



The UN Mandate On Gender And Indigenous Land Ownership

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Abstract

This paper reviews the critical intersection of Tribal (Indigenous) women's property rights and the role of the United Nations (UN). It identifies a pervasive global challenge stemming from the conflict between discriminatory customary laws—which frequently deny women secure ownership and inheritance of land—and the universal principles of gender equality and human rights.

The analysis highlights that secure property rights are fundamentally linked to tribal women's economic autonomy, food security, and protection from violence. The UN plays a pivotal role in establishing the normative framework for reform, primarily through the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which mandates States to eliminate discrimination in rural women's land access (Article 14), and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which demands special attention to Indigenous women's rights within the context of collective land claims (Article 22).

The literature underscores the persistent implementation gap between international commitments and national practices, noting that legal pluralism often allows regressive customary laws to persist. Ultimately, the UN framework serves as a vital legal and moral support for advocates and judiciaries worldwide, driving the necessary legal reforms and policy harmonization required to ensure gender justice and tenure security for tribal women.

Keywords: Tribal/indigenous women, property rights, United Nations, Forest Rights Act, land tenure, gender equality.

1. Introduction

The question of property rights for Tribal (Indigenous) women stands at a crucial intersection of customary law, national legislation, and universal human rights principles. Globally, securing land and inheritance rights for women is recognized as a fundamental prerequisite for achieving gender equality, economic empowerment, and sustainable development. However, Indigenous and tribal women frequently face a dual vulnerability: they are marginalized by poverty and ethnic status, and they are systemically excluded from land ownership and inheritance by prevailing patriarchal customary laws within their own communities.

In many national contexts, tribal laws related to succession and property are different from the amended modernised common, gender-equitable civil statutes which allow discriminatory traditional practices such as inheritance exclusively through the male line. This exclusion is not merely a matter of economic injustice; it fundamentally undermines tribal women's autonomy, security, and physical safety, leaving them highly vulnerable to poverty and exploitation, especially in cases of widowhood or divorce. The resulting legal pluralism, where customary law overrides statutory protection, represents a severe challenge to the constitutional guarantees of equality provided by nation-states.

The United Nations (UN) has established the primary normative and monitoring framework for challenging this injustice. Key international instruments, notably the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), demand that member states ensure equality in property rights. CEDAW explicitly targets discrimination against rural and Indigenous women concerning land (Article 14), while UNDRIP links individual women's rights to the collective right of Indigenous peoples to their traditional territories, explicitly calling for attention to the special needs and rights of Indigenous women (Article 22). These instruments provide a powerful legal and moral leverage for advocates, judiciaries, and civil society organizations to push for reform and hold governments accountable.

This article examines the nature and extent of this legal conflict between international law, national law and prevailing customary law. By exploring the synergy and tensions between international mandates and domestic implementation, this research seeks to clarify how the principles of UN can be better operationalized to secure equitable and enforceable property rights for tribal women worldwide.

2. Literature Review and Conceptual Framing

Academic and policy literatures conceptualize land rights for indigenous women across several overlapping dimensions:

2.1 Realizing Women's Rights to Land and Other Productive Resources (Second Edition)

Land rights are essential for realizing human rights, equality, and sustainable development goals (SDGs) when it comes to the safety and security of women. This publication explicitly addresses women who are facing multiple forms of discrimination, including indigenous, peasant, and rural women. It provides how international human rights principles must be applied to customary and statutory laws. This is a primary UN product, directly translating human rights law (especially CEDAW and the ICESCR) into practical guidance for governments and NGOs, offering a roadmap for legal and policy implementation. (OHCHR And UN Women)

2.2 The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions

The UNDRIP provides the global framework to address historic injustices, including dispossession of lands, territories, and resources. Crucially, it highlights the need to ensure that indigenous people's rights are enjoyed without discrimination based on gender. It provides the authoritative interpretation of Article 22 (which mandates special attention to the rights of Indigenous women) and Articles 25-32 (on lands, territories, and resources). It frames tribal land claims as a collective right, within which women's individual rights must be secured. It is a tool for national-level advocacy and monitoring, guiding National Human Rights Institutions (NHRIs) which is a key UN mechanism to use UNDRIP to challenge discriminatory laws and customs affecting tribal women's land and inheritance rights.

2.3. Gender and Land Rights Revisited: Exploring New Prospects via the State, Family and Market

Agarwal's extensive work argues that secure, individually titled land rights for women are the single most critical factor for their empowerment, improving household food security, reducing violence, and enhancing bargaining power within the family and community. Though covering diverse communities, the analysis of customary law, land reform, and legislative gaps applies directly to tribal women. It examines how external factors (like government programs giving loans only to male heads of households) weaken women's traditional, customary rights. The work provides the socio-economic and evidence-based argument that underpins UN policy goals like the SDGs. It offers the academic justification for why the UN and international donors must prioritize land titling and inheritance reform for women. (Agarwal, B., 2003)

2.4. Women's Rights to Land and Property: The Challenge of Customary Law

It provides in-depth case studies (e.g., in Africa, Southeast Asia, and India) demonstrating how customary systems, while sometimes preserving land for the community, systematically exclude female heirs from inheritance and decision-making bodies. Authors in this genre use the CEDAW Committee's Concluding Observations (which frequently criticize State parties for allowing discriminatory customary laws to persist) and emphasizes to call for legal harmonization and the codification of customs to ensure justice to all. (UN, DESA)

2.5. State of the World's Indigenous Peoples, Volume V: Rights to Lands, Territories and Resources

While focusing on collective rights, it inherently covers the gender dimension by noting that land dispossession disproportionately impacts Indigenous women, who are often the primary food producers and stewards of biodiversity, and whose traditional knowledge is vital to environmental protection. This publication acts as the highest-level UN monitoring document for UNDRIP implementation. It provides data and recommendations to UN bodies (like the Permanent Forum on Indigenous Issues) on how to improve tenure security, directly benefiting tribal women in their dual role as land users and community members.

3. Key International Instruments and UN Roles

3.1 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007)

On Sept. 13, 2007 the United Nations Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly and supported by the High Commissioner of Human Rights. (OHCHR and Indigenous People) UNDRIP is the most significant UN instrument addressing indigenous people's rights to lands, territories and resources, explicitly recognizing collective and individual entitlements and their right to free, prior and informed consent (FPIC) in matters affecting their lands. Although declaratory (non-binding), UNDRIP has become an authoritative normative reference influencing domestic law framing and courts, policy reforms and advocacy agendas. It emphasizes on the right of indigenous peoples to maintain their institutions and manage lands offers a structural foundation for arguing that indigenous women should be included in decision-making and benefit-sharing mechanisms. (UN, DESA)

3.2 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and General Recommendation on Indigenous Women

CEDAW was adopted in 1979 by the United Nations General Assembly and was instituted on 3 September 1981, having been ratified by 189 states thereby mandating State Parties to eliminate discrimination against women in property and inheritance (Articles addressing rights to own, inherit and manage property). The Committee's evolving General Recommendations and, in particular, recent focused guidance on indigenous women (General Recommendation No. 39 on Indigenous Women and Girls) deepen the interpretive clarity regarding how CEDAW obligations apply to indigenous contexts. It requires the States to remove discriminatory customary laws and ensure participation of indigenous women in decisions affecting lands and resources. The Committee stresses intersectional measures, remedies, and targeted policies to realize equality for indigenous women (OHCHR).

3.3 ILO Convention No. 169 (C169)

ILO Convention No. 169 (C169) is a legally binding international treaty from the International Labour Organization (ILO) adopted in 1989 that protects the rights of indigenous and tribal peoples. It recognizes their right to preserve their cultures and institutions, to land and natural resources, and to have their development priorities defined by them. The convention's cornerstone principles are consultation and participation to ensure indigenous peoples can have a say in decisions that affect their lives

3.4 UN Agencies and Programmatic Support (UN Women, FAO, UNPFII, OHCHR)

UN Women advances gender-responsive land governance, technical assistance, and policy advocacy to mainstream women's land rights into national programmes.

FAO's Voluntary Guidelines on the Responsible Governance of Tenure (VGGT) promote gender-equitable land tenure governance.

The UN Permanent Forum on Indigenous Issues (UNPFII) and the Office of the High Commissioner for Human Rights (OHCHR) amplify indigenous women's issues, recommend reforms and provide thematic reports supporting legal reform, capacity building and rights-based programming. Collectively, these instruments and agencies create normative and operational pathways through which tribal women's property rights can be asserted and operationalised.

4. From International Norms to Domestic Law: Mechanisms of Influence

UN norms influence domestic law through several mechanisms:

- Judicial interpretation:** Domestic courts increasingly cite UNDRIP and international human rights treaties when interpreting constitutional equality provisions and property law. **Niyamgiri Mining Case** was a major environmental and human rights dispute over a proposed bauxite mine in the Niyamgiri hills, which is the sacred land of the Dongria Kondh tribal community. The Supreme Court's ruling, which effectively stopped the project, heavily upheld the provisions of the Forest Rights Act, 2006, and stipulated that the Gram Sabha (village council) of the affected tribal communities must have the final decision-making power. Although the court relied on domestic law (FRA), the judgment's emphasis on the mandatory consent of the tribal community is a strong reflection of the "Free, Prior, and Informed Consent (FPIC)" principle, which is central to Article 10 of the UNDRIP (against forced removal from lands) and other international indigenous rights norms. [(2013) 6 SCC 476] International instruments encourage legislative changes to align domestic law with gender and indigenous rights (e.g., incorporating FPIC clauses, recognizing collective rights, mandating gender parity in titling).

- **Programmatic funding and conditionalities:** UN agencies and multilateral donors can incentivize gender-sensitive land governance reforms. International standards bolster civil society campaigns demanding reforms and empower indigenous women's organizations to claim rights. However, impact varies depending on political will, institutional capacity, and the strength of local social movements.

5. Indian Legal Framework and the Forest Rights Act (FRA, 2006)

India's tribal and indigenous peoples (recognized as Scheduled Tribes) have historically faced alienation from forests and commons through colonial and post-colonial forest administration and land acquisition. Recognizing historical injustice, India adopted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (commonly known as "Forest Rights Act" or FRA) to formally recognize forest-dweller rights including individual and community rights to land, habitation, and forest resources.

FRA contains important gender-sensitive provisions: titles to individual forest lands are to be issued in the name of the forest-dwelling household, and the Act and its implementing rules encourage participation of women in gram sabhas/local decision-making bodies. In practice, FRA provides both opportunities and challenges for tribal women:

- **Opportunities:** FRA's recognition of customary rights and collective claims can potentially strengthen women's access to resources for livelihood and enhance women's participation in community governance.
- **Challenges:** Implementation bottlenecks including lack of gender-disaggregated titling, male-dominated claim processes, and social norms that exclude women from land registration hamper the Act's gender-transformative potential.

Several empirical studies and government guidance documents point to mixed implementation: while many communities have received rights recognition, the share of women as individual titleholders or joint-titleholders is uneven. Administrative procedures and local socio-cultural practices often result in male names appearing on titles even when women are active land-users. Moreover, capacity gaps at the gram sabha and revenue/forest department levels lead to inconsistent application of FRA gender guidelines.(FRA, Mizoram)

6. Barriers to Tribal Women's Property Rights

The main structural and practical barriers include:

1. **Patriarchal customary norms** — In many communities, inheritance and ownership follow patrilineal lines; women's access is mediated via male relatives. This undermines women's bargaining power even when laws are formally gender-neutral.

2. **Title and documentation gaps** — Lack of formal titles, joint titling practices, or documentation in women's names limits access to credit and formal protections.
3. **Poor legal literacy and lack of accessible legal remedies** — Women often lack awareness of entitlements and the procedures to claim them; legal aid is uneven.
4. **Administrative and institutional bias** — Local institutions (village councils, gram sabhas) may lack gender parity and be dominated by men; unrealistic documentation demands and bureaucratic hurdles can exclude women's claims.
5. **Market pressures and dispossession** — Resource extraction, commercial plantations, and land acquisition for infrastructure disproportionately jeopardize women's livelihoods, especially where formal protections are weak.
6. **Intersectional marginalization** — The combination of caste/tribe, gender, poverty and geography increases vulnerability and reduces capacity to claim rights.

7. Impacts of Secure Property Rights for Tribal Women

The security of property rights for tribal women with multiple positive outcomes:

- **Economic wellbeing:** Land ownership increases access to credit, enhances agricultural productivity and reduces poverty.
- **Bargaining power:** Women with recognized rights have greater say in household decisions, marriage negotiations and reproductive choices.
- **Improved social outcomes:** Children's education and health indicators often improve where women control resources.
- **Conservation and stewardship:** Indigenous women often carry substantial ecological knowledge; secure rights encourage sustainable resource management.

Together, these impacts argue for prioritizing women's property rights as an integrated development, rights and environmental agenda.

8. Towards Gender-Transformative Implementation: Recommendations

The following recommendations flow from international norms, empirical evidence and pragmatic governance concerns. They are aimed at governments, UN agencies, donors, civil society, and community institutions.

8.1 Legal and policy reforms

- **Mandate joint titling and women's names** — Where individual titles are issued, require titles to be issued in the names of both spouses or in women's names where applicable. This should include clear administrative procedures and safeguards.
- **Harmonize statutory and customary law** — Where possible, undertake participatory reforms of customary institutions to remove discriminatory rules while respecting indigenous governance structures.
- **Ratify and align with international standards** — States that have not ratified ILO C169 should consider ratification; even where ratification is not immediate, states should align domestic laws with C169 and UNDRIP principles.
- **Introduce gender-sensitive FPIC** — FPIC processes should be operationalized with explicit requirements for the free and meaningful participation of women and youth in decision-making.

8.2 Institutional and procedural measures

- **Gender-disaggregated data and monitoring** — Create systems to record the gender of title-holders, claimants and committee members to assess progress.
- **Capacity building for gram sabhas and local institutions** — Train local bodies in gender-sensitive procedures and legal literacy.
- **Legal aid and paralegal networks** — Invest in rural legal services and paralegal training focused on land claims for tribal women.
- **Simplify documentation and ensure women-friendly processes** — Remove unnecessary documentary barriers and provide assistance in filing claims.

8.3 Programmatic and financing measures

- **Targeted livelihood and credit programs** — Link land rights recognition to financial inclusion programs tailored for tribal women (microcredit, collective enterprises).
- **Support indigenous women's organizations** — Fund community-based organizations that promote women's leadership in land governance.
- **Gender audits of large-scale land deals** — Prior to approvals for projects affecting indigenous lands, require gender impact assessments and mitigation plans.

8.4 Judicial and accountability measures

- **Strategic litigation and legal awareness** — Support cases that clarify women's entitlements and publish accessible judgment digests.
- **Use UN mechanisms for accountability** — Encourage indigenous women's groups to use treaty body reporting (e.g., CEDAW) and special procedures (e.g., Special Rapporteur on the Rights of Indigenous Peoples) to highlight violations and seek remedies.(UN, OHCHR)

9. Illustrative Policy Instruments and Program Examples

- **Joint titling pilot projects** — Some states and donor-supported pilots have trialed joint titling with positive evidence on women's financial inclusion.
- **Community forest governance with women's quotas** — Inclusive governance models that reserve seats for women in forest management committees have improved women's access to resources.
- **Paralegal training for women claimants under FRA** — NGO-led programs that train women as claim facilitators have improved rates of women's successful claims.

These examples show that legal reform coupled with targeted programming yields better outcomes than legal reform alone.

10. Conclusion

The land and resource rights of indigenous and tribal peoples, alongside mandates for gender equality and participation, are powerfully affirmed by international instruments like the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and ILO Convention No. 169. These global frameworks, supported by UN agencies, offer a strong blueprint for governments and civil society to correct historical injustices and embed gender equality within land governance systems.

In India, the Forest Rights Act (FRA) exemplifies both progress and constraints: while it legally recognizes rights and promotes local participation, its impact for tribal women remains limited. This is due to persistent challenges such as deep-seated socio-cultural norms, administrative inefficiencies, and flawed implementation. Ultimately, substantive empowerment for tribal women requires a powerful intersection of robust law, strategic policy, and grassroots action. This holistic approach is essential to ensure their land rights transition from mere recognition on paper to demonstrable control over the resources vital to their sustenance.

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