



The Global Initiative  
*for Economic, Social and Cultural Rights*



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*General discussion on land and the International Covenant on Economic, Social and Cultural Rights*

**Gender Equitable and Socially Inclusive Land Rights**

*Joint Written Submission by:*

*Asia Pacific Forum on Women Law and Development  
Global Initiative for Economic, Social and Cultural Rights  
Landesa Center for Women's Land Rights*

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## **Introduction**

This Committee has long recognized land rights as a fundamental prerequisite to realizing core Covenant rights to food,<sup>1</sup> housing,<sup>2</sup> an adequate standard of living,<sup>3</sup> water, cultural rights, and gender equality.<sup>4</sup> The Committee has elaborated on the relationship between land and Covenant rights in at least 8 of its 24 General Comments.<sup>5</sup> Numerous other human rights bodies and international and regional standards, guidance, and judicial decisions, both long-established and recent, complement this recognition that land is central to fulfilling human rights.<sup>6</sup> We continue to witness exploitation of land and natural resources at the expense of rightful users—often incentivized by economic structures, mounting climate change impacts, shifting migration trends, conflict, and widespread food security threats,<sup>7</sup> all related to land and natural resource rights. Articulation of the relationship between land and the realization of human rights is especially urgent for the majority of those living in poverty worldwide, namely indigenous peoples and local communities, who: live in rural areas where land is the most important resource; rely on agriculture and forests for food, livelihoods, and housing; and lack legal rights to their land.<sup>8</sup> Landlessness and weak land tenure are root causes of poverty and hunger, conflict, inequality, and environmental degradation.<sup>9</sup>

***Land rights must be gender equitable, just, and socially inclusive.***<sup>10</sup> The above impacts are severely compounded by gender inequality,<sup>11</sup> and intersecting forms of marginalization (age, race, religion, membership in an indigenous community, marital status, disability, and sexual orientation, and other grounds).<sup>12</sup> Without explicit recognition of intersectional discrimination, strong provisions to require states and other actors to affirmatively realize equitable tenure rights, and guidance for States on good practice approaches to shifting social norms,<sup>13</sup> the rights of the most marginalized will be inadequately identified and protected. In turn, this risks failing to achieve sustainable land management and use, including and beyond rural tenure. Well-being along the urban-rural continuum—including food systems, markets, and migration patterns<sup>14</sup>—depends on strong and gender-equitable rural tenure.<sup>15</sup>

Women's land rights continue to be frequently denied.<sup>16</sup> Improvements in statutory laws have begun to address gendered inequality in land and property rights, but widespread de jure and de facto discrimination persists.<sup>17</sup> These realities flagrantly violate women's human rights; undercut women's crucial contributions from household to global levels to natural resource management, climate action, food production, food sovereignty, and food security; reinforce women's unequal social, legal, political, and economic position within their families, communities and societies; and seriously limit their agency and opportunity.<sup>18</sup>

This Committee has previously urged States Parties to employ legal solutions to these issues.<sup>19</sup> In this forthcoming General Comment, the Committee has the opportunity to build on those recommendations by integrating gender equality, justice, and social inclusion as core elements.<sup>20</sup> This submission details these considerations in land governance and rights, and recommends language for the proposed General Comment related to two categories:

- ***Governance related to land:*** Realize women's equal presence and participation in decision-making at all levels; establish gender equitable land governance (both formal and customary) that fulfills human rights and addresses the climate crisis; ensure inclusive markets related to land, and address structural economic barriers to inclusivity; and measure progressive realization via the Sustainable Development Goals (SDGs).
- ***Rights to land for individuals and communities:*** Enshrine women's full equality in family and inheritance law; recognize customary law, and harmonize law and practice with international human rights standards, including full and equitable implementation and enforcement. The General Comment should also include a sub-section to identify and address gender-specific aspects of land rights.<sup>21</sup>

## **Governance Related to Land**

The Voluntary Guidance on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security (VGGT)<sup>22</sup> provides extensive guidance to States parties to fulfill their land-related human rights obligations.<sup>23</sup> This submission advocates for this General Comment to address land-related causes of injustice and inequity, by instructing States to take a comprehensive approach to land rights to protect ICESCR rights, and by fulfilling their commitments to the VGGT and other available guidance:

### ***Rights to equal political participation and representation must be fulfilled.***

Decisions about land and natural resources that impact thousands are frequently made without consultation with or the consent of those affected. This includes acquisition by companies, expropriation, and policy, regulatory, and law-making processes and implementation ranging from land-specific reforms, national land use management and planning, constitutional amendments, investment and trade regimes, climate action, and economic development. Gendered inequalities with regard to decision-making, control, and economic opportunity and power related to land and natural resources are often exacerbated by women's lack of representation in positions of political power. Parliaments and executive branches worldwide craft policy and legislation, issue regulations, and conduct business with extra-national actors; these institutions do not equitably represent the voices of those whose Covenant rights are most affected by their decisions.<sup>24</sup> Women and other marginalized groups have a human right to political participation; but land and natural resource management law and policy are among the most exclusive arenas, especially with regard to gender,<sup>25</sup> and legislative bodies with inadequate representation of women inadequately protect and benefit women.<sup>26</sup>

### ***Land institutions and administration must foster just and equitable land management, control, and use.***

While many countries have progressive legal protections recognizing gender equality, often there is a stark gap between the intent of the law and its effective implementation. Land institutions in particular play a key role in upholding women's rights and in effectively implementing legal protections.<sup>27</sup> Yet these institutions are often inadequately resourced and inadequately sensitized with regard to gender equality and social inclusion.<sup>28</sup> Without adequate institutional infrastructure, strong, just, and equitable individual and collective tenure rights (see below) cannot be realized.

### ***State resources should facilitate gender-equitable control over land, benefits from land, and access to and power within markets.***

Land markets can be exclusionary to women, especially as pressures on land increase; but markets can also provide opportunity for women if attention is paid to increasing equity and removing or reforming discriminatory laws, systems, and practices, including economic and fiscal policies incompatible with human rights obligations. As OHCHR and UN-Women have recognized, "Women's access to productive resources in general, and land in particular, cannot be divorced from the broader context of macroeconomic policy and the global economic system. Inclusive growth requires equal access to opportunities and resources for all segments of society, including for both women and men. Achieving this requires a departure from viewing land principally as a commodity... This discourse is at odds with many traditional, collective and indigenous understandings of land rights, which view land not as a financial commodity to be privatized and sold, but as a life-sustaining resource to be shared and protected."<sup>29</sup> States must also ensure that supports for tenure rights are gender equitable and socially inclusive, both those which promote ownership or productivity (loans, credits, mortgages, extension services), and that land reforms are undertaken where needed to address wealth and income inequality.<sup>30</sup>

### ***Land management and land tenure regimes must adopt a gender-equal, just, and socially inclusive response to climate change.***<sup>31</sup>

are a critical missing piece in climate change strategies. Emerging evidence suggests that when women hold secure rights to land, efforts to tackle climate change are more successful, and responsibilities and benefits associated with climate change response programs are more equitably distributed.<sup>32</sup> Conversely, without effective legal control over the land they farm or the proceeds of their labor, women often lack the incentive, security, opportunity, or authority to make decisions about ways to conserve the land and to ensure its long-term productivity and sustainability. The 2015 Paris Agreement on Climate Change does not explicitly mention land rights, yet there is growing recognition that land management and tenure is central to just climate action.<sup>33</sup> This year the IPCC issued a special report on climate change and land which evaluates the strength of evidence relating tenure security to climate action, finding that land management that favors stronger governance, including recognition of customary tenure, is an efficient and necessary component of climate action and poverty eradication.<sup>34</sup> The UN Convention to Combat Desertification also recently recognized the centrality of tenure, including recognition of gender issues.<sup>35</sup> Climate action will benefit from an enhanced focus on land tenure rights, and particularly women's land rights.<sup>36</sup>

***The 2030 Agenda should serve as a rights-oriented roadmap for measuring fulfillment of land-related human rights.*** States Parties are urged to consider coordinated action to implement the SDGs as a means to fulfilling human rights obligations related to land. Land underlies the ecological, economic, and social systems that are the subjects of the SDGs.<sup>37</sup> The importance of land governance and land tenure to achieving sustainability and equity is paramount, and States Parties benefit from understanding the numerous touchpoints between land and the SDGs:<sup>38</sup>

- *Gender Equality and the empowerment of women and girls:* Goal 5: Gender Equality contains two of the three land-specific indicators (5.a.1 and 5.a.2), and is a crucial cross-cutting issue within the SDGs<sup>39</sup> Links between women's rights to land and natural resources and numerous development outcomes are well-documented.<sup>40</sup>
- *Scaling up efforts to end hunger and malnutrition:* Goal 1: No Poverty, houses land-specific indicator 1.4.2; and Goal 2: Zero Hunger, includes Target 2.3 – calling for access and control of land.<sup>41</sup> These goals relate gender-equitable land tenure security<sup>42</sup> and intended outcomes of increased agricultural production, increased food security and improved nutrition, and improved livelihoods for those living in rural areas.<sup>43</sup>
- *Promoting inclusive and sustainable industrialization:* Goal 11: Sustainable Cities;<sup>44</sup> here, urban (and national) food security, sustainable urbanization and economic growth, and adequate rural/urban coordination requires strong land governance and tenure.<sup>45</sup>
- *Protecting ecosystems:* Goal 13: Climate Change;<sup>46</sup> and Goal 15: Life on Land<sup>47</sup> are intimately linked with land tenure—climate change impacts and land degradation are exacerbated by weak land tenure and governance.<sup>48</sup> And women are disproportionately affected by climate change, but also key agents for climate change action.<sup>49</sup>
- *Promoting peaceful and inclusive societies:* Goal 16: Strong Institutions links strongly with strengthening land governance institutions (both formal and customary);<sup>50</sup> Goal 10: Reduced Inequalities focuses on income inequality, exclusion, and discrimination;<sup>51</sup> inequality and poverty (rural and urban) is intimately related to land tenure insecurity.<sup>52</sup>

### **Rights to land for individuals and communities**

Actively facilitating inclusion via land governance is crucial—but insufficient—to fulfill human rights, including the right to development. Formal and customary land tenure regimes must realize equitable land rights for individuals, families, and communities. The General Comment should urge States to:

***Guarantee equitable rights in family and inheritance law and practice.*** Even if and when women are able to access land, their rights are frequently infringed through

discriminatory civil codes, marriage or inheritance laws, and patriarchal beliefs and practices.<sup>53</sup> Single women, as well as those whose marriages are customary (and often formally unrecognized) also typically have more tenuous rights to land. In many countries, the result of gender biased statutory laws, customary law, traditions, and social norms and attitudes is that women's rights to land and property are mediated via a male relative. This second class status constrains women's full and equal participation in their homes and communities, and renders their land rights vulnerable when a relationship ends or changes.

This Committee has recognized: the special discrimination women face with regard to land access, stating that women have a right to own, use or otherwise control land on an equal basis with men, without discrimination based on marital status or any other ground,<sup>54</sup> and a right to access necessary resources to do so;<sup>55</sup> the importance of equal rights to inheritance and ownership of land for women in the context of food security<sup>56</sup> and upon widowhood;<sup>57</sup> women's disproportionate suffering from forced evictions, including from land used to derive a livelihood;<sup>58</sup> women's insecure tenure due to statutory and customary discrimination in relation to property rights;<sup>59</sup> and has highlighted within the context of its Concluding Observations on States parties women's equal inheritance rights and equal rights in divorce proceedings.<sup>60</sup> The CESCR has also urged States to eradicate discriminatory practices against women and girls that restrict access to land, property, housing, and credit.<sup>61</sup>

***Formally recognize and respect customary and collective tenure, and work to harmonize these tenure systems with human rights standards.*** About 2.5 billion people, including indigenous peoples and rural communities, live on land that is collectively held or managed.<sup>62</sup> Governments legally recognize only a fraction of the 65 percent of the world's land area held under such customary, community-based tenure systems.<sup>63</sup> Customary systems that allow for or favor individual rights also commonly exist under limited or partial formal legal recognition. Yet customary and collective practice often primarily governs rights and transfers of land at the local and family level for the majority of those who lack formal legal protections and equitable access to justice. For women, this situation presents a complex web of marginalization. Due to lack of legal government recognition, women are particularly adversely impacted when collective land rights are disregarded. Internal customary and communal rules and governance often exclude and sideline women from decision-making and from asserting their rights as individuals. Community rules that govern marriage, inheritance, and family typically reflect gender inequitable social norms that favor males over females in inheritance, land control and management. Polygamous arrangements further dilute women's land-related rights.

Even when communities' land rights are formally recognized, there is a risk that women's rights will not be documented or secured, thus weakening their rights to the collective land. The legal definitions of communities and of community membership and rights often continue to reflect a gender bias. In many settings, women are seen as "transient" members of the community, expected to "marry out" of their birth communities, or as "strangers" in the communities to which they married. These women often lose their natal community rights upon marriage, without being fully accepted as members of their marital communities. Formalization programs that recognize households rather than individuals have almost invariably and predominantly formalized the rights of men, especially husbands, stripping women who may have held clear use rights under customary tenure. Such efforts reinforced or created adverse gender norms, rendering women's rights dependent on their relationships with male relatives and excluding derivative, secondary or other use rights most often held by women.<sup>64</sup> Defining community rights without including explicit recognition for the rights of women could have similar detrimental effects.<sup>65</sup>

## **Recommended Language**

We encourage the Committee to include language in the General Comment urging States to:

1. Align all legal and policy frameworks with the VGGT through immediate and sustained action, including the VGGT's gender equality and social inclusion standards.
2. Apply social norms and behavior change strategies<sup>66</sup> designed to shift discriminatory norms to research, policy and legal analysis and reform, and all implementation and programming related to land governance and tenure security.
3. Strengthen, resource, and coordinate land administration institutions, including capacity development to achieve gender-just and socially inclusive land rights. Apply comparable efforts to institutions responsible for SDG implementation, to realize efficient and effective strengthening of land-related systems and institutions, to achieve sustainable development, climate action, and climate justice, and fulfill human rights.
4. Create pathways for gender parity and social inclusion in key governance bodies impacting land governance and tenure: national and sub-national legislative bodies, land administration and other government ministries (investment and trade agencies, climate change and disaster risk reduction policy working groups, etc.), and collaborate with traditional authorities and civil society actors to realize gender parity and social inclusion in customary institutions. These efforts (e.g., educational and financial supports) should enable full, informed, meaningful, and effective participation of women and marginalized groups in formulating and implementing land-related laws, policies and programs.
5. Remove all discrimination and obstacles to gender-equitable and socially-inclusive land tenure rights within formal frameworks and institutions. Reform national laws as needed (including marriage and family, inheritance, land, and investment) as well as economic policies and trade agreements, to ensure coherent and effective frameworks that realize equitable tenure rights.<sup>67</sup> Ensure budget allocations related to land integrate a gender perspective and track how budgets respond to gender equality commitments.<sup>68</sup> Ensure gender-equitable access to loans and credits, and ensure temporary special measures when required, to enable women to maintain access to land and other productive resources regardless of marital status and other gendered barriers;<sup>69</sup> this could include providing funds to combat gendered and other discrimination in access to land.<sup>70</sup>
6. Recognize and respect collective and customary rights,<sup>71</sup> in collaboration with traditional authorities and indigenous communities, but paying particular attention to ensuring gender equality. Efforts should: ensure these tenure systems progressively reflect international human rights standards, including those related to gender equality and social inclusion;<sup>72</sup> protect communities<sup>73</sup> and individual women and men within communities; be consultative and inclusive;<sup>74</sup> ensure that all justice mechanisms, including religious and customary mechanisms, recognize and protect gender-equitable and socially inclusive rights to land and productive resources;<sup>75</sup> and provide information, legal literacy, and legal aid to enable equitable land rights claims and enforcement.
7. Implement previous guidance from this Committee on private sector activity affecting land governance and tenure, including gendered impacts,<sup>76</sup> including: meet extraterritorial human rights obligations on land;<sup>77</sup> protect land and water rights and prevent land and food speculation in engagement with international financial markets and trade agreements<sup>78</sup>; recognize special risks to women human rights defenders;<sup>79</sup> and employ free, prior and informed consent (FPIC) standards to protect land users, communities, and indigenous groups in the context of concessions and expropriation.<sup>80</sup>
8. Recognize the crucial contribution of women's land rights to climate action. Develop and implement climate, development, and disaster risk reduction policy and action that realizes gender equality and ecological sustainability principles (particularly agroecology). Adopt a "do no harm" approach so climate action does not undermine land-related human rights. Address gendered impacts of climate change and related

disasters on land tenure, and take socially inclusive approaches to policy and strategy development, including increasing women's participation and leadership at all levels.

<sup>1</sup> UN Human Rights Council, Report of the Special Rapporteur on the Right to Food, Olivier De Schutter: Interim Report, Aug. 11, 2010, A/65/281, para. 24.

<sup>2</sup> Committee on Economic, Social and Cultural Rights, general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, para. 28. See also, general comment No. 7 on the right to adequate housing: forced evictions, para. 10.

<sup>3</sup> Article 25 of the Universal Declaration of Human Rights; Art. 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

<sup>4</sup> ICESCR Article 2. See also Convention on the Elimination of All Forms of Discrimination against Women, December 18, 1979, A/RES/34/180; CEDAW, Article 5(a): 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. See also, General recommendation No. 28 (47<sup>th</sup> sess., 2010); The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 31 (“States parties have an obligation to take steps to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”); and see generally GIESCR et al, ‘The International Covenant on Economic, Social, and Cultural Rights at 50: The Significance from a Women’s Rights Perspective,’ available at: <http://globalinitiative-escr.org/wp-content/uploads/2016/10/ICESCR-and-Womens-ESC-Rights-FINAL.pdf>

<sup>5</sup> CESCR, General Comment No. 4 (1991) on the Right to Adequate Housing, at paras. 8(a) and (e); CESCR, General Comment No. 7 (1997) on Forced Evictions, at paras. 2, 3, 7, 9, 15 and 16; CESCR, General Comment No. 12 (1999) on the Right to Adequate Food, UN Doc. E/C.12/1999/5, at paras. 12, 13 and 26; CESCR, General Comment No. 14 (2000) on the Right to the Highest Attainable Standard of Health, UN Doc. E/C.12/2000/4, at para. 27; CESCR, General Comment No. 15 (2002) on the Right to Water, UN Doc. E/C.12/2002/11, at paras. 16(c)-(d); CESCR, General Comment No. 16 (2005) on the Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights, UN Doc. E/C.12/2005/4, at para. 28; CESCR, General Comment No. 21 (2009) on the Right of Everyone to Take Part in Cultural Life, UN Doc. E/C.12/GC/21, at paras. 3, 15(b), 36, 49(d), and 50(c); and CESCR, General Comment No. 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, UN Doc. E/C.12/GC/24, at para. 8.

<sup>6</sup> The 2018 United Nations Declaration on the Rights of Peasants and other people working in rural areas includes numerous specific references to land tenure, gender equality in access to land and resources, and the rights of indigenous peoples and customary communities U.N. G.A., U.N. Declaration on the Rights of Peasants and Other People Working in Rural Areas, U.N. Doc. A/C.3/73/L.30, (Oct. 30, 2018), at Art. 7(3), Art. 17(3), Art. 4(1-2), Art. 2(3); the CESCR Committee’s work dovetails with the standard set by the Committee for the Elimination of Discrimination Against Women (CEDAW), explicitly declaring “Rural women’s rights to land and natural resources to be fundamental human rights” (CEDAW General Recommendation No. 34, at para 56).

Human rights bodies have also issued survey reports on the right to land, including the Office of the High Commissioner for Human Rights (see HR/Pub/13/04 and HR/PUB/15/5/Add.1, and E/2014/86), and UN Women, on women’s rights to land and natural resources (HR/Pub/13/04). These standards join longer-standing human rights law implicating land: the United Nations Declaration on the Rights of Indigenous Peoples, the International Labor Organization’s Convention No. 169, and the Convention on the Elimination of all forms of Discrimination Against Women, which in addition to specific reference to women’s equal rights to land (Art 14) has issued a host of Concluding Observations relevant to women’s land, housing, and property rights. These hard law developments in international law are complemented and bolstered by a host of soft-law guidance on land at international and regional levels, including the Voluntary Guidelines on the Governance of Tenure (VGGT); the United Nations Guiding Principles on Business and Human Rights, the New Urban Agenda, and the African Union’s Framework and Guidelines on Land Policy in Africa, and a host of decisions on land rights from regional human rights courts; see e.g., Minority Rights, “Legal cases: Land Rights,” available at: <https://minorityrights.org/our-work/law-legal-cases-introduction/land-rights/>.

<sup>7</sup> Globally, 108 million people in 2016 were reported to be facing food insecurity or worse, representing a drastic increase compared to 2015 when the figure was almost 80 million. Food Security Information Network, World Food Programme, Global Report on Food Crisis 2017, March 2017, Executive Summary, p. 4, available at [http://documents.wfp.org/stellent/groups/public/documents/ena/wfp291270.pdf?\\_ga=2.22311163.1918544708.1507831311-877180677.1507831311](http://documents.wfp.org/stellent/groups/public/documents/ena/wfp291270.pdf?_ga=2.22311163.1918544708.1507831311-877180677.1507831311).

<sup>8</sup> World Bank, Agriculture and Rural Development, available at <http://data.worldbank.org/topic/agriculture-and-rural-development>. (accessed January 15, 2017).

<sup>9</sup> R. Prosterman, R. Mitchell and T. Hanstad, One Billion Rising (2009); M.R. El Ghonemy, G. Tyler and Y. Couvreur, Alleviating Rural Poverty through Agricultural Growth, 29 Journal of Development Studies, 358-364 (1993). A study on the relationship between land access and poverty in 21 developing countries found that land concentration and a corresponding lack of land access explained 69% of the variation in poverty levels.

<sup>10</sup> **Terms** used have been developed internally by Landesa, and while in accord with definitions in use by many entities and practitioners, are not universal or official.

**Gender Equitable:** The end-state goal for an intervention that seeks to contribute to gender equality. Intervention results will reflect: 1) accommodations for gendered differences in ability and capacity that result

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from social and cultural norms and roles as well as differences based on biological sex; 2) the engagement of men and boys as allies and champions for gender equality; and 3) the provision of additional resources, benefits, and supports for women and girls as needed to ensure that results are achieved as equitably as possible.

***Socially Inclusive:*** A socially inclusive approach seeks to benefit the most marginalized groups equitably, in line with the 2030 Agenda's commitment to "leave no one behind." Social inclusion requires acknowledging and then applying an intersectional approach. The concept of intersectionality calls for the recognition that not all people who are members of a vulnerable group will experience discrimination in the same way or to the same degree, and that membership in more than one group may compound individual disadvantages. Race and ethnicity, gender, status or class, and other social markers combine to determine an individual's experience of their place in a community, including any experience of marginalization or vulnerability. None of these social markers should be understood or addressed in a vacuum.

***Gender Transformative:*** The intended effect of an intervention. Power dynamics and hierarchies based on gender, as well as social and cultural norms, are deeply entrenched and require concerted and strategic engagement and effort in order to achieve gender equitable outcomes. Interventions and the activities that comprise them should aim not just to account for but to transform gender inequality in specific and concrete ways. Intervention goals should reflect this analysis, and activities should integrate mechanisms for transformational effects.

***Gender Responsive:*** In order to contribute to transformational effects, activities should reflect analysis of specific ways gender inequality manifests in a given context, and integrate specific tactics to bring light to, counterbalance, and provide alternative social structures and modes of behavior that facilitate gender equitable outcomes.

***Gender Sensitive:*** Analysis conducted to facilitate intervention and activity design, and at strategic junctures during implementation, is thorough and context specific; gendered norms are identified, and analysis includes an examination of how gendered norms function and their effects from an intersectional perspective (in addition to gender, other aspects of identity and discrimination are accounted for, including: age, marital status, ethnicity, religion, socioeconomic status).

In short, ***gender sensitive*** analysis allows for ***gender responsive*** activities and interventions that take a ***gender transformative*** approach, leading to ***gender equitable*** outcomes.

<sup>11</sup>CEDAW, General Recommendation No. 34 on the rights of rural women (2016), UN Doc. CEDAW/C/GC/34.

"Globally, and with few exceptions, on every gender and development indicator for which data are available, rural women fare worse than rural men and urban women and rural women disproportionately experience poverty and exclusion. They face systemic discrimination in accessing land and natural resources. They carry most of the unpaid work burden due to stereotyped gender roles, intra-household inequality, and lack of infrastructure and services, including with respect to food production and care work." Id. at para. 5.

<sup>12</sup> "Women working in rural areas, including peasant, pastoralists, migrants, fisherfolk and landless, also suffer disproportionately from intersecting forms of discrimination." Id at para. 14. See also Id at para. 15 for guidance for States Parties with regard to intersectional discrimination related to gender.

<sup>13</sup> CEDAW Art 5(a). "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..."

<sup>14</sup> See UN Habitat, New Urban Agenda (2017), UN Doc A/RES/71/256, at paras 35, 49, 72, 95, 96, 107, available at: <http://habitat3.org/wp-content/uploads/NUA-English.pdf>

<sup>15</sup> See The United Nations Working Group on the issue of discrimination against women in law and practice's position paper on women's land rights, recognizing the centrality of women's land rights for sustainable development. OHCHR, <http://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WGWomenIndex.aspx>

<sup>16</sup> Landesa, The Law of the Land: Women's Rights to Land, 2016, infographic available at <https://www.landesa.org/resources/property-not-poverty/>

<sup>17</sup> CEDAW General Recommendation No. 34 on the Rights of Rural Women contains comprehensive language on women's rights to land and productive resources under Art. 14 of the Convention on the Elimination of all Forms of Discrimination against Women (UN Doc. CEDAW/C/GC/34, 2016), as well as the position paper of the UN Working Group on the issue of discrimination against women in law and in practice on 'Insecure land rights for women threaten progress on gender equality and sustainable development,' 1 July 2017. See also: Food and Agriculture Organization of the United Nations (FAO), 'Gender and Land Rights: Understanding Complexities, Adjusting Policies,' Economic and Social Perspectives Policy Brief 8, 2010.

<sup>18</sup> UN-Women/OHCHR, 'Realizing women's rights to land and other productive resources,' 2013.

<sup>19</sup> Establish women's right to own, use or otherwise control land on an equal basis with men, and to access necessary resources to do so, and women's equal inheritance rights, UN Committee on Economic, Social and Cultural Rights, General Comment 16, Article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights (UN Doc. E/C.12/2005/3, 2005); Recognize that the capacity of women to own property, including land, may not be restricted on the basis of marital status or any other discriminatory ground, UN Human Rights Committee, General Comment 28 on the Equality of Rights between Men and Women, Article 3 (UN Doc. CCPR/C/21/Rev.1/Add.10, 2000); prevent discrimination in access to food or resources for food, including by guaranteeing full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land, UN Committee on Economic, Social and Cultural Rights, General Comment 12, Right to adequate food (UN Doc. E/C.12/1999/5, 1999); and address the disproportionate and negative impact of extractive industries and large scale land acquisitions on women's land rights, CESCR General Comment No. 24 (2017) on State Obligations under the International Covenant on



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Economic, Social and Cultural Rights in the context of business activities, UN Doc. E/C.12/GC/24. “...among the groups that are often disproportionately affected by the adverse impact of business activities are women, children, [and] indigenous peoples, particularly in relation to the development, utilization or exploitation of lands and natural resources...” Id at para. 8. See also, CESCR Concluding Observations on Uganda, 2015; and Landesa, *What do we know about gender and large-scale land acquisitions?* (2016), hereinafter “Gender LSLA,” available at: <https://landportal.org/blog-post/2016/02/what-do-we-know-about-gender-and-large-scale-land-acquisitions>

<sup>20</sup> See CEDAW/C/GC/34 (supra note 12, 13) at para 14, 15 for guidance on gender and social inclusion and intersectionality. See also, Landesa (2018), *Responsible Investments in Property and Land: Vulnerable Groups Primer*, at 4, available at:

[http://ripl.stage.s3.amazonaws.com/uploads/primer\\_link/file/25/RIPL\\_Vulnerable\\_Groups\\_Primer\\_-\\_Final.pdf](http://ripl.stage.s3.amazonaws.com/uploads/primer_link/file/25/RIPL_Vulnerable_Groups_Primer_-_Final.pdf)

<sup>21</sup> The UN Working Group on the Issue of Discrimination Against Women in Law and in Practice (WG DAW), informed by input from Landesa, defined elements of a gender-responsive legal framework in its position paper on women’s land rights (see supra note 7).

<sup>22</sup> FAO (2012). *Voluntary Guidance on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security (VGGT)*, available at: <http://www.fao.org/3/a-i2801e.pdf>

<sup>23</sup> The VGGT explicitly reference fulfilling human rights obligations and standards: VGGT 9.3, 12.4, 12.6, 12.8 16.7, 16.9, and encourage States to reference human rights instruments and guidance regularly (VGGT preface at vi).

<sup>24</sup> “Only 24.3 per cent of all national parliamentarians were women as of February 2019...” UN Women, *Facts and Figures*, available at: <https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures>

<sup>25</sup> See e.g., UNFCCC (2019). ‘Gender Equality on the Rise at UN Climate Meetings,’ noting that despite marked progress under the UNFCCC’s Gender Action Plan, the number of women leading national delegations is less than 30%. <https://unfccc.int/news/gender-equality-on-the-rise-at-un-climate-meetings>; see also, Elizabeth Daley, et al. (2013). *Women’s Land Rights and Gender Justice in Land Governance: pillars in the promotion and protection of women’s human rights in rural areas*, International Land Coalition, at 10, hereinafter ILC, available at:

<https://www.ohchr.org/Documents/HRBodies/CEDAW/RuralWomen/InternationalLandCoalition.pdf>; and Landesa (2012). *Women’s Secure Rights to Land: Benefits, Barriers, and Best Practices*. Available at: <https://www.landesa.org/wp-content/uploads/Landesa-Women-and-Land-Issue-Brief.pdf>

<sup>26</sup> Women Deliver, ‘Strengthen Women’s Political Participation and Decision-Making Power,’

<https://womendeliver.org/investment/strengthen-womens-political-participation-decision-making-power/>

<sup>27</sup> VGGT 6.1 – 6.9.

<sup>28</sup> Department for International Development (DFID) UK, “Strengthening Land Governance: Lessons from Implementing the Voluntary Guidelines,” 2016, at 61, available at:

<https://landportal.org/sites/landportal.info/files/Strengthening%20Land%20Governance.pdf>

<sup>29</sup> UN-Women/OHCHR, ‘Realizing women’s rights to land and other productive resources,’ 2013, p. 3.

<sup>30</sup> The VGGT addresses redistribution, expropriation, and compensation (see generally VGGT §§15, 16), which can be interpreted alongside provisions on public interest (4.3, 16.7) and in line with the overall goals of the VGGT. The UN Research Institute for Social Development (UNRISD) in 2010 urged States to “refocus on land reform” to address wealth and income inequality: “In countries with a high degree of inequality in land ownership—and concomitant high landlessness—well-implemented redistributive land reforms can yield gains in terms of reduced poverty and inequality as well as increased output.” Any reforms taken should also increase women’s access to land and productive resources. UNRISD (2010). *Combating Poverty and Inequality*, at 78, 128, available at:

[http://www.unrisd.org/80256B3C005BCCF9/\(httpAuxPages\)/92B1D5057F43149CC125779600434441/\\$file/PovertyRep%20\(small\).pdf](http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/92B1D5057F43149CC125779600434441/$file/PovertyRep%20(small).pdf)

<sup>31</sup> CEDAW General Recommendation No. 37 on Gender-related dimensions of disaster risk reduction in the context of climate change (UN Doc. CEDAW/C/GC/37, 2018).

<sup>32</sup> Landesa (2016). *Women Gaining Ground: Securing Land Rights as a Critical Pillar of Climate Change Strategy*. Available at: [https://s24756.pcdn.co/wp-content/uploads/LCWLR\\_WomenGainingGround.pdf](https://s24756.pcdn.co/wp-content/uploads/LCWLR_WomenGainingGround.pdf)

<sup>33</sup> Zoe Sullivan (2019). *The Real Reason the Amazon is on Fire*, Time, available at:

<https://time.com/5661162/why-the-amazon-is-on-fire/>

<sup>34</sup> See IPCC (2019). *Climate Change and Land: Summary for Policymakers*, at pgs. 31-33:

[https://www.ipcc.ch/site/assets/uploads/2019/08/4.-SPM\\_Approved\\_Microsite\\_FINAL.pdf](https://www.ipcc.ch/site/assets/uploads/2019/08/4.-SPM_Approved_Microsite_FINAL.pdf); This Committee also recently joined 4 other treaty-monitoring bodies in a recent statement on climate change:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E>; and this

Committee has also separately recognized the links between Covenant rights and climate change:

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23691&LangID=E>;

<sup>35</sup> UN News (2019). *Delhi Declaration: Countries agree to make ‘land degradation neutrality’ by 2030 a national target for action*, <https://news.un.org/en/story/2019/09/1046332>; see also UNCCD (2019), *Land Degradation, Poverty, and Inequality*, available at: [https://www.unccd.int/sites/default/files/relevant-links/2019-09/UNCCD%20-%20Poverty%20briefing%20note%20%28hi-res%29%20%281%29\\_o.pdf](https://www.unccd.int/sites/default/files/relevant-links/2019-09/UNCCD%20-%20Poverty%20briefing%20note%20%28hi-res%29%20%281%29_o.pdf)

<sup>36</sup> See Tzili Mor, U.N. Women, *Towards a Gender-Responsive Implementation of the United Nations Convention to Combat Desertification*, at 5,(2018).

<sup>37</sup> UNDP (2017), *Role of National Human Rights Institutions in Implementing the 2030 Sustainable Development Agenda and the Sustainable Development Goals*,

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[https://www.eurasia.undp.org/content/rbec/en/home/library/democratic\\_governance/Role-of-National-Human-Rights-Institutions-in-implementing-the-2030-Sustainable-Development-Agenda-and-the-Sustainable-Development-Goals.html](https://www.eurasia.undp.org/content/rbec/en/home/library/democratic_governance/Role-of-National-Human-Rights-Institutions-in-implementing-the-2030-Sustainable-Development-Agenda-and-the-Sustainable-Development-Goals.html).

<sup>38</sup> This can be conceptualized by analyzing land within key cross-cutting issues from the Addis Ababa Agenda on Financing for Development (the SDGs financial implementing agreement. The Third International Conference on Financing for Development, U.N. Dep't of Econ. and Soc. Aff., Addis Ababa Action Agenda.

<sup>39</sup> UNDP, Institutional and Coordination Mechanisms: Guidance Note on Facilitating Integration and Coherence for SDG Implementation, at 17, (2017). [hereinafter "UNDP Guidance Note,"] See also UNDP, Gender Equality as an Accelerator for Achieving the SDGs, (2019); Mor., *infra* note 40; Roy Prosterman, Enhancing Poor Rural Women's Land Rights in the Developing World, Vol. 67 No. 1, J. of Int'l Aff., 147, (2013); and Elizabeth Stuart et al., Leaving no one behind: A Critical Path for the First 1,000 days of the Sustainable Development Goals, ODI, at 8, 43, (2016). (There is clear alignment between the leave no one behind agenda and what marginalised people say they want from their governments: better services such as universal health coverage and rural electrification; greater public awareness, such as creating environments where all girls are expected to go to school; and institutional and legal reform, including the extension of a minimum wage to informal workers, or the introduction of women's land rights.)

<sup>40</sup> Comm. on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 34 on the Rights of Rural Women (2016), U.N. Doc. CEDAW/C/GC/34, para. 5 (Globally, and with few exceptions, on every gender and development indicator for which data are available, rural women fare worse than rural men and urban women and rural women disproportionately experience poverty and exclusion. They face systemic discrimination in accessing land and natural resources. They carry most of the unpaid work burden due to stereotyped gender roles, intra-household inequality, and lack of infrastructure and services, including with respect to food production and care work.) See also, U.N.HABITAT Fact Sheet: Women Watch, Gender Equality and Sustainable Urbanisation.

<sup>41</sup> Target 2:3: By 2030, double the agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment, and Target 2.4: By 2030, ensure sustainable food production systems and implement resilient agricultural practices that increase productivity and production, that help maintain ecosystems, that strengthen capacity for adaptation to climate change, extreme weather, drought, flooding and other disasters and that progressively improve land and soil quality, and Indicator 2.4.1: Proportion of agricultural area under productive and sustainable agriculture.

<sup>42</sup> Landesa, *Why Women's Land Rights Matter for the Future of People and Planet*, (2019).

<sup>43</sup> U.S. Agency for Int'l Dev. (USAID), Fact Sheet: Land Tenure and Food Security, (2016).

<sup>44</sup> Target 11.1 addresses urban tenure: (By 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums;" and Indicators 11.1.1 and 11.3.1 respectively address the "Proportion of urban population living in slums, informal settlements or inadequate housing" and the "Ratio of land consumption rate to population growth rate.)

<sup>45</sup> Beth Roberts, *Securing Rural Land Rights to Achieve Sustainable Cities*, Thomson Reuters Founda. Place, (last updated Oct. 17, 2016).

<sup>46</sup> Tzili Mor, U.N. Women, *Towards a Gender-Responsive Implementation of the United Nations Convention to Combat Desertification*, at 5,(2018). [hereinafter "Mor,"]. See also, U. N. Convention to Combat Desertification (UNCCD), Land and Climate Change, (Nov. 16, 2015).

<sup>47</sup> Target 15.1: By 2020, ensure the conservation, restoration and sustainable use of terrestrial and inland freshwater ecosystems and their services, in particular forests, wetlands, mountains and drylands, in line with obligations under international agreements, and Indicator 15.1.1: Forest area as a proportion of total land area; and Target 15.3: By 2030, combat desertification, restore degraded land and soil, including land affected by desertification, drought and floods, and strive to achieve a land degradation-neutral world, and Indicator 15.3.1: Proportion of land that is degraded over total land area.

<sup>48</sup> Mor., at 5, *supra*. note 53.

<sup>49</sup> See generally Mor. See also CEDAW Committee, General Recommendation No. 37 on Gender-related Dimensions of Disaster Risk Reduction in the Context of Climate Change, (2018), U.N. Doc. CEDAW/C/GC/37; and *5 Ways Climate Change is a Women's Rights Issue*, Int'l Women's Dev. Agency, (2017).

<sup>50</sup> See e.g., Catherine Benson Wahlen, UNFF Note Highlights Linkages Among Forests, SDGs 4, 8, 10, 13, 16, (2019).

<sup>51</sup> Liu Zhenmin, *Ending Poverty is Possible, but it means Facing up to Inequality—within & Between Countries*, Inter Press Serv. News Agency, (Jan. 28, 2019), <http://www.ipsnews.net/2019/01/ending-poverty-possible-means-facing-inequality-within-countries/>.

<sup>52</sup> Tiernan Mennen, *Know Your SDGs: Land Matters for Sustainable Development*, Chemonics: Env't and Nat. Resources/ Env'tl. Mgmt./ Land Tenure and Resource Governance, (Sept. 2, 2015).

<sup>53</sup> UN Committee on Economic, Social and Cultural Rights, General Comment 12, Right to adequate food (UN Doc. E/C.12/1999/5, 1999).

<sup>54</sup> UN Human Rights Committee, 'General Comment 28 on the Equality of Rights between Men and Women, Article 3,' adopted 29 Mar. 2000, UN Doc. CCPR/C/21/Rev.1/Add.10.

<sup>55</sup> UN Committee on Economic, Social and Cultural Rights, General Comment 16, Article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights (Thirty- fourth session, 2005), U.N. Doc. E/C.12/2005/3 (2005).

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- <sup>56</sup> General Comment No. 12: The right to adequate food (Art. 11), 26
- <sup>57</sup> General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the ICESCR). II(C)(27)
- <sup>58</sup> General Comment No. 7: The right to adequate housing (art. 11(1) of the Covenant): Forced evictions, para. 10
- <sup>59</sup> Ibid.
- <sup>60</sup> Ibid. See also CESCR Concluding Observations on Morocco, 2000; Senegal, 2001; Madagascar, 2009; Yemen, 2011; Egypt, 2013; Nepal, 2014; Kenya 2016.
- <sup>61</sup> See CESCR Concluding Observations on Senegal, 2001.
- <sup>62</sup> Rights and Resources Initiative (RRI), Who Owns the World's Land? A global baseline of formally recognized indigenous and community land rights, September 2015, at 1, available at [http://www.rightsandresources.org/wp-content/uploads/GlobalBaseline\\_web.pdf](http://www.rightsandresources.org/wp-content/uploads/GlobalBaseline_web.pdf).
- <sup>63</sup> Id.
- <sup>64</sup> Roy Prosterman, "Enhancing Poor Rural Women's Land Rights in the Developing World," *Journal of International Affairs*, Fall/Winter 2013, Vol. 67, No. 1., at pg. 156, available at <http://www.landesa.org/wp-content/uploads/Enhancing-Poor-Rural-Womens-Land-Rights-in-the-Developing-World-Roy-Prosterman.pdf>.
- <sup>65</sup> SR Right to Food at para. 22. "...there is a high risk that traditional, patriarchal forms of land distribution will be further legitimized through the recognition of customary forms of tenure, in violation of women's rights. Such risks should be addressed through the inclusion of strict safeguards in the process of such recognition."
- <sup>66</sup> Here, States Parties, civil society, and development partners can take lessons learned and good practices from the public health sector. See e.g., Beniamino Cislighi, Lori Heise (2018). Using social norms theory for health promotion in low-income countries, available at: <https://academic.oup.com/heapro/article/34/3/616/4951539>; see also the work of civil society organizations like Tostan (<https://www.tostan.org>), which has successfully shifted norms on female genital cutting, or Raising Voices (<http://raisingvoices.org>), which uses social and behavior change approaches to counter violence against women.
- <sup>67</sup> UN-Women/OHCHR, 'Realizing women's rights to land and other productive resources,' 2013.
- <sup>68</sup> Id.
- <sup>69</sup> Id.
- <sup>70</sup> See CESCR Concluding Observations on Bolivia, 2008; Cameroon, 2012. See also Committee on the Elimination of Discrimination against Women, general recommendation No. 21 (1994) on the rights of rural women, para. 78.
- <sup>71</sup> VGGT 5.3, 5.6, 9.6
- <sup>72</sup> See Committee on the Elimination of Discrimination against Women, general recommendation No. 21 (1994) on the rights of rural women, para. 58; and CESCR Concluding Observations on Kenya, 2016.
- <sup>73</sup> Good Practices at 5.
- <sup>74</sup> VGGT 4.6, 7.3. See also CESCR Concluding Observations on Equatorial Guinea, 2012; Kenya 2016.
- <sup>75</sup> UN-Women/OHCHR, 'Realizing women's rights to land and other productive resources,' 2013.
- <sup>76</sup> See CESCR, General Comment No. 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, UN Doc. E/C.12/GC/24; United Nations Guiding Principles on Business and Human Rights, (2011) UN Doc. HR/PUB/11/04, at pg. 5 [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)
- <sup>77</sup> Including compliance with the UN Binding Treaty for Transnational Corporations on Human Rights and Other Business Enterprises with respect to Human Rights.
- <sup>78</sup> Report of the Expert Group Meeting on the CSW 62 Priority Theme: Challenges and Opportunities in Achieving Gender Equality and the Empowerment of Rural Women and Girls, [https://www.womenforwater.org/uploads/7/7/5/1/77516286/report\\_expert\\_group\\_challenges\\_and\\_opportunities\\_in\\_achieving\\_gender\\_equality\\_and\\_the\\_empowerment\\_of\\_rural\\_women\\_and\\_girls\\_un\\_women\\_and\\_if\\_ad\\_sept\\_2017.pdf](https://www.womenforwater.org/uploads/7/7/5/1/77516286/report_expert_group_challenges_and_opportunities_in_achieving_gender_equality_and_the_empowerment_of_rural_women_and_girls_un_women_and_if_ad_sept_2017.pdf).
- <sup>79</sup> See United Nations OHCHR brief on Women Human Rights Defenders, 2014, available at: <https://www.ohchr.org/Documents/Events/WHRD/OnePagerWHRD.pdf> "Women's human rights defenders face all of the challenges generally experienced by human rights defenders [including] threats, death threats, killings, arrests, detentions, judicial harassment, threat of criminal prosecution and other forms of criminalisation, threats of committal to psychiatric hospitals and eviction, threats of violence against family members, stigmatization, [home] break-ins..., rape and other forms of sexual violence. However, female defenders require particular attention as they are under different pressures from those confronted by men and often face gender-specific threats and violence more than their male counterparts, such as rape and sexual violence."
- <sup>80</sup> VGGT 16.2. See also, FAO (2014), Respecting Free, Prior and Informed Consent, <http://www.fao.org/3/a-i3496e.pdf>; Landesa (2018), Responsible Investments in Property and Land: Free Prior and Informed Consent Primer, [http://ripl.stage.s3.amazonaws.com/uploads/primer\\_link/file/21/RIPL\\_FPIC\\_Primer\\_-\\_Final.pdf](http://ripl.stage.s3.amazonaws.com/uploads/primer_link/file/21/RIPL_FPIC_Primer_-_Final.pdf); and CESCR Concluding Observations on Uganda, 2015.