

**Written Submission to the General Discussion on Rural Women,
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Women**

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Special Theme: the Land Rights of Rural Women

**Written Statement
Asia Indigenous Peoples' Pact Foundation
Nepal Indigenous Women's Federation
Forest Peoples Programme**

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Introduction

1. We welcome the opportunity to provide written input into the important discussions being undertaken by the Committee on the Elimination of Discrimination Against Women (CEDAW) to develop a possible General Recommendation on Rural Women. We take this opportunity to raise the issues related to the human rights of indigenous peoples, a specific category of rights-holders who are predominantly found living in rural and remote areas and with unique and specific relationships with their lands and resources.
2. We are drawing on the experiences of indigenous women in Asia and will be making reference to reports submitted into CEDAW by indigenous women in Nepal. Indigenous peoples in Asia are gaining increasing recognition of their status as indigenous peoples, but many continue to face a lack of recognition by their own governments and others. In this statement, we are referring to peoples who may be known by other terms in their own countries, as 'ethnic minorities', 'hill tribes', or 'adivasi'. Our reference is inclusive of all peoples who choose to self-define as 'indigenous', regardless of national government terminology.
3. We will address two closely related themes that have been raised by indigenous women before. The first theme is the effect of multiple forms of discrimination, where discrimination against a person or group of persons on the basis of their gender intersects with discrimination against a people on the basis of their ethnicity or status as indigenous peoples and also, in some cases, discrimination on economic grounds against those living at the margins of the mainstream economic system. The second theme is the nature and extent of the impacts felt from violations of land and resource rights. The central importance of land and resource rights to the survival and wellbeing of indigenous peoples cannot be overstated. These rights are specifically important to the wellbeing of the women and girls of these communities and peoples.
4. Human rights are universal, indivisible, inter-related and interdependent. To address one set of human rights through one instrument requires reference to and understanding of the other core international human rights instruments. This is particularly critical where multiple forms of discrimination are present. In the context of indigenous women, investigations of human rights violations must take into consideration the basic human rights of women and also the collective rights of indigenous peoples. A key document is the UN Declaration on the Rights of Indigenous Peoples, which provides the international legal context for such a multi-dimensional approach.¹ Further relevant international human rights documents include the Convention on the Elimination of All Forms of Racial Discrimination.

¹ Article 22 (2), UN Declaration on the Rights of Indigenous Peoples, September 2007

Multiple forms of discrimination

5. The impact of multiple forms of discrimination has been recognized by the CEDAW Committee on many occasions. The Committee has highlighted instances in which indigenous women experience multiple forms of discrimination or inter-sectoral discrimination and has recommended specific remedies for these instances.² The severity of multiple forms of discrimination has also been recognised by the United Nations' Secretary-General in his human rights review issued on the occasion of the World Conference against Racism, Xenophobia and Intolerance, noting that indigenous women face multiple forms of discrimination because of the "nexus between gender, race, colour or ethnicity and other axes of subordination".³
6. The Secretary-General explained that "[g]ender-based discrimination intersects with discriminations based on other forms of 'otherness', such as race, ethnicity, religion and economic status, thus forcing the majority of the world's women into situations of double or triple marginalisation. The combined effects of racism and gender discrimination on migrant, immigrant, indigenous, minority and marginalised women, in particular, around the world has had devastating consequences for their full enjoyment of equality and fundamental human rights in both the public and private spheres. Because discrimination based on ethnicity, race, religion, etc. is imbedded in State and social structures, such discrimination decreases the rights and remedies available to women and increases women's vulnerability to violence and abuse."⁴
7. Multi-fold discrimination has also been highlighted by various human rights bodies, which have referred to the need to ensure that gender-based discrimination is addressed in efforts to end forms of ethnically-based discrimination. The Committee on the Elimination of Racial Discrimination (CERD) adopted *General Recommendation No. XXV on Gender Related Dimensions of Racial Discrimination* explaining "racial

² See among others the Concluding Observations adopted by the Committee on: Guatemala CEDAW/C/GUA/CO/7, 10 February 2009, paragraph 41; Guatemala CEDAW/C/GUA/CO/6, 2 June 2006, par 35-36; Japan CEDAW/C/JPN/CO/6, 7 August 2009, paragraph 51; Mexico CEDAW/C/MEX/CO/6, 25 August 2006, paragraph 36; Nicaragua CEDAW/C/NIC/CO/6, 2 February 2007, paragraphs 31–32; Paraguay CEDAW/C/PAR/CC/3-5, 15 February 2005, paragraph 36; Peru CEDAW/C/PER/CO/6, 2 February 2007, paragraph 36; Australia CEDAW/C/AUL/CO/7, 30 July 2010, paragraph 36; Belize CEDAW/C/BLZ/CO/4, 10 August 2007, paragraph 15.

³ Review of Reports, Studies and Other Documentation for the Preparatory Committee and the World Conference, Note by the Secretary-General, World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, A/CONF.189/PC.3/5 27 July 2001, at paragraph 8.

⁴ Review of Reports, Studies and Other Documentation for the Preparatory Committee and the World Conference, Note by the Secretary-General, World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, A/CONF.189/PC.3/5 27 July 2001, at paragraph 2.

discrimination does not always affect women and men equally or in the same way. There are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men”.⁵ The Committee on Economic, Social and Cultural Rights (CESCR) emphasised that: “[s]ome individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example women belonging to an ethnic or religious minority. Such *cumulative discrimination* has a unique and specific impact on individuals and merits particular consideration and remedying”⁶. Very recently also, Rashida Manjoo, the Special Rapporteur on Violence against Women, its Causes and Consequences, submitted a report addressing multiple discrimination faced by women and stated that “[t]he United Nations system and the United Nations human rights mechanisms should also strive to adopt a holistic approach to violence against women and multiple forms of discrimination”.⁷

8. The importance of recognizing and accounting for the different circumstances faced by peoples or groups suffering from multiple forms of discrimination becomes particularly important in the case of applying Article 14 of the Convention. Article 14 deals with the specific situations and rights of women living in rural areas, and highlights particular rights that need to be carefully considered and protected, including the right to participate in agrarian reform and land resettlement schemes,⁸ to education and training programmes,⁹ to participate in development planning,¹⁰ to participate in community life,¹¹ to access health services¹² and more. All these rights are also referred to and protected in the UN Declaration on the Rights of Indigenous Peoples in the context of the collective rights of indigenous peoples. Effective protection against the multiple forms of discrimination that indigenous women face requires application of multiple forms of law designed to protect them.

⁵ Committee on the Elimination of Racial Discrimination, General Recommendation No. 25: Gender related dimensions of racial discrimination: 1391st meeting, 20 March 2000, in document A/55/18, annex V, paragraph 1.

⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), E/C.12/GC/20, 10 June 2009, paragraph 17. See also paragraph 27.

⁷ Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/17/26, 2 May 2011, paragraph 108.

⁸ Article 14(g) “(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*”, CEDAW (emphasis added).

⁹ Article 14(d) “To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency”, CEDAW

¹⁰ Article 14(a), “To participate in the elaboration and implementation of development planning at all levels”, CEDAW

¹¹ Article 14(f), “To participate in all community activities”, CEDAW

¹² Article 14 (b), “To have access to adequate health care facilities, including information, counseling and services in family planning”, CEDAW

9. There are many ways in which the application of the UN Declaration on the Rights of Indigenous Peoples and the application of Article 14 of CEDAW address similar issues and can be complementary. To highlight one, Article 14 recognizes the right of rural women to participate effectively in all levels of development planning, a right also provided for under Article 23 of the UN Declaration on the Rights of Indigenous Peoples wherein “Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development”.¹³ This example highlights the need for nuanced application of these two instruments to protect the collective decision-making referred to in Article 23 of the UN Declaration and the individual right of women to participate equally as protected in Article 14.

10. Where a nuanced approach is not taken, the application of one international instrument intended to protect human rights can undermine the human rights protected in another instrument. This is of particular importance in the area of land rights and land reform processes as highlighted by the Shadow Report on Nepal submitted by indigenous women’s organisations to the 49th Session of the Committee in 2011.¹⁴ This report specifically recommended that Nepal “ensure that current reforms of land access and land tenure are carefully designed to ensure that the rights of women to access and manage their resources and lands are not denied or restricted. This includes, where appropriate, recognition of the collective right of indigenous peoples to maintain their cultural ties to their lands and own and manage their own resources.”¹⁵.

Land acquisition and alienation

11. Forced removal of indigenous peoples from their lands and resources triggers the ‘urgent action/early warning’ procedure under the Committee on the Elimination of Racial Discrimination (CERD), a procedure designed to be used to avert the most egregious forms of racial discrimination.¹⁶ This highlights CERD’s view that the loss of lands and resources threatens the very survival of the affected people as a people – as a collective, culturally cohesive group. Such displacement entails physical, economic and social disruption. This points to a need to intervene very carefully when applying law to the situation of rural women when those women are members of indigenous peoples. Any recommendations or actions which may influence access to lands and resources

¹³ UN Declaration on the Rights of Indigenous Peoples, Article 23

¹⁴ THE RIGHTS OF INDIGENOUS WOMEN IN NEPAL: Shadow Report for the combined 4th and 5th Periodic Reports of Nepal CEDAW/c/NPL/4-5, Committee on the Elimination of Discrimination Against Women (CEDAW), 49th Session 11–29 July 2011, para 24.

¹⁵ This was also highlighted by the UN Special Rapporteur on Indigenous Peoples in his recommendation that land reforms should “incorporate a specific focus on the rights of the *Adivasi Janajati* over the lands, territories and natural resources they traditionally have inhabited or used, or otherwise possessed, either individually or collectively” Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Report on the situation of indigenous peoples in Nepal, (2009), A/HRC/12/34/Add.3, p. 22 *et seq.*, paragraph 90.

¹⁶ Revised Guidelines for the Early Warning Procedure, CERD, 2007

must be considered in light of the protections offered by ICERD and by the UN Declaration on the Rights of Indigenous Peoples.

12. For indigenous peoples, land is the material and spiritual basis that provides food, health security and cultural survival. In many indigenous communities women are the main food producers, knowledge holders, healers and keepers and transmitters of culture. When lands and access to traditionally-used resources are lost indigenous women can lose their traditional teaching roles and their abilities to use and maintain traditional knowledge. As traditional knowledge on the use of local resources is weakened, so is the ability of a community to respond to climate-driven changes in their environment. In Mindanao (Philippines), serious droughts have resulted in deaths as communities resort to eating wild foods that they have lost the knowledge to effectively process, and therefore they poison themselves. At the same time, other traditional foods that have fallen into disuse have proved essential sources of nutrients in times of drought and hardship, underlying again the importance of traditional knowledge to the survival of the people as well as to the role and status of women. All these impacts point to the “significant role that rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy” as noted under Article 14, and the specific ways in which these additional roles exist in indigenous communities. Protecting these roles means protecting and promoting traditional knowledge and its regeneration.
13. Changes in societies brought about by development also impact on indigenous women in specific ways. As societies increasingly engage in low wage labour, women can become economically more dependent on men, and vulnerable in the forms of labour available to them. In Kalimantan and Sulawesi (Indonesia) replacement of forests and agricultural land by oil palm plantations has adverse impacts on the indigenous communities, some felt disproportionately by women. The expertise of women in managing natural resources and supporting their families has been jeopardized by loss of access to traditional crops and they become poorer as their families become poorer. In the plantations they are paid lower wages than men. Women who travel for migrant labour are particularly vulnerable.

Exclusion from social services

1. Denial of permanent ownership of lands and resources, in places combined with a lack of recognition of basic political rights, results in denial of basic services in a manner that disproportionately impacts indigenous women and children. In countries where indigenous peoples are denied even citizenship access to social services is constrained

even further.¹⁷ Although this is an issue that faces all women living in rural areas, as recognized by Article 14, the barriers for indigenous women are specific and reflect multiple sources of discriminatory action.

2. Exclusion from social services is a form of what can be termed 'structural violence', where the structures of society have resulted in wide disparities of wealth and power, causing generational poverty, forced labour migration, bonded labour, human trafficking and other serious rights violations. Some instances of these are specific to indigenous women as in the examples of the *Kamaiya* (agricultural workers) and *Kamlari* (female domestic servants) in Nepal. These are both forms of enslavement in which servants are bound to specific individuals or families to pay off their debts incurred by them or by previous generations. In Nepal, this bonded labour is specifically tied to ethnic and cultural background – violence tied to indigenous status.¹⁸
3. Lack of social services is exacerbated by other factors: the remote locations of indigenous communities and lack of government access; security problems in these areas; and social discrimination. Social discrimination can include rejection by hospitals and inadequate treatment by health professionals.¹⁹ Loss of traditional healing systems due to loss of land and resources, limited national health budgets in many Asian countries and emerging social, economic and political changes in indigenous communities can adversely affect the health conditions of indigenous women.

Recommendations

1. A General Recommendation on the application of Article 14 should provide specific reference to the requirements of the Article in the specific cases of indigenous women and indigenous peoples. The following issues are among those that could be specifically referenced and highlighted by the Committee:
 - a. To address the specific situations faced by indigenous women, the collective rights of indigenous peoples must be recognized as part of protecting the individual rights of indigenous persons. Interpretation and application of human rights treaties concerned with individual rights, including CEDAW, should happen with reference to the UN Declaration on the Rights of Indigenous Peoples.

¹⁷ "When Citizenship is Denied to Indigenous Children: The Hill Tribes of Southeast Asia", November 12, 2004; <http://topics.developmentgateway.org/indigenous/highlights/viewHighlights>

¹⁸ *The Rights of Indigenous Women in Nepal: Shadow Report for the combined 4th and 5th Periodic Reports of Nepal*, CEDAW, 49th Session, 11–29 July 2011 (CEDAW/c/NPL/4-5): p. 27-28

¹⁹ AIPP Briefing Paper, *Situation of Indigenous Women's Reproductive Health and Rights in Asia*, 2012: 10

- b. Protecting the rights of indigenous women as rural women under Article 14 of CEDAW requires proactively seeking to simultaneously strengthen the collective rights of indigenous peoples as a means to support and empower women as members of indigenous peoples.
- c. Any land resettlement schemes, agrarian reforms or land and resource use and access recommended under the auspices of Article 14 must, in the case of indigenous women, protect the rights of indigenous peoples to secure access, management and use of their traditional territories, for both individual and collective tenure systems.
- d. The role of indigenous women in the transmission and maintenance of traditional knowledge and their roles in sustainable resource management should be recognized and respected along with their rights to their lands, environment, livelihoods and resources.
- e. The right to participate in development planning at all stages, as protected in Article 14, should also be applied to indigenous women in the context of the right of indigenous peoples to be consulted and to participate fully through chosen representatives and in a culturally appropriate manner. The full, informed and effective participation of indigenous women in consultation and decision-making processes should not be specific to development planning but should encompass any decision-making process that may impact on their lands and resources.