is to monitor the implementation of the Convention and its Optional Protocol to ensure States act in accordance with the Convention and the Committee's recommendations. The Committee is made up of 23 independent experts on women's rights from all around the world and with a wide range of relevant expertise, who are elected by States. The members serve in their personal capacity and not as representatives of any State or institution. The current membership list of the Committee can be viewed here:

<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Membership.aspx>

The Committee meets 3 times a year in Geneva to review the performance of States under the Convention through the State reporting process, to consider complaints (Communications and inquiries) submitted under the Optional Protocol and to elaborate General Recommendations on various important and topical issues.

The Committee is supported by a Secretariat located within the office of the UN Office of the High Commissioner for Human Rights (OHCHR), whose role includes assisting and advising NGOs wishing to engage with the Committee. Contact details for the Secretariat are here: <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Contact.aspx>

## 2.4

# The Role of States

CEDAW and the CEDAW Committee are the creation of States and for those States that have ratified CEDAW, they continue to play a central role in the life of the mechanism. Whilst the Committee is an independent expert body, its members are elected by States and its funding is subject to the approval of States through the UN Economic and Social Council.

The key on-going role for States is in submitting their Periodic Reports on how they are implementing CEDAW, attending the formal State Party review (the dialogue with the Committee about its implementation and recommendations for improvements) and responding to Communications and Inquiries in relation to that State. States can also choose to get involved in thematic activities of the Committee such as Days of Discussion<sup>9</sup> on thematic issues of interest.

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<sup>9</sup> These are events organized by the Committee gathering experts and advocates to discuss particular thematic issues. Often they are the precursor to the development of a General Recommendation on that topic.

## 2.5

# The Role of Rights Holders and Advocates

CEDAW is intended to benefit women all around the world by establishing international standards of equality and non-discrimination, highlighting violations of women's rights and making recommendations to States on how to implement the Convention and remove inequality and discrimination in its laws, customs, practices and society. Therefore for the effective functioning of the Committee, it is critical that rights holders and advocates working on their behalf, are able to engage with the Committee and share their perspectives and experiences.

Further, unlike Special Procedures mandate holders, the Committee does not undertake country visits<sup>10</sup> or substantial field research about countries under review. Therefore the Committee relies significantly on rights holders, advocates and civil society organizations to provide substantive information about the situation of women's rights in that country. The Committee uses that information to prepare its 'List of Issues' (the list of key issues that the Committee would like the State to address at the formal State Party Review – see section 3.1 below for further details), to formulate its questions for States at the State Party Review and to decide on its 'Concluding Observations' (published recommendations to States on how to improve its implementation of CEDAW – see section 3.8 below). Therefore it is important that rights holders and advocates submit detailed, reliable, substantiated information on the most pressing women's rights issues in their country.

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<sup>10</sup> Except perhaps in the case of the Inquiry procedure. Further detail is provided below in Section 5.

# 3 How Can NGOs Use and Engage with CEDAW Review Processes?

There are 3 main ways that NGOs can use and engage with CEDAW processes in order to advance their domestic advocacy objectives:

“The most successful and impactful international human rights advocacy is that which draws from the lived experience of rights holders”

- State party reporting;
- Complaints;
- Thematic areas of work and development of new General Recommendations.

We will address each of these in more detail below. However, first a note about integrating international human rights advocacy and processes with domestic advocacy and campaigns. Often the most successful and impactful international human rights advocacy is that which draws from the lived experience of rights holders and builds on domestic advocacy and law reform campaigns. Further, human rights advocacy at the international level is most effective when it uses the outcomes at the international level and feeds them back into domestic campaigns.

Therefore it is very important to have a plan about how your international advocacy will interact with your local campaigns and how you will make sure that domestic decision-makers are aware of CEDAW pronouncements and how you intend to keep the pressure on your government to implement them.

## 3.1 The State Party Reporting Process

CEDAW requires State parties (that is, States who have ratified the Convention) to submit a ‘Periodic Report’ to the Committee every 4 years (after the Initial Report) describing the ways in which it has and has not implemented the Convention. The State party’s performance will then be reviewed by the Committee in a constructive dialogue open to the public.



# CEDAW in Action

CEDAW Committee Recognizes the Need for  
Legislative Action in Securing Women's Land Rights in Sri Lanka

Sri Lanka - Combined fifth, sixth and seventh periodic reports  
Forty-eighth session: 17 January - 4 February 2011

"The Committee calls upon the State party to:

A

Accelerate its review process to harmonize, within a specific timeframe  
its domestic legislation with provisions of the Convention;

B

Expedite the adoption of bills aimed at modifying discriminatory laws, such  
as the Land Development Ordinance currently pending in Parliament for amendment;

C

In particular, provide its support for customary law reform through sensitization of,  
dialogue and collaboration with religious groups and community members, civil society  
organizations including women's non governmental organizations; and

D

Ensure that women are fully and equally involved in the law reform process."

At a 'Pre-Session' meeting usually 2 sessions (about 8 months) prior to the session at which the State party will be reviewed, the Committee will make an initial assessment of the key issues for that State party and draw up a 'List of Issues' which the State will be asked to respond to by way of a further report and orally at the review meeting. The Pre-Session Working Group is usually made up of a sub-group of the Committee, which includes the 'Country Rapporteur' who is the Committee member responsible for coordinating the review of that State and preparing the List of Issues and Concluding Observations. Time is allocated during the Pre-session meeting for NGOs to brief the Committee.

Then the State party is reviewed by the Committee in open session. The State party usually sends a delegation including government officials responsible for women's rights and other relevant government departments. The State party delegation present their report and then the Committee members ask them questions about the State's implementation of the Convention. This is intended to be an interactive and constructive dialogue between the Committee and the State party about the situation of women's rights in the country. The Review meeting usually occurs over 2 sessions of 3 hours each.

NGOs can observe the Review meeting but not participate in it. However, NGOs are given a formal opportunity to orally brief the Committee on the first Monday of the session at which the State is to be reviewed. Further, often informal briefings of the Committee are arranged by NGOs at lunchtime or breakfast meetings and NGOs can also informally approach Committee members during the breaks of the review meeting, to respond to statements made by the State, provide further clarifying information or suggest additional questions.

After the formal review, the Committee will prepare its 'Concluding Obligations' which is a document identifying the matters on which the State has advanced its implementation of the Convention and those matters on which the Committee would like to see further progress.

The final part of the process is the follow-up procedure where the Committee identifies 2 Concluding Observations on which it will follow-up the State's implementation, by way of an interim report 2 years after the review.

More detailed descriptions of the process can be found online here:

[www.un.org/womenwatch/daw/cedaw/reporting.htm](http://www.un.org/womenwatch/daw/cedaw/reporting.htm)

and here:

<http://www.iwraw-ap.org/cedaw/using-cedaw/for-ngos/>

Figure 1. State Party Reporting Process and Opportunities for NGO Intervention





NGOs play a very important role in CEDAW's State Party reporting process. There are a number of different points in the process at which an NGO can intervene or engage. Figure 1, opposite, outlines the process and opportunities for NGO interventions.

## 3.2 What is a Parallel Report?

A Parallel Report (sometimes called a 'Shadow Report' or 'NGO Report') is a report compiled by one or several NGOs that draws attention to the struggles for women's rights within a country and assesses the State's implementation of the Convention. This independent report submitted by civil society organizations critiques the report issued by the State and provides detailed information about the most pertinent women's rights issues in the State.

NGOs are often well positioned to provide information about what is actually taking place in a particular country and to suggest practical recommendations. Thus, information provided by NGOs is vital in assisting the CEDAW Committee to assess a State's compliance with CEDAW. Additionally, the parallel reporting process can be a useful educational opportunity that provides community participants with information about their rights.

The Committee prefers NGOs to form a working coalition and submit 1 joint report that covers all the issues (or most of them) for that State. However, this is not always possible and it is permissible for NGOs to submit separate Parallel Reports and reports dealing with only 1 distinct issue (for example, a report only addressing the issue of laws and customs on rights to own, access or inherit land and property, that discriminate against women in that State).

A photograph of two young girls with dark hair, smiling warmly at the camera. They are sitting in front of a large pile of scrap metal, including tires and various mechanical parts. The girl on the left is wearing a pink shirt, and the girl on the right is wearing a dark floral patterned top. The background is slightly out of focus, showing more of the scrap metal pile.

# NGO Reporting in Action

## How can NGOs Address Women's Land and Property Rights in their Parallel Reports to the CEDAW Committee?

In 2013, a Parallel Report was prepared by STAR Kampuchea to call the CEDAW Committee's attention to denial of women's land and property rights in Cambodia. The report called for Cambodian government to comply with CEDAW articles 14, 15, and 16.

According to the report, approximately 80% of Cambodians reside in rural areas. Livelihoods in rural areas are earned through sustaining agricultural land, fisheries, and forestland. Cambodians depend on these resources for daily needs and as economic safety. Because land security is critical to social welfare development, it is essential for women to obtain equal land right rights with men. Although Cambodia offers land equality to women and men through its Land Law, cultural practices typically deny women the right to own land. Below are excerpts from Cambodia's Parallel Report.

### CEDAW Article 14 Rural Women

Women in rural areas in Cambodia face higher rates of poverty because they lack access to land and resources. The Land Law, which gives men and women equal land ownership rights, protects women, but women still face discrimination through cultural practices. Women also face a lack of educational opportunities which affects their ability to understand how the law protects them, and often means they don't have the skills to necessary to apply for the credit and loans necessary to develop land and secure livelihoods. This report recommends that Cambodia disseminate information on the Land Law and the land registration process. The report notes that Cambodia only allocates 0.66% of the national budget to women's affairs, and this extremely limited amount negatively affects opportunities for women.

### CEDAW Article 15 Women and Men Equality before the Law

Article 15 of the Convention requires State parties to treat women and men equally before the law, including in relation to property, contracts, social relations and other areas. The Parallel Report recommends equality in marriage contracts, noting that women and men are allowed to enter marriage contracts at different ages, disadvantaging women. Because cultural tradition is deeply embedded in Cambodia, women are expected to be submissive and obedient to their husbands. These attitudes prevent them from taking positions of equality with men, both within and outside the home, which limits how women develop economically, socially, and as heads of household. The report cited a case in which a husband resorted to domestic violence against a wife who tried to exert some autonomy and authority in economic decisions.

## CEDAW Article 16

# Equality in Marriage and Family Law

Article 16 calls for State parties to take measures to end discrimination against women in all matters, including marriage and family relations. The Parallel Report calls for Cambodia to raise the age of marriage to 18 years for women and men equally. The report also recommends equal land rights for men and women with respect to the official registration of land tenure, which would empower women to make more economic decisions.

Although Cambodian law offers protection for women's ownership of land, this law is often circumvented by cultural practices that only allow women to own land with the consent of their husbands. The lack of knowledge of the law has fueled confusions and conflict, which is particularly acute when marriages dissolve. The report concludes that these deeply embedded cultural biases must be changed through education and awareness raising that will empower women to exercise their economic rights.

## Recommendations

STAR Kampuchea made the following suggestions to the CEDAW Committee for recommendations to Cambodia:

**More gender-disaggregated information should be collected and analyzed to highlight gender disparities. This information will "enable various stakeholders to identify gaps in the formulation and implementation of laws and policies, and to address the changing context."**

•

**Decisions about land management should be more transparent.**

•

**Laws aimed at enhancing women's access to land and resources should be expansively communicated and consistently enforced, with an effort to make this information accessible at the local level. Local organizations, community members, and local government should participate in informing the community of land rights.**

•

**Training and support should be offered for women dispossessed of their land, and self- help groups should be offered to women in villages to provide a forum for them to speak about the development in their communities**

•

**Civil society organizations should work collaboratively to monitor and assess the status of women's land rights and these groups should develop and make recommendations to the government and interested organizations that ensure compliance with CEDAW.**



Download the report here:

[tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNGO%2fKHM%2f15172&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNGO%2fKHM%2f15172&Lang=en)

### 3.3

## Organizing the Community, Preparing and Submitting the Parallel Report

Because compiling a Parallel Report takes considerable time and financial resources, NGOs are encouraged to collaborate in the submission of one joint report by building local or state coalitions. Collaboration among NGOs also facilitates the incorporation of ideas and issues from various stakeholders that strengthens the report for presentation before the CEDAW Committee. Further, a number of NGOs speaking with one voice and in a coordinated way gives the message greater credibility and enables the Committee to better absorb and prioritize the myriad issues faced by women in the State.

First, determine when the State party's review is scheduled by checking the OHCHR website: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CEDAW](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CEDAW).

The UN establishes Committee review schedules one year in advance. This will allow for the development of a timeline for activities, including gathering resources and partnering with other groups and organizations to create an effective Parallel report. The process should start as early as possible to enable reliable quantitative and qualitative data to be collected and collated and to enable broad consultations with rights holders and interested civil society organizations to be undertaken.

NGOs are advised to begin by reviewing the State party's previous report to the CEDAW Committee and the previous Concluding Observations received from the Committee (unless this is the Initial Report of the State Party, in which case there will be no previous report or Concluding Observations).

All CEDAW State Party reports and Concluding Observations can be found here: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CEDAW](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CEDAW)

Parallel Reports should address the extent of implementation by the State of the Concluding Observations.

The formal requirements and helpful suggestions for the content of Parallel Reports are detailed in a Guide prepared by IWRAP-Asia Pacific, found here: <http://www.iwraw-ap.org/cedaw/using-cedaw/for-ngos/>

You should identify the Articles of CEDAW that are relevant to the issues you are raising and explain how the State is failing in relation to women's secure rights to land and property.

“You should identify the Articles of CEDAW that are relevant to the issues you are raising and explain how the State is failing in relation to women's secure rights to land and property”

Here are some suggested questions NGOs might consider addressing in their Parallel Report:

- What progress has the State made in securing women’s rights to land and property in your country since its last Periodic Report to CEDAW? What positive or negative change has there been?
- Do women in your country have an equal right to access, use, control, own, enjoy, and dispose of land and property? Do women enjoy these rights in practice? What practical barriers do women face in this respect?
- Do women face discrimination or disadvantage in matters of inheritance?
- Do women in your country have an equal right to marital property at the end of a marriage or de facto relationship?
- Does your country have laws, policies or programs that may discriminate against women because men are seen as ‘heads of the household’?
- Do rural women in your country have equal access to productive resources including land? If your country is undergoing a program of agrarian reform or redistribution of land among groups of different ethnic origins, are the rights of women, regardless of marital status, to share in such redistributed land on equal terms with men observed?
- Are statistics available (from State or other sources) in relation to women’s rights to land and property (e.g.: % of women who own property, % of land farmed by women)?
- Has there been ‘land-grabbing’ by commercial entities in your country and have women been disadvantaged?
- Have women been involved in land negotiations or consultations or in relocation processes?

Any supporting documentation should be included as Annexes to the Parallel Report. These documents usually include reports in which data is disaggregated by sex and other indicators if necessary; a listing of programs supporting women rights; amount of country’s budget allocated for women’s programs; and political commitments and financial resources available to carry out State’s obligations. This section should also include any studies conducted for your report.

The Parallel Report should be submitted at least two-weeks prior to the Pre-session meeting for the relevant State in order for it to be considered by Committee members for the List of Issues.

## 3.4

# What Happens after a Parallel Report is Submitted?

After the Parallel Report is submitted it is important for NGOs to follow up with lobbying the Committee to ensure that their issue is understood and taken-up by the Committee. The objective is to influence the Committee to include your issue/s in the List of Issues and the Concluding Observations and to raise awareness and, potentially open a dialogue with the State on your issues. Ideally, this will involve going to Geneva to brief the Committee orally at either or both of the Pre-session meeting and the Review meeting. Each of these is discussed in more detail below.

It should be remembered that the NGO briefings at the Pre-session meetings are *closed sessions* which means representatives of the State will not be present. However, the NGO briefings just prior to the Review meeting, are *public meetings* and representatives of the State can and probably will attend. If your issues are sensitive or you are concerned about speaking about them in public, you should contact the Secretariat to seek an informal, private meeting with Committee members.

IWRAW-Asia Pacific (an NGO) co-ordinates NGO briefings of the Committee for both the Pre-session and the State review and arranges security passes to the UN buildings. NGOs should contact them no later than 2 weeks before arriving in Geneva to ensure there is sufficient time for these arrangements to be made.

Further details about logistics can be found here:

[http://www.ohchr.org/Documents/HRBodies/CEDAW/CEDAW\\_NGO\\_Participation\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/CEDAW/CEDAW_NGO_Participation_en.pdf)

Unfortunately, CEDAW does not provide funding for travel assistance, so it is important to plan accordingly.

Presenting in Geneva can be daunting, given the limited time available to present before the Committee, protocols regarding how materials are to be presented, and differing levels of experience within formal, global institutional settings. What follows, therefore, is a breakdown of some of the common formal and informal events and opportunities that NGOs and advocates have in Geneva for making their cases on behalf of their countries.

## 3.5

### NGO Attendance at the Pre-Session Meeting

NGOs may travel to Geneva to present information verbally to the Pre-Sessional Working Group. These meetings take place 2 sessions (or 8 months) prior to the Committee session in which the State party is reviewed. This can be an important opportunity to influence the List of Issues and to suggest that the Committee ask the State to provide further information about specific issues missing from their Periodic Report.

NGOs are usually given only 10 minutes in total to present information in relation to each State. This time must be shared between all NGOs seeking to present information on that State and so should co-ordinate their presentations to ensure all issues are covered and there is no duplication. Participants are expected to be ready to answer questions of the Committee as well as update the Committee on any developments arising since the submission of their Parallel report.

## 3.6

### NGO Attendance at the Review Meeting

NGOs can observe the Review meeting but cannot participate in it by making statements or asking questions. However, NGOs are given a formal opportunity to brief the Committee on the first Monday of the session at which the State is to be reviewed. NGOs have just 10 minutes to present orally the key points of their report to the Committee. The NGO presentation is an opportunity for the Committee to clarify and seek more detail about the information presented to them in the written submissions. Although quite short, this is a conversation designed to assist the Committee to prepare for the Review meeting and in particular to identify gaps and questions for the State.

Because there are usually several State party reviews scheduled at each session, NGOs can attend reviews of other States. Doing so helps delegates get a sense of the types of questions and answers exchanged in anticipation of their own State's examination.

NGOs may also contact the OHCHR Secretariat to request an informal meeting with Committee members (usually the Country Rapporteur) prior to the review of the State party. These informal exchanges take place prior to formal sessions. NGOs should also check the OHCHR's website for the Provisional Agenda and Programme of Work to see the schedule of dialogues and presentations for NGOs.

### 3.7

## Informal Sessions, Breaks, and Lunches

NGOs and advocates should take full advantage of every minute in Geneva whether attending the Pre-session meeting or the Review meeting. Indeed, even lunches and breaks become briefing and debriefing sessions. Members of the Committee make themselves available during lunch and other breaks in order to engage with NGOs, as these informal opportunities are as important as the formal oral presentations and offer more chances to highlight issues not covered in the formal sessions due to time constraints. Official arrangements for informal opportunities (lunch or coffee sessions with experts) can be made ahead of time by contacting the office of the Secretariat.

### 3.8

## Concluding Observations

Published shortly after the close of the Review meeting with the State Party, the Concluding Observations are the Committee's detailed recommendations addressing the issues and concerns they see as most pertinent to the State's implementation of the Convention. The Concluding Obligations usually first identify positive steps by the State towards full implementation and then identify the areas where progress is needed. The Committee may call on State Parties to make specific changes to laws, processes, and conditions within the state that continue to inhibit women's equal rights. The Committee also sets the deadline by which the State must comply with the recommendations in the Concluding Observations (two years) and the date for the State's next report, making specific recommendations as to what issues it expects the State to address in the report, as well as procedural and substantive issues not addressed by the State.

### 3.9

## After Geneva: Bringing It All Home

Appearing in Geneva can be a kind of new beginning. It is up to NGOs and advocates to use what they learned in Geneva to formulate new action plans, encourage broader participation in the CEDAW process, and to continue to create change and improve the situation of women in their countries.



Continuing the process of advocacy after Geneva begins with widely disseminating the Concluding Observations. It is important to ensure that domestic decision-makers and rights holders know about and understand the Concluding Observations by, for example, issuing a press release, arranging forums, workshops, meetings and consultations with a range of stakeholders. Do not assume that the government will provide information or training on the Concluding Observations to its own staff in relevant portfolios as they generally don't. Therefore contacting local government authorities to discuss the issues identified in the Concluding Observations can be a useful way to open new dialogue with government. Frequently NGOs establish coalitions which devise strategies to monitor implementation of the Concluding Observations, collate data, continue to lobby government and raise awareness about the Concluding Observations at the community level.

## CEDAW in Action

### What Has the CEDAW Committee said about Women's Land and Property Rights through its Concluding Observations on States Parties?

The CEDAW Committee has made a range of recommendations to States parties on promoting and protecting women's rights to land and property. These Concluding Observations can be cited in NGO parallel reports to the Committee as an example of recommendations which can be made.

While not an exhaustive list, the CEDAW Committee has:

**Expressed concern that customs and traditional practices, prevalent in rural areas, prevent women from inheriting or acquiring ownership of land and other property**

(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).

•

**Expressed concern that confiscation of land by private and foreign companies, as well as the implementation of megaprojects, has a disproportionate and adverse impact on women**

(Cambodia, 2006; India, 2007; Ethiopia, 2011; Togo, 2012).

•

**Expressed concern that registration of land to male 'heads of household' discriminates against women**

(Mongolia, 2008, Sri Lanka 2011).

•

**Expressed concern over lack of comprehensive data on women's land rights, and their de facto ability to access and control land, and encourage States to collect and provide such data**

(Uzbekistan, 2010).

•

**Urged States to strengthen initiatives aimed at encouraging sustainable economic empowerment of women, including the promotion of women's access to land and credit**

(Nepal, 2011; Côte d'Ivoire, 2011).

**and call upon States to 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 to fertile land**

(Kenya, 2011; South Africa, 2011; Chad, 2011; Republic of Korea, 2011).

**Called upon States to:**

**eliminate all forms of discrimination with respect to ownership, co-sharing and inheritance of land**

(South Africa, 2011; Chad, 2011).

**establish a clear legislative framework to protect women's rights to inheritance and ownership of land**

(Kenya, 2011; Zambia, 2011).

**and introduce measures to address negative customs and traditional practices, especially in rural areas, which affect full enjoyment of the right to property by women**

(Kenya, 2011; South Africa, 2011).

**To this end, the Committee can also urge States to use "innovative measures" to strengthen understanding of the equality of women and men, including their equal rights to participate in public life and decision-making, own land and livestock**

(Ethiopia, 2011).

•

**Underscore the importance of ensuring outreach of agricultural programmes and extension services to women**

(Ghana, 2006; Kenya 2007; Tanzania, 2008).

•

**Call upon States to disseminate information on women's land rights and ensure legal literacy and legal support to enforce rights**

(Namibia, 2007; Kenya 2007; Tanzania, 2008; Cameroon, 2009).

•

**Call upon States to 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 women**

(Uganda, 2010; Bangladesh, 2011; Kenya 2011; Chad, 2011; Zimbabwe, 2012; Samoa, 2012; Comoros, 2012; Equatorial Guinea, 2012),

**and call upon States to adopt temporary special measures to accelerate the advancement of women's land ownership and expand access by women to land**

(Nepal, 2011; Côte d'Ivoire, 2011; Mexico, 2012).



## 4

## Complaints

The procedure for complaints about a State's violation of Convention rights is set out in the Optional Protocol to CEDAW. Only those States that have ratified the Optional Protocol are bound by it. This means that complaints may only be brought against States that have ratified the Optional Protocol. Complaints are called 'Communications' and are submitted by an individual or group of individuals within the jurisdiction of the State, to the Committee for adjudication. Often NGOs are involved in preparing and submitting Communications on behalf of individuals or groups. The Committee will make an initial assessment of admissibility (i.e. whether it has jurisdiction to hear the case and whether the procedural requirements are satisfied) and, if admitted, adjudicate on the merits of the case. The Committee can make findings about whether there have been violations of the individual's rights due to an act or omission of the State and can recommend remedies.

It is important to note, that unlike a domestic court case, Communications are determined 'on the papers' and in closed meetings of the Committee. Complainants do not have the opportunity to address the Committee orally or present oral evidence. Further, the procedure does not involve a visit to the relevant State or any field investigation. The Committee relies upon the material presented by the complainant and the State. Finally, it is important to understand that the timeframes for decisions on Communications are long – usually 2-3 years and often the Committee's decision and recommendations are difficult to enforce and ignored by the State.

Nevertheless, this procedure can be a very useful component of an advocacy campaign to persuade a State to change its laws or practices. To date, the CEDAW Committee as a mechanism has made many positive judgments on a range of women's rights issues (sexual and reproductive rights, violence against women, etc.), but has yet to issue a judgment on women's land and property rights, specifically. By bringing an individual complaint to CEDAW, positive jurisprudence can be developed on these issues which would not only help the individual litigant to achieve justice, but also other similarly situated women. As such, the individual complaint procedure potentially represents an important opportunity in the advancement of women's land and property rights both internationally and domestically, and could help to move forward cases on women's land and property rights that have either stalled or failed at the national level. As the UN Office of the High Commissioner for Human Rights has noted "In the adjudication of individual cases, international norms that may otherwise seem general and abstract are put into practical effect."<sup>11</sup>

<sup>11</sup> <http://www2.ohchr.org/english/bodies/petitions/individual.htm>

In addition to the 'Communications Procedure,' the Optional Protocol establishes an 'Inquiry Procedure' which enables the Committee to commence its own inquiry into 'grave or systematic violations' of women's rights and make findings and recommendations about the issue. This procedure is intended to address serious violations of CEDAW rights which affect a large number of women. For instance, the Committee undertook an Inquiry into the abduction, rape and murder of hundreds of women in Ciudad Juarez, Mexico between 1993 and 2003 and the failure of the Mexican Government to carry out adequate investigations into those crimes. In that case, Committee members visited Ciudad Juarez, with the consent of the Mexican government, and spoke with victims, civil society organizations, State officials and police officers. The Committee then made a series of concrete recommendations to Mexico about how to address the discrimination against women in this context. It was NGOs who brought this issue to the attention of the Committee and suggested an Inquiry and were closely involved in the procedure.<sup>12</sup>

## 4.1 How to Submit a Communication

There are several very good Guides on preparing a Communication to CEDAW which can be found on line.<sup>13</sup>

This Guide does not intend to duplicate that information but to provide some basic information about the key considerations and the benefits of this procedure for advancing women's secure rights to land and property. Many NGOs have ample experience and knowledge of the CEDAW Communication procedure and can assist others considering bringing a Communication.

 **Feel free to get in touch with the Global Initiative for Economic, Social and Cultural Rights for assistance and further information.**

- The Communication must concern a State Party to the Convention and the Optional Protocol, and the State party must have ratified the Optional Protocol prior to when the violation occurred. The Committee does not examine Communications dating from a period prior to the State ratifying the Optional Protocol. However, there are some exceptions. For instance complainants may argue that the violation has 'continuing effects'.
- Check also that the State Party involved has not entered a Reservation in relation to the rights you are alleging have been violated. State Reservations to CEDAW can be viewed here: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en)
- The complaint cannot be anonymous (but note that information supplied under

<sup>12</sup> For further information, please see: <http://opcedaw.wordpress.com/inquiries/by-country/>

<sup>13</sup> <http://www.iwraw-ap.org/protocol/overview.htm>

the Inquiry procedure can be provided anonymously).

- If you are acting on behalf of another person, you must obtain sufficient authorization (written consent) and establish that you are justified in doing so.
- The complainant must show that she is personally and directly affected by the law, policy, practice, act or omission of the State Party which she claims has violated her rights. It is not sufficient simply to challenge a law or State policy or practice in the abstract without demonstrating how she is individually a victim of the law, policy or practice in question.
- The complainant must claim to be a victim of a violation of a right enshrined in the Convention and the allegations must be sufficiently substantiated. The complainant should provide the Committee with the facts upon which they are relying, and include supporting documentation, as well as indicate the provisions of the Convention they claim the State party is violating.
- Generally, a complainant must exhaust all remedies in her own State before bringing a claim to the Committee. This means complainants must first pursue all avenues for having the complaint resolved within the State, which usually includes pursuing the claim through the local court system. There are, however, limited exceptions to this rule: if the exhaustion of remedies would be unreasonably prolonged; if the exhaustion of remedies would plainly be ineffective (if, for example, the law in your State is quite clear on the point at issue); or if the remedies are otherwise unavailable to you (owing, for example, to denial of legal aid in a criminal case).
- The Office of the High Commissioner for Human Rights has a separate team who manage the Communications from all UN treaty bodies, called the 'Petitions Team.' This team is separate from the Secretariat of CEDAW<sup>14</sup> Communications should be submitted directly to the Petitions Team:

**Petitions Team,  
Office of the High Commissioner for Human Rights  
United Nations Office at Geneva  
Geneva 10, Switzerland  
E-mail: [petitions@ohchr.org](mailto:petitions@ohchr.org)**

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<sup>14</sup> For more details on complaints and communications, please see:  
<http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>





# 5

## Themes and General Recommendations

The CEDAW Committee from time to time highlights topical women's rights issues to focus their activities on and to develop authoritative guidelines on how CEDAW addresses those issues. After identifying thematic foci the Committee will usually form a working group to take responsibility for the work around the thematic focus. The Committee will often commission studies and research papers on the topic, hold a 'General Discussion,' undertake regional consultations with States and civil society and develop 'General Recommendations.' The development of a General Recommendation is usually the culmination of years of work and the conclusion of the Committee's work on that topic.

Each of these are good opportunities for NGOs to engage with the Committee and influence the Committee's understanding and approach to the topic which can have a flow-on effect into the Committee's approach to the issue in State Party reviews, Concluding Observations and Communications. Often, NGOs make suggestions to the Committee for new focus themes and provide substantive material for input into reports and meetings.

By way of example, the Committee started working on the issue of the economic consequences of marriage, family relations and their dissolution in about 2009. The Committee held a Day of Discussion in August 2009, a special meeting in 2012 in Istanbul to discuss the issue. NGOs were involved in both meetings and were able to submit written information and make oral statements. In February 2013 the Committee adopted General Recommendation 29 on the 'economic consequences of marriage, family relations and their dissolution' (Article 16).

### 5.1 General Discussions

A General Discussion (or General Day of Discussion) is a day (or half day) during one of the Committee's sessions devoted to discussion of one thematic topic. Experts and advocates who work on the relevant topic are invited to make presentations to the Committee and NGOs are able to attend and make short statements on the topic to the Committee. Attending a General Day of Discussion, submitting information and making an NGO statement can be a good way to provide the Committee with

examples of the lived experiences of women in relation to the topic and to make recommendations about how States can tackle the issue.

## 5.2 General Recommendations

General Recommendations are detailed authoritative statements of the Committee which provide elaboration on the interpretation of the articles in the Convention. They are intended to provide guidance to States on how to implement CEDAW articles. Sometimes they address a specific article and sometimes they address a cross-cutting issue.

The CEDAW Committee has made many general recommendations on a range of women's rights issues including education, sexual and reproductive rights and violence against women. As of April 2015, the Committee has made 32 General Recommendations. While there is not a specific General Recommendation on women's land and property rights, as shown in Table 2 above, a number of General Recommendations do integrate discussion of these rights. Currently, a General Recommendation on the Rights of Rural Women is in the process of being developed.

As mentioned above, NGOs can be involved in the various events and discussions that occur throughout the process for the elaboration of a new General Recommendation. NGOs should contact the Secretariat to find out what activities are planned in relation to new themes and to identify themselves as having expertise on the topic. NGOs can submit written information, attend consultations and Days of Discussion and make oral statements (although due to time constraints there may be limits on the number of NGOs who can participate in this way).

It is important also for NGOs to operationalize General Recommendations by referring to them and using them in their domestic and international advocacy. For instance, Parallel Reports and Communications can refer to relevant General Recommendations and domestic advocates can refer to General Recommendations to support their 'CEDAW-friendly' interpretations of domestic laws and policies or when making law reform recommendations to governments.

## 5.3 General Recommendation on Rural Women

'Rural women' is a current theme of the Committee and it is intended that this will be the topic of a new General Recommendation. A General Discussion on Rural Women was held in October 2013. Thirty-six NGOs from around the world made written

submissions for this General Discussion, available here

<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/ContributionsRuralWomen.aspx>

The issue of rural women's secure access to land, property and productive resources was also addressed by many keynote speakers, as well as within oral interventions made to the Committee, available here:

<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/keynotespeakersRuralWomen.aspx>

and here:

<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/OralinterventionsRuralWomen.aspx>.

Because of these interventions from NGOs and other stakeholders, is very likely to be specifically addressed in the General Recommendation.

The proposed General Recommendation on Rural Women will allow the CEDAW Committee to clarify the obligations of State Parties regarding women's land and property rights included in earlier General Recommendations, while building on that foundation to expand on the policies currently in place and challenge some of the obstacles that have disallowed women equal access to land. The ultimate goal is to eliminate discrimination against rural women and promote de facto equality through means of acquiring land and property rights.

See also [section 2.2](#) above which gives some examples of how certain CEDAW General Recommendations might be relevant to the violations of women's land and property rights.



## NGO Reporting in Action

### How can NGOs Join Together to Raise the Profile of Womens Land Property Rights during General Discussions?

In addition to written submissions, NGOs are invited to make oral interventions during General Discussions.

During the General Discussion on the Rights of Rural Women, seven organizations made a joint oral statement to the CEDAW Committee.

The full text of that statement is available here  
<http://www.ohchr.org/Documents/HRBodies/CEDAW/RuralWomen/Landesa.pdf>.

In the statement, organizations highlighted that:

“We believe that the General Recommendation on the Rights of Rural Women by the CEDAW Committee is an important opportunity to highlight the land rights of rural women, and to consolidate what has been already said by the Committee on these issues. ...

With its General Recommendation on the Right of Rural Women, the CEDAW Committee can build on this foundation, as well as consolidate previous recommendations related to women’s land and property rights, for example, as made within its Concluding Observations on States parties.”

# 6

## Additional Resources

### Additional resources for understanding the use of CEDAW for Women's Secure Land Rights

#### **Secretary-General's message on the International Day of Rural Women**

Includes links to the concept note, oral interventions by stakeholders, and other written contributions that clarify issues faced by rural women.

<http://www.unwomen.org/en/news/stories/2013/10/sg-statement-for-rural-women-day>

#### **International Women's Rights Action Watch, University of Minnesota.**

For information specific to the Parallel Reporting process and other useful links.

<http://www1.umn.edu/humanrts/iwraw/proceduralguide-08.html#intro>

**Alexandriah Muhaji, CEDAW Parallel Reports** – FIDA Kenya and related documents, Marriage Bill and Matrimonial Bill, Women's Inheritance Now (Sep. 9, 2011),

<http://winafrica.org/2011/09/cedaw-shadow-report-fida-kenya-and-related-documents-marriage-bill-and-matrimonial-property-bill/>

#### **Kenya State Report**

The 7th Periodic Report of the Government of the Republic of Kenya on Implementation of all the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

<http://www1.uneca.org/Portals/ngm/Documents/KENYA-COUNTRY-REPORT-TO-CEDAW-FINAL-APRIL-2004-2009-1.pdf>

#### **Understanding the state reporting process:**

<https://www.youtube.com/watch?v=wQgVby2mHr8>

[https://www.youtube.com/watch?v=P\\_HDB7mB7IE](https://www.youtube.com/watch?v=P_HDB7mB7IE)

#### **CEDAW process flow chart:**

[http://www.wunrn.com/news/2007/11\\_07/11\\_26\\_07/112607\\_cedaw.htm](http://www.wunrn.com/news/2007/11_07/11_26_07/112607_cedaw.htm)

## More about CEDAW and CEDAW's History

### **A Short History of the CEDAW Convention**

<http://www.un.org/womenwatch/daw/cedaw/history.htm>

### **What is CEDAW?**

The UN Convention on the Elimination of All Forms of Discrimination against Women: The human rights of women and what they mean.

A guide by Federal Chancellery-Federal Minister for Women, Media and Civil Service,

<http://www.bka.gv.at/DocView.axd?CobId=29171>

Links to Other Sites with Helpful Information

### **Copies of State Party Reports**

<http://tb.ohchr.org/default.aspx>.

### **Rural Women, Land and CEDAW:**

Website with links, articles, and information specific to the application of the articles of CEDAW to the issue of land rights for rural women.

<http://www.landcoalition.org/fr/global-initiatives/womens-land-rights/rural-women-land-and-cedaw>

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Economic, Social and  
Cultural Rights

8 North 2nd Ave. East, #208  
Duluth MN 55802 USA  
Tel/Fax: +1 218 733 1370