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**Committee on the Elimination of Discrimination  
against Women****General recommendation No.39 (2022) on the rights of  
Indigenous Women and Girls**

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## I. Introduction

1. This General Recommendation provides guidance to States parties on legislative, policy, and other relevant measures to ensure the implementation of their obligations in relation to the rights of Indigenous Women and Girls under CEDAW. There are an estimated 476.6 million Indigenous Peoples globally, of which more than half (238.4 million) are women.<sup>1</sup> Discrimination and violence are recurrent phenomena in the lives of many Indigenous Women and Girls living in rural, remote, and urban areas. This General Recommendation applies to Indigenous Women and Girls both within and outside indigenous territories.

2. This General Recommendation takes into account the voices of Indigenous Women and Girls as driving actors and leaders in and outside of their communities. It identifies and addresses different forms of intersectional discrimination faced by Indigenous Women and Girls, and their key role as leaders, knowledge-bearers, and culture transmitters within their peoples, communities, families, and society as a whole. The Committee has consistently identified patterns of discrimination faced by Indigenous Women and Girls in the exercise of their human rights,<sup>2</sup> and the factors that continue exacerbating discrimination against Indigenous Women and Girls. Such discrimination is often intersectional and based on factors such as sex; gender; indigenous origin, status, or identity; race; ethnicity; disability; age; language; socio-economic status, living with HIV/AIDS, among others.<sup>3</sup>

3. Intersectional discrimination against Indigenous Women and Girls must be understood taking into consideration the multifaceted nature of their identity. As Indigenous Women and Girls, they face discrimination and gender-based violence frequently committed by state and non-state actors. These forms of violence and discrimination are widespread and often remain in impunity. Indigenous Women and Girls also often have an inextricable link and relation to their peoples, lands, territories, natural resources, and culture. To comply with articles 1 and 2 and other relevant provisions of the Convention on the Elimination of All Forms of Discrimination against Women (the Convention), state action, legislation, and policies must reflect and respect the multifaceted identity of Indigenous Women and Girls. States parties should also take into consideration the intersectional experience of discrimination faced by Indigenous Women and Girls on the basis of their sex; gender; indigenous origin, status or identity; race; ethnicity; disability; age; language; socio-economic status; living with HIV/AIDS, among other factors.

4. State action to prevent and address discrimination against Indigenous Women and Girls must integrate a gender, Indigenous Women and Girls, intersectional, intercultural, and multi-disciplinary perspective throughout their lifespan. A *gender perspective* takes into consideration the discriminatory norms, harmful social practices, stereotypes, and inferior treatment that have affected Indigenous Women and Girls historically, and still affect them in the present. An *intersectional* approach, requires for a state considering the multitude of factors which combine to increase the exposure of and exacerbate the consequences for Indigenous Women and Girls of unequal and arbitrary treatment, on the basis of sex; gender; indigenous origin, status, or identity; race; ethnicity; disability; age; language; socio-economic status; living with HIV/AIDS; among others. States should take into consideration the interdependence and interconnectedness of all these factors in their adoption of laws, policies, national budgets, and interventions related to Indigenous Women and Girls. Indigenous Women and Girls suffer intersectional discrimination both within and outside of their territories. Intersectional discrimination against Indigenous Women and Girls is

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<sup>1</sup> International Labor Organization, *Implementing the ILO Indigenous and Tribal Peoples Convention No. 169 Towards an inclusive, sustainable and just future* (2019), page 13; United Nations Department of Economic and Social Affairs, *5th Volume: State of the World's Indigenous Peoples, Rights to Land, Territories, and Resources* (2021), page 119.

<sup>2</sup> See, for example, CEDAW General Recommendation 34 on rural women, paras. 14 and 15. For more discussion of the work of CEDAW in the area of Indigenous Women, see UN Women and CEDAW, *Recomendaciones Generales y Observaciones Finales del Comité para la Eliminación de la Discriminación contra la Mujer sobre mujeres indígenas y/o afrodescendientes realizadas a Estados de América Latina* (2017).

<sup>3</sup> United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Article 2.

structural, embedded in constitutions, laws, policies, programmes, government action, and services.

5. An *Indigenous Women and Girls*' perspective entails understanding the different experiences, realities, and needs of Indigenous Women and men related to human rights protection based on their sex and gender differences. It also involves considering the status of Indigenous Girls as developing women, which requires interventions appropriate to their age, development and condition. An *intercultural perspective* considers the cultural diversity of Indigenous Peoples, including their cultures, languages, beliefs, and values, and the social appreciation and value of this diversity. Finally, a *multidisciplinary approach* appreciates the multifaceted identity of Indigenous Women and Girls, and how different disciplines related to law, health, education, culture, spirituality, anthropology, economy, science, and work have and still shape the social experience of Indigenous Women and Girls, and promote discrimination against them. These perspectives and approaches are key to prevent and eradicate discrimination against Indigenous Women and Girls, and to fulfill the goal of social justice when human rights violations against them occur.

6. The prohibition of discrimination under articles 1 and 2 must be strictly applied to ensure the rights of Indigenous Women and Girls, including those living in voluntary isolation or initial contact, to self-determination, access to, and integrity of their lands, territories and resources, culture, and environment. It should also be implemented to ensure the rights of Indigenous Women and Girls to effective and equal participation in decision-making and to consultation, in and through their own representative institutions, in order to obtain their free, prior and informed consent before the adoption and implementation of legislative or administrative measures that may affect them. This set of rights forms the foundation for a holistic understanding of the individual and collective rights of Indigenous Women. The violation of any of these and related rights constitutes discrimination against Indigenous Women and Girls.

7. In implementing this General Recommendation, the CEDAW Committee calls on States parties to take into consideration the challenging context in which Indigenous Women and Girls exercise and defend their human rights. Indigenous Women and Girls are heavily impacted by existential threats connected to climate change, environmental degradation, the loss of biodiversity, and barriers to access food and water security.<sup>4</sup> Extractive activities of business enterprises and other industrial, financial, public, and private actors often have a devastating impact on the environment, air, land, waterways, oceans, territories, and natural resources of Indigenous Peoples and may infringe the rights of Indigenous Women and Girls. Indigenous Women and Girls are at the forefront of the local, national and international demand and action for a clean, safe, healthy, and sustainable environment. Many Indigenous Women environmental human rights defenders face killings, harassment, criminalization, and ongoing discrediting of their work. State parties have an obligation to ensure that State actors and business enterprises act without delay to guarantee a clean, healthy, and sustainable environment and planetary system, including the prevention of foreseeable loss and damage, socio-economic and environmental violence, and all forms of violence against Indigenous Women human rights defenders and their communities and territories. States parties also have an obligation to address the effects of colonialism, racism, assimilation policies, sexism, poverty, armed conflicts, militarization, forced displacement and the loss of territories, sexual violence as a tool of war, and other alarming human rights abuses frequently perpetrated against Indigenous Women and Girls and their communities.

## II. Objectives and Scope

8. The Committee considers self-identification, according to international standards,<sup>5</sup> a guiding principle in international law to determine rights holders' status as Indigenous

<sup>4</sup> CEDAW Committee, General Recommendation 37 on the gender-related dimensions of disaster risk reduction in the context of climate change, paras. 1-9.

<sup>5</sup> See UNDRIP, articles 9 and 33.

Women and Girls.<sup>6</sup> However, the Committee recognizes that some Indigenous Women and Girls may prefer not to disclose their status due to structural and systemic racism and discrimination, and colonial and colonization policies. This General Recommendation and the rights under CEDAW are applicable to all Indigenous Women and Girls, inside and outside of their territories; in their countries of origin, while in transit, and in their countries of destination; and as migrants, as refugees during their forced or involuntary displacement cycle, and as stateless persons.

9. Gender-based violence is adversely affecting the lives of many Indigenous Women and Girls, including psychological, physical, sexual, economic, spiritual, political, and environmental violence. Indigenous Women often suffer domestic violence and violence in the workplace, public and educational institutions; while receiving health services and navigating child welfare systems; in their participation as leaders in political and community life; as human rights defenders; while deprived of liberty; and when confined to institutions. Indigenous Women and Girls are disproportionately at risk of rape and sexual harassment; gender-based killings and femicide; disappearances and kidnapping; trafficking in persons;<sup>7</sup> contemporary forms of slavery; exploitation; exploitation of prostitution of women;<sup>8</sup> sexual servitude; forced labor; coerced pregnancies; state policies mandating forced contraception and intrauterine devices (IUDs); and domestic work which is not decent, safe, and adequately remunerated.<sup>9</sup> The Committee highlights in particular the gravity of discrimination and gender-based violence against Indigenous Women and Girls with disabilities living in institutions.

10. The Committee calls on States parties to promptly engage in data collection efforts to fully assess the situation of Indigenous Women and Girls, and the forms of discrimination and gender-based violence they face. States must undertake efforts to collect data disaggregated by a range of factors including sex, age, indigenous origin, status, or identity, and disability, and collaborate with Indigenous Women and their organizations, as well as academic and non-profit institutions, in the achievement of this goal. The CEDAW Committee also underscores that Indigenous Peoples must have control over data collection processes in their communities, and how this information is stored, interpreted, used, and shared.

11. One of the root causes of discrimination against Indigenous Women and Girls is the lack of effective implementation of their rights to self-determination, autonomy, and related guarantees, as manifested inter alia in the continued dispossession of their lands, territories, and natural resources. The Committee acknowledges that the vital link between Indigenous Women and their lands often forms the basis of their culture, identity, spirituality, ancestral knowledge, and survival. Indigenous Women face lack of legal recognition of their rights to land and territories and wide gaps in the implementation of existing laws to protect their collective rights. Governments and third-party actors frequently implement investment, infrastructure, development, conservation, climate change adaptation and mitigation initiatives, tourism, mining, logging, and extraction activities without securing the effective participation and obtaining the consent of the Indigenous Peoples affected. The Committee has a broad understanding of the right to self-determination of Indigenous Women and Girls, including their ability to make autonomous, free, and informed decisions concerning their life plans and health.

<sup>6</sup> See Article 33.1, UNDRIP; Article 1, ILO Convention 169; United Nations Permanent Forum on Indigenous Issues, Fact Sheet, *Who are Indigenous Peoples?*; UN – Economic and Social Council – Commission on Human Rights – Sub-commission on Prevention of Discrimination and Protection of Minorities – Working Group on Indigenous Populations: *Working Paper by the Chairperson-Rapporteur, Mrs. Erica-Irene A. Daes, on the concept of “indigenous people”*, UN Document E/CN.4/Sub.2/AC.4/1996/2, June 10, 1996, paras. 69-70.

<sup>7</sup> See CEDAW Committee, General Recommendation No. 38 (2020), *Trafficking in women and Girls in the context of global migration*, CEDAW/C/GC/38, paras. 18-35.

<sup>8</sup> See Article 6, CEDAW.

<sup>9</sup> See, for reference, CEDAW Committee, *Report of the Inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, paras. 95-99; 111-127.

12. The Committee acknowledges that Indigenous Women and Girls have struggled and continue to struggle against forced assimilation policies and other large-scale human rights violations, which may in certain instances amount to genocide.<sup>10</sup> Some of these assimilation policies – in particular in the form of forced placement in residential schools and institutions and the displacement of Indigenous Peoples from their territories in the name of development – have resulted in killings, disappearances, sexual violence, psychological abuse, and may amount to cultural genocide.<sup>11</sup> It is critical for States parties to address the consequences of historic injustices and to provide support and reparations to the affected communities as part of justice, reconciliation, and the process of building societies free from discrimination and gender-based violence against Indigenous Women and Girls. The Committee highlights in particular the need for states to act proactively to protect the rights of Indigenous Women and Girls living in urban settings, in which they face racism, discrimination, assimilation policies, and gender-based violence.

### III. Legal Framework

13. The rights of Indigenous Women and Girls derive from the articles of the Convention, as further developed in the Committee’s General Recommendations, as well as specific international instruments for the protection of the rights of Indigenous Peoples, such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention No. 169 (1989) on Indigenous and Tribal Peoples. The Committee considers UNDRIP an authoritative framework to interpret state party and core obligations under CEDAW. All of the rights recognized in UNDRIP are relevant to Indigenous Women, both as members of their peoples and communities and as individual Indigenous Women, and ultimately in relation to the guarantees against discrimination in CEDAW itself. In addition, all core international human rights treaties, contain relevant protections for the rights of Indigenous Women and Girls.<sup>12</sup>

14. In addressing the rights of Indigenous Girls, the Committee also makes reference to the Convention on the Rights of the Child (CRC) and General Comment 11 (2009) on indigenous children and their rights of the Committee on the Rights of the Child. States parties have an obligation to protect indigenous Girls from all forms of discrimination. The creation of an enabling and safe environment for Indigenous Girls’ leadership and effective participation is paramount to the full enjoyment of their rights to territories, cultures, and a clean, healthy, and sustainable environment.<sup>13</sup> The CEDAW Committee moreover recognizes the status of Indigenous Girls as developing women, which calls for a state response tailored to their best interests, needs, and the adaptation of government procedures and services to their age, development, evolving capacities, and condition.

15. The Convention should also be interpreted taking into consideration the 2030 Agenda for Sustainable Development, in which states agreed that the achievement of gender equality and the empowerment of women and Girls is paramount to sustainable development and the end of poverty.<sup>14</sup> Moreover, the Beijing Declaration and Platform for Action is also an important reference document in this General Recommendation. The CEDAW Committee also makes reference to the resolutions adopted by the Commission on the Status of Women related to Indigenous Women.<sup>15</sup>

<sup>10</sup> See, for reference, UNDRIP, Article 8; Convention on the Prevention and Punishment of the Crime of Genocide, Article II; Rome Statute of the International Criminal Court, Article 6.

<sup>11</sup> See, for reference, UNDRIP, Article 8.

<sup>12</sup> See for example, Committee on the Elimination of Racial Discrimination (CERD), General Recommendation XXIII on the Rights of Indigenous Peoples, paras. 3-6.

<sup>13</sup> Committee on the Rights of the Child, General Recommendation 12, *The Right of the Child to be Heard*, para. 2.

<sup>14</sup> U.N. General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development Goals*, A/RES/70/1 (October 21, 2015), para. 20, Goals 5, 2.3, and 4.5.

<sup>15</sup> See Resolutions 49/7 (CSW 49-2005); and 56/4 (CSW 56/4-2012). See also, CSW, 66<sup>th</sup> session (14-25 March 2022), *Achieving gender equality and the empowerment of all women and Girls in the context of climate change, environmental and disaster risk reduction policies and programmes*, Agreed Conclusions, E/CN.6/2022/L.7 (29 March 2022),

## IV. General obligations of States parties in relation to the rights of Indigenous Women and Girls: Articles 1 and 2 of CEDAW

### A. Equality and Non-Discrimination with a focus on Indigenous Women and Girls and Intersecting Forms of discrimination

16. The prohibition of discrimination in articles 1 and 2 of the Convention applies to all rights of Indigenous Women and Girls under the Convention, including, by extension, those set out in UNDRIP, which is of fundamental importance to interpretation of the Convention in the current context. The prohibition of discrimination is an important pillar and foundational principle of international human rights law. Indigenous Women and Girls have the right to be free from all forms of discrimination based on their sex; gender; indigenous origin, status, or identity; race; ethnicity; disability; age; language; socio-economic disadvantage; and living with HIV/AIDS, among others.<sup>16</sup>

17. Discrimination against Indigenous Women and Girls and its effects should be understood in both their individual and collective dimensions. In its individual dimension, Indigenous Women and Girls suffer intersecting forms of discrimination by both state and non-state actors, including those in the private sphere on the basis of their sex; gender; indigenous origin, status or identity; race; ethnicity; disability; age; language; socio-economic status; and living with HIV/AIDS; among others. Racism, discriminatory stereotypes, marginalization, and gender-based violence are inter-related violations experienced by Indigenous Women and Girls. Discrimination and gender-based violence threaten the individual autonomy, personal liberty and security, privacy, and integrity of all Indigenous Women and Girls, and may also harm the collective and its well-being. As indicated in General Recommendation no. 29 (2013) on the economic consequences of marriage, family relations, and their dissolution, Indigenous Women as individuals can suffer discrimination in the name of ideology, tradition, culture, religious and customary laws and practices. Indigenous Women – including those with disabilities - also often face arbitrary removal and abduction of their children as well as discriminatory and gender-biased decisions concerning the custody of their children – when married and unmarried - or alimony following divorce. Indigenous Women and Girls as individuals have the right to be free from discrimination and human rights violations throughout their life cycle and to choose their own paths and life plans.

18. In its collective dimension, discrimination and gender-based violence against Indigenous Women and Girls threaten and disrupt the spiritual life, their connection with Mother Earth, cultural integrity and survival, and social fabric of Indigenous Peoples and communities. They have a harmful effect on the continuance and preservation of the knowledge, cultures, views, identities, and traditions of Indigenous Peoples. The failure to protect the rights to self-determination, collective security of tenure over ancestral lands and resources, and the effective participation and consent of Indigenous Women in all matters affecting them constitutes discrimination against them and their communities.

19. As indicated in the preamble of UNDRIP, collective rights are indispensable for the existence, well-being, and integral development of Indigenous Peoples and Indigenous Women and Girls.<sup>17</sup> The individual rights of Indigenous Women and Girls should never be neglected or violated in the pursuit of collective or group interests, as the respect of both dimensions of their human rights is essential.<sup>18</sup> The individual rights of Indigenous Women and Girls must always be respected, protected, fulfilled and promoted in the pursuit of collective rights as respect for both individual and collective rights is essential.

20. Discrimination against Indigenous Women and Girls is perpetuated by gender stereotypes, but also forms of racism fueled by colonialism and militarization. These underlying causes of discrimination are reflected directly and indirectly in laws and policies

<sup>16</sup> CEDAW Committee, General Recommendation 28, para. 9; UNDRIP, para. 2.

<sup>17</sup> UNDRIP Preamble.

<sup>18</sup> Committee on the Rights of the Child, General Comment No. 1 (2009), *Indigenous Children and their Rights under the Convention*, para. 30.

that impede access by Indigenous Women and Girls to land use and ownership, their rights over their territories, natural and economic resources, credit, financial services, and income generating opportunities. They also impede the recognition, protection, and support for collective and cooperative forms of land ownership and use. Indigenous Women still face weak legal protection of their land rights, which frequently exposes them to dispossession, displacement, confinement, expropriation, and exploitation.<sup>19</sup> The lack of legal title to Indigenous Peoples' territories increases their vulnerability to illegal incursions and the implementation of development projects by both state and non-state actors without their free, prior, and informed consent. Barriers to access land can disproportionately impact Indigenous Women and Girls – in particular those who are widows, heads of households, and orphans - resulting in the loss of their livelihoods; threatening their culture and intrinsic link to their environment, food and water security, and health.

21. Indigenous Women and Girls worldwide still do not enjoy equality before the law under article 15 of the Convention. In many parts of the world, Indigenous Women lack capacity to conclude contracts and administer property independent of their husband or a male guardian. Indigenous Women also experience challenges in owning, holding, controlling, inheriting, and administering land, in particular when they are widowed and have to care for their families on their own. Inheritance laws – both in the state and indigenous legal systems – frequently discriminate against Indigenous Women. Indigenous Women with disabilities commonly experience the denial of legal capacity which leads to further human rights violations in areas such as access to justice, institutionalized violence, and forced sterilization. Many laws still discriminate against women, including Indigenous Women and Girls, in relation to the transmission of their nationality and indigenous status to their children when they marry non-indigenous persons, which is contrary to Article 9 of CEDAW. This can result in transgenerational discrimination and forced assimilation, falling within the scope and meaning of Article 1 of the Convention.<sup>20</sup> Therefore, states must ensure that Indigenous Women and Girls can acquire, change, retain or renounce their nationality and/or indigenous status, transfer it to their children and foreign spouse, and have access to information on these rights, as part of their rights to self-determination and self-identification.

22. The Committee in its General Recommendation No. 34 (2016) on the rights of rural women underscored the importance of Indigenous Women's rights to land and collective ownership, natural resources, water, seeds, forests and fisheries under article 14 of the Convention.<sup>21</sup> These rights are equally guaranteed to Indigenous Women as members of their peoples and communities by UNDRIP and related international legal norms. Key barriers to these rights are the incompatibility of domestic laws with international law; the ineffective implementation of laws at the national and local levels; discriminatory gender stereotypes and practices, particularly in rural areas; lack of political will; and the commercialization, commodification, and financialization of land and natural resources. Indigenous customary laws, misogyny, and existing institutions may also be barriers. Indigenous Women with disabilities often face intersecting forms of discrimination based on their sex, gender, disability, and indigenous origin, status or identity, reflected in the denial of their full legal capacity, which further increase their risk of exploitation, violence, and abuse, and undermine their rights to land, territories, and resources.<sup>22</sup> Moreover, Indigenous Women and Girls who are lesbian, bisexual, transgender, and intersex (LBTI) regularly face intersecting forms of discrimination. The Committee also expresses its concern over forms of inequality, discrimination, and gender-based violence which affect Indigenous Women and Girls in the digital space, the internet, social media, and all technology platforms.

23. **The Committee recommends that State parties:**

<sup>19</sup> United Nations Rapporteur on Indigenous Peoples, *Report on Indigenous Women*, paras. 15-17.

<sup>20</sup> For example, see CEDAW Committee, Jeremy Eugene Manson (and his children I.D.M. and A.M.M.) (Canada) CEDAW/C/81/D/68/2014 (March 11, 2022), para. 18.3.

<sup>21</sup> CEDAW Committee General Recommendation No. 34 (2016) on rural women, para. 56.

<sup>22</sup> United Nations Department of Economic and Social Affairs, 5<sup>th</sup> Volume: [State of the World's Indigenous Peoples, Rights to Land, Territories, and Resources](#) (2021), page 121.

(a) **Develop comprehensive policies to eliminate discrimination against Indigenous Women and Girls, centered around the effective participation of Indigenous Women and Girls living in and outside of indigenous territories, and collaboration with Indigenous Peoples more broadly. This policy should include measures to address intersectional discrimination faced by Indigenous Women and Girls with disabilities and those with albinism; Indigenous Girls; elderly Indigenous Women; Indigenous LGBTI Women; those in situations of poverty; Indigenous Women living in rural and urban areas; forcibly displaced, refugee, and migrant Indigenous Women within and outside of their countries; and those who are widows, heads of households or orphaned due to national and international armed conflicts. States parties should collect disaggregated data by age and disability on the forms of gender-based discrimination and violence faced by Indigenous Women and Girls, and undertake these efforts in ways which respect Indigenous Peoples' languages and their cultures;**

(b) **Provide information on legislative, judicial, administrative, budgetary, monitoring, and evaluation, and other measures specific to Indigenous Women and Girls in their periodic reports to the Committee;**

(c) **Repeal and amend all legislative and policy instruments, such as laws, policies, regulations, programs, administrative procedures, institutional structures, budgetary allocations and practices, which directly or indirectly discriminate against Indigenous Women and Girls;**

(d) **Ensure that Indigenous Women are equal before the law and have equal capacity to conclude contracts, administer, and inherit property. States Parties should ensure the recognition of legal capacity for Indigenous Women with disabilities and support mechanisms for the exercise of legal capacity;**

(e) **Adopt legislation to fully ensure Indigenous Women and Girls' rights to land, water, and other natural resources, including their right to a clean, healthy, and sustainable environment, and that their equality before the law is recognized and respected. States should ensure that Indigenous Women in rural and urban areas have equal access to ownership, title, possession, and control over land, water, forests, fisheries, aquaculture and other resources that they have owned, occupied, or otherwise used or acquired, including by protecting them against discrimination and dispossession;<sup>23</sup>**

(f) **Ensure that Indigenous Women and Girls have adequate access to information on existing laws and remedies to claim their rights under the Convention. Information should be accessible in their own languages and in culturally appropriate formats of communication, such as community radios. Information should also be made available for Indigenous Women and Girls with disabilities in formats such as braille, easy read, sign language, and other modes.**

(g) **Guarantee that Indigenous Women and Girls are protected from discrimination by both state and non-state actors in and outside of their territories, including businesses and companies, especially in the areas of political participation, representation, education, employment, health, social protection, decent work, justice, and security;**

(h) **Adopt effective measures to legally recognize and protect the lands, territories, natural resources, intellectual property, scientific, technical and indigenous knowledge, genetic information, and cultural heritage of Indigenous Peoples; take steps to fully ensure respect for the right to free, prior, and informed consent; to self-determination of their own life plan; and the effective participation of Indigenous Women and Girls, particularly marginalized groups of Indigenous Women and Girls such as those with disabilities, in decision-making on matters affecting them; and**

(i) **Adopt effective measures to eliminate and prevent all forced assimilation policies or other patterns of denials of cultural and other rights vested in Indigenous**

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<sup>23</sup> CEDAW Committee General Recommendation 34 on rural women, paragraph and recommendation 59.

**Peoples. This includes the prompt investigation, accountability, justice, and reparations for past and present assimilation policies, and practices that significantly compromise indigenous cultural identity. Establish and ensure that truth, justice, and reconciliation bodies are vested with adequate and sufficient resources.**

## **B. Access to justice and plural legal systems**

24. Access to justice for Indigenous Women requires a multi-disciplinary and holistic approach, understanding that their access to justice is linked to other human rights challenges they face, including racism, racial discrimination, and the effects of colonialism; sex- and gender-based discrimination; and discrimination on the basis of socio-economic status; disability-based discrimination; barriers to access their lands, territories, and natural resources; the lack of adequate and culturally pertinent health and education services; and disruptions and threats to their spiritual life.<sup>24</sup> As indicated by other global human rights mechanisms, Indigenous Peoples must have access to justice guaranteed by both states and through their indigenous customary and legal systems.<sup>25</sup>

25. The Committee reiterates that the right of Indigenous Peoples to maintain their own judicial structures and systems is a fundamental component of their rights to autonomy and self-determination.<sup>26</sup> At the same time, indigenous justice systems and their practices should be consistent with international human rights standards, as indicated in the United Nations Declaration on the Rights of Indigenous Peoples.<sup>27</sup> Accordingly, the Committee considers that the Convention is an important reference for both non-indigenous and indigenous justice systems in addressing cases related to discrimination against Indigenous Women and Girls.

26. The Committee recognized in its General Recommendation No. 33 (2015) on women's access to justice, six essential components of women's access to justice.<sup>28</sup> These six interrelated components - justiciability, availability, accessibility, good quality, provision of remedies for victims and accountability of justice systems – are also applicable in the case of Indigenous Women and Girls. Access to justice and remedies for Indigenous Women and Girls should be offered with a gender, intersectional, Indigenous Women, intercultural, and multidisciplinary perspective as defined in paragraphs 4 and 5 of this General Recommendation.

27. According to these principles, states must ensure that all justice systems, both indigenous and non-indigenous, act in a timely fashion to offer appropriate and effective remedies for Indigenous Women and Girls who are victims and survivors of discrimination and gender-based violence. This entails having available interpreters, translators, anthropologists, psychologists, healthcare professionals, lawyers, cultural mediators with experience, indigenous spiritual and medicinal authorities, and training with a gender perspective on the realities, cultures, and views of Indigenous Women and Girls. Justice systems should also have in place methods to collect evidence that are appropriate and compatible with the culture and views of Indigenous Women and Girls. Justice officials should be consistently trained on the rights of Indigenous Women and Girls, and the individual and collective dimensions of their identity, with the goal of instilling a substantial degree of indigenous cultural competence. In this process, it is key to respect the different

<sup>24</sup> See, United Nations, Human Rights Council, *Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples*, Study by the Expert Mechanism of the Rights of Indigenous Peoples, A/HRC/EMRIP/2014/3/Rev.1, June 25, 2014, para. 35-42; Inter-American Commission on Human Rights, *Indigenous Women and their Human Rights in the Americas*, OEA/Ser.L/V/II. Doc. 44/17, April 17, 2017, para. 138.

<sup>25</sup> United Nations Expert Mechanism on Indigenous Peoples, *Access to Justice in the Promotion and Protection of The Rights of Indigenous Peoples*, A/HRC/24/50 (2013), para. 5.

<sup>26</sup> Article 34, UNDRIP; CEDAW Committee, General Recommendation 33 on women's access to justice, para. 5.

<sup>27</sup> Article 34 of UNDRIP provides that "Indigenous Peoples have the right to promote, develop, and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards."

<sup>28</sup> CEDAW Committee, General Recommendation 33 on women's access to justice, para. 14.

conceptions of justice and processes that non-indigenous and indigenous systems have, and to actively listen to and collaborate with Indigenous Peoples. Justice can be a process of balance and healing for Indigenous Peoples, with the goal of restoring harmony to their territories and communities.<sup>29</sup> States should also proactively recruit and appoint Indigenous Women justices.

28. State parties should also ensure the establishment of courts, judicial, and other bodies throughout the State party in urban, rural, and remote areas, as well as their maintenance and funding. Indigenous justice systems should also be easily available, adequate, and effective for Indigenous Women and Girls. Information should be available and be disseminated among Indigenous Women and Girls of how to avail themselves of judicial avenues in both the non-indigenous and indigenous justice systems. Basic judicial services and free legal aid services should be available in close proximity to Indigenous Women and communities. States must adopt measures to ensure that Indigenous Women know where to seek justice, and that justice systems are accessible, fair, and affordable.

29. Indigenous Women face obstacles in their access to both non-indigenous and indigenous justice systems, which can be particularly acute in the case of Indigenous Women and Girls with disabilities. They are routinely denied their right to a remedy. As a result, many cases of discrimination and gender-based violence against Indigenous Women and Girls end in impunity. Barriers to access to justice and reparations for Indigenous Women and Girls include lack of information in indigenous languages on the legal remedies available in both non-indigenous and indigenous justice systems. Other barriers include the costs of legal assistance and the lack of free legal aid; the disrespect of due process guarantees; the absence of interpreters, including for sign language; court fees; long distances to courts; reprisals and retribution when they report crimes; lack of identity cards and forms of identification; and lack of training for justice officials on the rights and specific needs of Indigenous Women and Girls. Indigenous Women and Girls with disabilities frequently face barriers to the physical accessibility of buildings which house law enforcement agencies and the judiciary, and to access critical information, transportation, communications, procedures, and support services.

30. In non-indigenous justice systems, Indigenous Women and Girls frequently face racism, structural and systemic racial discrimination, and forms of marginalization, and often have to participate in procedures that are not culturally appropriate and do not take into account indigenous traditions and practices. Judicial structures tend to reflect ongoing colonialism. Obstacles include the remoteness of indigenous territories, forcing Indigenous Women and Girls to travel long distances to file complaints, illiteracy, and lack of knowledge of existing laws and judicial avenues. Indigenous Women are often not provided with interpretation services necessary to fully participate in legal proceedings, and there is a lack of culturally appropriate evidence collection methods. There is a dearth of training of justice officials on the rights of Indigenous Women and Girls and their individual and collective dimensions. Indigenous Women and Girls also have limited access to specialized medical care when they suffer acts of rape and sexual violence.

31. Indigenous justice systems are often male dominated and discriminate against women and Girls, providing limited space for them to participate, voice their concerns, and hold decision-making positions.<sup>30</sup> The Committee has also expressed its concern in the past over the influence of gender stereotypes in the activity of indigenous legal systems.<sup>31</sup> In general, the Committee has recommended that both indigenous and non-indigenous justice systems adopt measures to comply with international human rights standards.<sup>32</sup>

<sup>29</sup> United Nations Rapporteur on Indigenous Peoples, *Report on the Rights of Indigenous Peoples*, A/HRC/42/37, August 2, 2019, para. 25.

<sup>30</sup> United Nations Rapporteur on Indigenous Peoples, *Report on Indigenous Women*, para. 44; Study by the Expert Mechanism of the Rights of Indigenous Peoples, *Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples*, para. 42.

<sup>31</sup> United Nations, CEDAW Committee, Concluding Observations of the Committee on Elimination of Discrimination against Women, CEDAW/C/MEX/CO/7-8, August 7, 2012, para. 34.

<sup>32</sup> United Nations, General Recommendation 33 on women's access to justice, para. 62.

32. Indigenous Women also tend to be overrepresented in prisons, are affected by arbitrary pre-trial detention, and face discrimination, gender-based violence, inhumane treatment, and forms of torture when they are in conflict with the law. These problems are aggravated by deficiencies in the legal support provided by legal aid counsels. The Committee highlights the right of every indigenous girl who is in conflict with the law to a fair trial, equality before the law and the equal protection of the law.<sup>33</sup>

33. **The Committee recommends that States Parties:**

(a) **Ensure that Indigenous Women and Girls have effective access to adequate non-indigenous and indigenous justice systems, free from racial and/or gender-based discrimination, bias, stereotypes, retribution, and reprisals;**

(b) **Adopt measures to ensure that Indigenous Women and Girls with disabilities have physical access to law enforcement and judiciary buildings, information, transportation, support services, and procedures critical to access justice.**<sup>34</sup>

(c) **Provide continuous training to judges and all law enforcement officials in both the non-indigenous and indigenous justice systems on the rights of Indigenous Women and Girls and the need for an approach to justice that is guided by a gender, intersectional, Indigenous Women and Girls, intercultural, and multidisciplinary perspective, as defined in paragraphs 4 and 5 of this General Recommendation. Training on indigenous justice should be part of the training for all legal professionals;**

(d) **Recruit, train, and appoint Indigenous Women justices and other court personnel in both non-indigenous and indigenous justice systems;**

(e) **Ensure equal access to justice for all Indigenous Women and Girls, including through the provision of procedural accommodations and adjustments for those who need them due to age, disability or illness, which may include sign language interpretation and other communication support and longer timeframes for submissions;**

(f) **Ensure that justice systems include interpreters, translators, anthropologists, psychologists, and healthcare professionals specialized and trained on the needs of Indigenous Women and Girls, giving priority to qualified Indigenous Women.**<sup>35</sup> **Provide information on legal remedies in both the non-indigenous and indigenous justice systems in indigenous languages and in accessible formats. Awareness-raising campaigns should be undertaken to make these legal remedies and avenues known, as well as the means to report cases of structural and systemic violence. Follow-up mechanisms are critical in cases of gender-based violence and discrimination against Indigenous Women and Girls;**

(g) **Ensure that Indigenous Women and Girls without sufficient means and whose legal capacity has been removed have access to free and quality legal aid, including in cases of gender-based violence against women. States parties should financially support non-governmental organizations providing free and specialized legal assistance to Indigenous Women and Girls;**

(h) **Guarantee that judicial institutions, remedies and services are available in urban areas and in proximity to indigenous territories;**

(i) **Adopt measures and policies related to criminal justice, and those civil and administrative, that consider the historical conditions of poverty, racism, and gender-based violence which have and still affect Indigenous Women and Girls;**

(j) **Adopt measures to ensure that all Indigenous Women and Girls can access information and education on existing laws, the legal system, and how to access both**

<sup>33</sup> Committee on the Rights of the Child, General Comment 24: *Children's Rights in Juvenile Justice* (2019), paras. 49, 116, 118.

<sup>34</sup> Committee on the Rights of Persons with Disabilities, General Comment No. 2 (2014), *Article 9: Accessibility*, CRPD/C/GC/2, para. 37.

<sup>35</sup> Inter-American Commission on Human Rights, *Indigenous Women Report*, para. 156.

**non-indigenous and indigenous justice systems. This can be in the form of awareness-raising campaigns, community trainings, legal, and mobile clinics which offer this information;**

**(k) Ensure that Indigenous Women and Girls effectively enjoy the rights to a fair trial, equality before the law and equal protection of the law; and**

**(l) Ensure that integral reparations for human rights violations are a key component of the administration of justice in both non-indigenous and indigenous systems, including a consideration of spiritual and collective harm.**

## **V. State party obligations in relation to specific dimensions of the rights of Indigenous Women and Girls**

### **A. Prevention of and protection from gender-based violence against Indigenous Women and Girls (articles 3, 5, 6, 10 (c), 11, 12, 14, 16).**

34. Gender-based violence against Indigenous Women and Girls is a form of discrimination under article 1 and therefore engages all obligations under the Convention. Under article 2, States parties must adopt measures without delay to prevent and eliminate all forms of gender-based violence against Indigenous Women and Girls.<sup>36</sup> Similarly, UNDRIP in its Article 22 requires states to pay particular attention to the full protection of the rights of Indigenous Women and to ensure their right to live free from violence and discrimination. The prohibition of gender-based violence against women is a principle of customary international law and applies to Indigenous Women and Girls.<sup>37</sup>

35. Gender-based violence is disproportionately affecting Indigenous Women and Girls. Available statistics indicate that Indigenous Women are more likely to experience rape than non-Indigenous Women.<sup>38</sup> It is estimated that 1 in 3 Indigenous Women is raped during their lifetime.<sup>39</sup> While there is a growing body of evidence of the magnitude, nature, and consequences of gender-based violence globally, knowledge of its incidence against Indigenous Women is limited and tends to vary considerably by issue and region.<sup>40</sup> The Committee highlights the need for States to engage in data collection efforts, in collaboration with indigenous organizations and communities, to understand the scope of the problem of gender-based violence against Indigenous Women and Girls. It also highlights the need for States to address discrimination, stereotypes, and social legitimization of gender-based violence against Indigenous Women and Girls.

36. The Committee is alarmed at the many forms of gender-based violence committed against Indigenous Women and Girls.<sup>41</sup> Gender-based violence against Indigenous Women and Girls occurs in all spaces and spheres of human interaction, including the family,<sup>42</sup> community, public spaces, the workplace, educational settings, and the digital space.<sup>43</sup>

<sup>36</sup> CEDAW Committee, General Recommendation 35 on gender-based violence against women, para. 21.

<sup>37</sup> CEDAW Committee, General Recommendation 35 on gender-based violence against women, para. 2.

<sup>38</sup> United Nations Rapporteur on Indigenous Peoples, *Report on Indigenous Women*, para. 47.

<sup>39</sup> United Nations Rapporteur on Indigenous Peoples, *Report on Indigenous Women*, A/HRC/30/41, para 47.

<sup>40</sup> UN Women, UNICEF, UNFPA, *Breaking the Silence on Violence against Indigenous Girls, Adolescents and Young Women*, May 2013, page 4. See also for reference, UN Inter-Agency Support Group on Indigenous Peoples Issues, *UN Thematic Paper on the Elimination and Responses to Violence, Exploitation and Abuse of Indigenous Girls, Adolescents and Young Women* (preparation on of the World Conference on Indigenous Peoples 2014), pages 1-2; 4-10.

<sup>41</sup> See United Nations Rapporteur on Violence against Women, *Report on Violence against Indigenous Women and Girls*, A/HRC/50/26 (April 21<sup>st</sup>, 2022), paras. 7-10; 24-34.

<sup>42</sup> United Nations Rapporteur on Indigenous Peoples, *Report on Indigenous Women*, paras. 57-59; IACHR, *Indigenous Women Report*, paras. 113-117.

<sup>43</sup> CEDAW Committee General Recommendation 35, on gender-based violence against women, paragraph 20.

Violence can be psychological, physical, sexual, economic, political, and a form of torture. Spiritual violence is frequently perpetrated against Indigenous Women and Girls, harming the collective identity of their communities, and their connection to their spiritual life, culture, territories, environment, and natural resources. Violence often occurs in institutions, particularly those that are closed and segregated, against Indigenous Women and Girls with disabilities and older Indigenous Women. Indigenous Women and Girls are frequently victims of rape, harassment, disappearances, killings, and femicide.

37. Forced displacement is a major form of violence which affects Indigenous Women and Girls, severing their connection to their lands, territories, and natural resources, and permanently harming their life plans and communities. Environmental violence, which can be in the form of environmental harm, degradation, pollution, and State failures to prevent foreseeable harm connected to climate change, also adversely affect Indigenous Women and Girls. Exploitation in prostitution; contemporary forms of slavery such as domestic servitude; forced surrogacy; the targeting of older unmarried Indigenous Women as witches or carriers of bad spirits; the stigmatization of married Indigenous Women who cannot bear children; and female genital mutilation are other forms of gender-based violence against Indigenous Women and Girls. The Committee underscores in particular the problem of human trafficking affecting Indigenous Women and Girls resulting from the militarization of indigenous territories by national armies, organized crime, mining and logging operations, drug cartels, as well as the expansion of military bases on indigenous lands and territories.

38. Gender-based violence against Indigenous Women and Girls is drastically underreported and perpetrators regularly enjoy impunity due to Indigenous Women and Girls' extremely limited access to justice and biased or flawed criminal justice systems.<sup>44</sup> Racism, marginalization, poverty, and alcohol and substance abuse increase the risk of Indigenous Women and Girls to gender-based violence.<sup>45</sup> Indigenous Women and Girls suffer gender-based violence perpetrated or tolerated by both state and non-state actors. State actors include members of the government, armed forces, law enforcement authorities, and public institutions, including in the health, education sectors, and in prisons.<sup>46</sup> Non-state actors include private individuals, businesses, private companies, paramilitary and rebel groups, illegal actors, and religious institutions.<sup>47</sup>

39. States parties have a due diligence obligation to prevent, investigate and punish perpetrators, and provide reparations to Indigenous Women and Girls who are victims of gender-based violence. This obligation is applicable to both non-indigenous and indigenous justice systems.<sup>48</sup> Due diligence should be implemented with a gender, Indigenous Women, intersectional, intercultural, and multidisciplinary perspective as defined in paragraphs 4 and 5 of this General Recommendation, and bearing in mind the gendered causes and impacts of the violence experienced by Indigenous Women.

40. Gender-based violence against Indigenous Women and Girls undermines the collective spiritual, cultural, and social fabric of Indigenous Peoples and their communities, also causing collective and sometimes inter-generational harm. Sexual violence against Indigenous Women and Girls has been used by a plurality of actors during armed conflicts and times of unrest as a weapon of war and as a strategy to control and harm indigenous communities.

41. States should have an effective legal framework and adequate support services in place to address gender-based violence against Indigenous Women and Girls. This framework must include measures to prevent, investigate, punish perpetrators, and provide

<sup>44</sup> CEDAW Committee, Report of the Inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, paras. 132-172.

<sup>45</sup> Inter-American Commission on Human Rights, *Indigenous Women Report*, paras. 85-86.

<sup>46</sup> See, for reference, UN Women, UNICEF, UNFPA, *Breaking the Silence on Violence against Indigenous Girls, Adolescents and Young Women*, May 2013, pages 13-16; 19-20; FIMI Contribution, pages 149-155.

<sup>47</sup> *Id.*

<sup>48</sup> Inter-American Commission on Human Rights, *Indigenous Women Report*, para. 230. See also CEDAW Committee, General Recommendation 33 on women's access to justice, para. 64.

assistance and reparations to Indigenous Women and Girls who are victims, as well as services to address and mitigate the harmful effects of gender-based violence. This general obligation extends to all areas of State action, including the legislative, executive, and judicial branches, at the national, regional and local levels, as well as privatized services. They require the formulation of legal norms, including at the constitutional level, and the design of public policies, programs, institutional frameworks and monitoring mechanisms, aimed at eliminating all forms of gender-based violence against Indigenous Women and Girls, whether committed by State or non-State actors.<sup>49</sup>

**42. The Committee recommends that States parties:**

**(a) Adopt and effectively implement legislation that prevents, prohibits, and responds to gender-based violence against Indigenous Women and Girls incorporating a gender, Indigenous Women and Girls, intersectional, intercultural, and multidisciplinary perspective, as defined in paragraphs 4 and 5 of this General Recommendation. Legislation and its implementation should also adequately consider the life cycle of all Indigenous Girls and Women, including those with disabilities;**

**(b) Recognize, prevent, address, sanction, and eradicate all forms of gender-based violence against Indigenous Women and Girls, including environmental, spiritual, political, structural, institutional, cultural violence, and that attributable to extractive industries;**

**(c) Ensure that Indigenous Women and Girls have timely and effective access to both non-indigenous and indigenous justice systems, including protection orders and prevention mechanisms when needed, and the effective investigation of cases of missing and murdered Indigenous Women and Girls free from all forms of discrimination and bias;**

**(d) Repeal all laws that prevent or deter Indigenous Women and Girls from reporting gender-based violence, such as guardianship laws that deprive women of legal capacity or restrict the ability of women with disabilities to testify in court; the practice of so-called “protective custody”; restrictive immigration laws that discourage women, including migrant and non-migrant domestic workers, from reporting such violence; and laws allowing for dual arrests in cases of domestic violence or for the prosecution of women when the perpetrator is acquitted;<sup>50</sup>**

**(e) Ensure that support services, including medical treatment, psychosocial counselling, professional training, as well as reintegration services and shelters are available, accessible, and culturally appropriate for Indigenous Women and Girls who are victims of gender-based violence against women. All services should be designed with an intercultural and multidisciplinary approach, as described in paragraph 5 of this General Recommendation and be vested with sufficient financial resources;**

**(f) Provide resources for Indigenous Women and Girls survivors of gender-based violence to have access to the legal system to report cases of gender-based violence against women. These can include transportation, legal aid and representation, and access to information in their own indigenous languages;**

**(g) States should act with due diligence to prevent all forms of violence, inhumane treatment, and torture against Indigenous Women and Girls who are deprived of liberty. States must ensure that when these events do occur, they are appropriately investigated and sanctioned. States should also adopt measures to ensure that Indigenous Women and Girls deprived of liberty know where and how to report these incidents. States should also prioritize policies and programs to promote the social reintegration of Indigenous Women and Girls deprived of liberty, respecting their culture, views, and languages;**

<sup>49</sup> CEDAW Committee, General Recommendation 35 on gender-based violence against women, para. 24(b).

<sup>50</sup> CEDAW Committee General Recommendation 35, on gender-based violence against women, para. 29 (c) iii.

(h) States must adhere to their obligations under international human rights law and international humanitarian law in situations of armed conflict, including the prohibition of all forms of discrimination and gender-based violence against civilians and enemy combatants, and harm to land, natural resources, and the environment; and

(i) Systematically collect disaggregated data and undertake studies, in collaboration with indigenous communities and organizations, to assess the magnitude, gravity, and root causes of gender-based violence against Indigenous Women and Girls, particularly sexual violence and exploitation, to inform measures to prevent and respond to such violence.

## **B. Right to effective participation in political and public life (articles 7, 8, and 14)**

43. Indigenous Women and Girls tend to be excluded from decision-making in local, national, and international processes, as well as in their own communities and indigenous systems.<sup>51</sup> Under article 7, they have the right to effective participation at all levels in political, public, and community life. This right includes participation in decision-making within their communities, ancestral and other authorities; in consent and consultation processes over economic activities by State and private actors in indigenous territories; in public service and decision-making positions at the local, national, regional, and international levels; and their work as human rights defenders.<sup>52</sup>

44. Indigenous Women and Girls face multiple and intersecting barriers to effective, meaningful, and real participation. Such barriers include political violence; lack of and unequal educational opportunities; illiteracy; racism; sexism; discrimination based on class and economic status; language constraints; the need to travel long distances to access any form of participation; the denial of access to health care services, including sexual and reproductive health and rights; and the lack of access, economic support, and information on legal, political, institutional, community, and civil society processes to vote, run for political office, organize campaign, and secure funding. The barriers to participation can be particularly high in armed conflict contexts, including in transitional justice processes, in which Indigenous Women and Girls, and their organizations are often excluded from peace negotiations or attacked and threatened when they do. States parties should act promptly to ensure that all Indigenous Women and Girls have access to computers, the internet, and forms of technology to facilitate their full inclusion in the digital world.

45. The Committee acknowledges the threats faced by Indigenous Women human rights defenders, whose work is protected by the right to participate in political and public life. At particular risk are Indigenous Women and Girls who are environmental human rights defenders, advancing their land and territorial rights, and those advocating against the implementation of development projects without the free, prior, and informed consent of the Indigenous Peoples concerned. In many cases, Indigenous Women and girl human rights defenders face killings; threats and harassment; arbitrary detentions, forms of torture, and the criminalization, stigmatization, and discrediting of their work. Many Indigenous Women and Girls' organizations face obstacles to be recognized as legal entities at the national level, which challenges their access to funding and their ability to work freely and independently. The Committee considers that States parties should adopt immediate gender-responsive measures to publicly recognize, support, and protect the life, liberty, security, and self-determination of Indigenous Women and girl human rights defenders, and to ensure safe conditions and an enabling environment for their advocacy work free from discrimination, racism, killings, harassment, and violence.

46. **The Committee recommends that States parties:**

<sup>51</sup> See United Nations Rapporteur on Indigenous Peoples, *Report on Indigenous Women*, paras. 38-39.

<sup>52</sup> For reference, see, United Nations High Commissioner for Human Rights, *Guidelines for States on the effective implementation of the right to participate in public affairs*, pages 10-19, [GuidelinesRightParticipatePublicAffairs\\_web.pdf \(ohchr.org\)](https://www.ohchr.org/en/docd/indigenous-rights-participate-public-affairs)

(a) In accordance with the Committee's General Recommendations No. 23 (1997) on women in political and public life and No. 25 (2004) on temporary special measures, and Articles 18, 19, 32(1), and 44 of the UNDRIP, promote the meaningful, real and informed participation of Indigenous Women and Girls in political and public life and at all levels, including in decision-making positions, which may include temporary special measures such as quotas, targets, incentives, and efforts to ensure parity in representation;<sup>53</sup>

(b) Establish accountability mechanisms to prevent that political parties and trade unions discriminate against Indigenous Women and Girls, and ensure that they have effective access to gender-responsive judicial remedies to report these violations when they occur. It is also critical to train public servants on the rights of Indigenous Women and Girls to effectively participate in public life;

(c) Disseminate accessible information among Indigenous Women and Girls and society in general on opportunities to exercise their right to vote, to participate in public life, and stand for election and promote their recruitment into the public service, including at the decision-making level. Measures to facilitate accessibility for women and Girls with disabilities can include sign language, easy read, braille, among others;

(d) Act with due diligence to prevent, investigate, and punish all forms of political violence against Indigenous Women politicians, candidates, human rights defenders, and activists, at the national, local, and community levels, and recognize and respect ancestral forms of organization and the election of representatives;

(e) Create, promote, and ensure the access of Indigenous Women to political office through campaign financing; skills training; incentives; awareness-raising activities for political parties to nominate Indigenous Women as candidates; and adequate health, child care facilities, and support services for caring of older persons. Adopt the necessary legislative measures and reforms to ensure the right of political participation of Indigenous Women and Girls. Create incentives, monitoring mechanisms as well as penalties for failure by political parties to implement temporary special measures to increase the political participation of Indigenous Women and Girls;

(f) Ensure that economic activities, including logging, development, investment, tourism, extractive, mining, climate mitigation and adaptation programs, and conservation projects are only implemented in indigenous territories and protected areas with Indigenous Women's effective participation, including full respect for their right to free, prior, and informed consent and the undertaking of adequate consultation processes. It is key that these economic activities do not adversely impact human rights, including those of Indigenous Women and Girls;<sup>54</sup>

(g) In line with the Committee's General Recommendation No. 30 (2013) on women in conflict prevention, conflict, and post-conflict situations and Security Council Resolution 1325 (2000) and subsequent resolutions, ensure and create spaces for Indigenous Women and Girls to participate as decision-makers and actors in peacebuilding efforts and transitional justice processes; and

(h) Take proactive and effective steps to recognize, support, and protect the life, integrity, and work of Indigenous Women human rights defenders and ensure that they conduct their activities in safe, enabling and inclusive environments. State measures should include the creation of specialized government mechanisms to protect women human rights defenders, with the genuine and meaningful participation of women human rights defenders and in collaboration with Indigenous Peoples.

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<sup>53</sup> CEDAW Committee General Recommendation 34 on rural women, para. 54.

<sup>54</sup> CEDAW Committee General Recommendation 34 on rural women, para. 54.

### C. Right to education (articles 5 and 10)

47. Indigenous Women and Girls face multiple barriers to enrollment, retention, and completion at all levels of education and in non-traditional fields.<sup>55</sup> Some of the most important educational barriers for Indigenous Women and Girls include: the lack of education facilities designed, established or controlled by Indigenous Peoples; poverty; discriminatory gender stereotypes, and marginalization;<sup>56</sup> limited cultural relevance of educational curricula; instruction solely in the dominant language; and the scarcity of sexuality education. Indigenous Women and Girls frequently must travel long distances to schools and they are at risk of gender-based violence on the way to and at schools. While at school, they may experience sexual violence, corporal punishment, and bullying. Gender-based violence and discrimination in education is particularly acute when forced assimilation policies are implemented in schools. Indigenous Girls with disabilities face particular barriers to their access and retention in the educational system, including lack of physical accessibility; the refusal by schools to enroll them; and the reliance on segregated schools for children with disabilities; among other problems. Forced and/or child marriages, sexual violence and adolescent pregnancies, the disproportionate burden of family responsibilities, child work, natural disasters, and armed conflicts can also hamper indigenous Girls' access to school.

48. **The Committee recommends that States parties:**

(a) **Ensure that Indigenous Women and Girls fully enjoy the right to education by:**

i) **Guaranteeing equal access of Indigenous Women and Girls to quality education at all levels of education, including by supporting Indigenous Peoples to realize the rights guaranteed in Articles 14 and 15 of the UNDRIP;**

ii) **Addressing discriminatory stereotypes related to indigenous origin, history, culture, and the experiences of Indigenous Women and Girls;**

iii) **Creating scholarship and financial aid programs to promote indigenous women's and Girls' enrollment, including in non-traditional fields such as science, technology, engineering and mathematics (STEM) and information and communication technologies (ICT), and recognize and protect indigenous knowledge and the contributions of Indigenous Peoples, including women, to science and technology; and**

iv) **Creating inter-disciplinary support systems for Indigenous Women and Girls to reduce their unequal share of unpaid care work and combat child marriage, and to assist victims in reporting acts of gender-based violence and labor exploitation. Social support systems should be operationally effective, accessible, and culturally responsive.**

(b) **Ensure quality education that is inclusive, accessible, and affordable for all Indigenous Women and Girls, including those with disabilities. States should remove barriers and provide adequate resources and facilities to ensure that Indigenous Women and Girls with disabilities have access to an education. States should guarantee the availability of age-appropriate sexual education, based on scientific research;<sup>57</sup> and**

(c) **Promote the adoption of curricula that reflect indigenous education, languages, cultures, history, knowledge systems, and epistemologies.<sup>58</sup> These efforts should extend to all schools, including those in the mainstream. The adoption of curricula should be done with the participation of Indigenous Women and Girls.**

<sup>55</sup> CEDAW General Recommendation 36 on the right of Girls and women to education, para. 41; CEDAW General Recommendation 34 on rural women, para. 42.

<sup>56</sup> CEDAW General Recommendation 36 on the right of Girls and women to education, para. 41; CEDAW General Recommendation 34 on rural women, para. 42.

<sup>57</sup> CEDAW Committee, General Recommendation 34 on rural women, para. 43.

<sup>58</sup> CEDAW Committee, General Recommendation 34 on rural women, para. 43.

## **D. Right to work (articles 11 and 14)**

49. Indigenous Women have limited access to decent, safe and adequately remunerated employment, which undermines their economic autonomy. Indigenous Women contribute significantly to the agricultural sector, however, they are overrepresented in subsistence agriculture, low-skilled, part-time, seasonal, low-paid or unpaid jobs, and home-based activities. A significant number of Indigenous Women and Girls also engage in domestic work with low remuneration and unsafe work and working conditions. Their overrepresentation in informal employment translates into weak income, benefits, and social protection. They also face discriminatory gender stereotypes and racial prejudice in the workplace, including the frequent prohibition from wearing their attire or to use their languages. Indigenous Women often face forms of gender-based violence and harassment at work, and their treatment can amount to forced labor and forms of slavery. States should create equal opportunities for Indigenous Women and Girls to access the needed education and training necessary to increase their employment prospects, and to facilitate their transition from the informal to the formal economy. States should also guarantee that Indigenous Peoples and women continue to pursue and benefit from their occupations, without discrimination.

50. **The Committee recommends that States parties:**

**(a) Ensure equal, safe, just, and favorable conditions of work and income security for Indigenous Women and Girls, including by:**

**i) Expanding and promoting vocational and professional training opportunities for Indigenous Women and Girls;**

**ii) Expanding opportunities for Indigenous Women to run businesses and become entrepreneurs. States should support Indigenous Women-led businesses and help indigenous communities generate wealth by improving access to capital and business opportunities;**

**iii) Facilitating their transition from the informal to the formal economy, if desired;**

**iv) Protecting the occupational health and safety of Indigenous Women in all forms of work;**

**v) Expanding the coverage of social protection and provide adequate child care services for Indigenous Women, including those who are self-employed;<sup>59</sup>**

**vi) Guarantee that Indigenous Peoples and women can continue to pursue and benefit from their occupations, without discrimination, also guaranteeing the collective rights to the land on and in which these occupations take place; and**

**vii) Fully incorporating the right to just and favorable conditions of work and the principle of equal pay for work of equal value into legal and policy frameworks, paying special attention to Indigenous Women, and Girls who are working legally.<sup>60</sup> States parties should promote entrepreneurship by ensuring equal access for Indigenous Women to loans and other forms of financial credit without collateral to enable them to create their own businesses, and advance their economic autonomy.**

**(b) Take steps to prevent discrimination, racism, stereotypes, gender-based violence, and sexual harassment against Indigenous Women in the workplace and to establish and enforce effective reporting and accountability mechanisms, including through regular labor inspections; and**

**(c) Ensure that Indigenous Women and Girls have access to vocational and professional skills training, including in science, technology, engineering and**

<sup>59</sup> General Recommendation 34 on rural women, paras. 40 and 41.

<sup>60</sup> General Recommendation 34 on rural women, para. 50.

**mathematics (STEM) as well as information and communication technologies (ICT) and other fields historically excluding Indigenous Peoples.**

## **E. Right to health (articles 10 and 12)**

51. Indigenous Women and Girls have limited access to adequate health care services, including sexual and reproductive health services and information, and face racial and gender-based discrimination in health systems. The right to free, prior and informed consent is often not respected for Indigenous Women and Girls in the health sector. Health professionals are often race- and gender-biased, insensitive to the realities, culture, and views of Indigenous Women, often do not speak indigenous languages, and rarely offer services respecting their dignity, privacy, informed consent, and reproductive autonomy. Indigenous Women frequently experience difficulties in securing access to sexual and reproductive health information and education, including about family planning methods, contraception, and access to a safe and legal abortion. They are often victims of gender-based violence in the health system, including obstetrics violence; coercive practices such as involuntary sterilizations or forced contraception; and barriers to decide on the number and spacing of their children. Indigenous midwifery and birth attendants are often criminalized, and technical knowledge is undervalued by non-indigenous health systems. Pandemics have a disproportionate impact on Indigenous Women and Girls and States parties must ensure access to culturally acceptable health-care services, testing, and vaccination during these emergencies.

52. **The Committee recommends that States parties:**

(a) **Ensure that quality health services and facilities are available, accessible, affordable, culturally appropriate, and acceptable for Indigenous Women and Girls, including those with disabilities, older women and LGBTI Indigenous Women and Girls. Ensure that free, prior and informed consent; confidentiality; and privacy are respected in the provision of health services;**

(b) **Guarantee that Indigenous Women and Girls receive prompt, comprehensive, and accurate information in accessible formats on sexual and reproductive health services and affordable access to such services, including safe abortion services and modern forms of contraception;**

(c) **Ensure that health information is widely disseminated in indigenous languages, including through conventional and social media;**

(d) **Ensure the recognition of indigenous health systems, ancestral knowledge, practices, sciences, and technologies, and prevent and sanction the criminalization of this knowledge;**

(e) **Provide gender-responsive and culturally responsive training to health professionals treating Indigenous Women and Girls, with a gender and intercultural perspective as described in paragraphs 4 and 5 of this General Recommendation, including community health workers and birth attendants. Encourage Indigenous Women to enter the medical profession; and**

(f) **Adopt steps to prevent all forms of gender-based violence, coercive practices, discrimination, gender stereotypes and racial prejudice in the provision of health services.**

## **F. Right to culture (articles 3, 5, 13 and 14)**

53. Culture is an essential component of the lives of Indigenous Women and Girls. Culture is intrinsically linked to their lands, territories, histories, and community dynamics. There are many sources of culture for Indigenous Women and Girls, including languages, dress, the way they prepare food, practice indigenous medicine, respect sacred places, practice religion and their traditions, and transmit the history and heritage of their communities and peoples. Indigenous Women have a right not only to enjoy their culture, but also to challenge aspects

of their culture that they consider discriminatory, such as outdated laws, policies, and practices contrary to international human rights law and gender equality. According to article 12 of the Convention on the Rights of the Child, indigenous Girls also have the right to express their views and to participate in cultural matters affecting them, either directly or through a representative, in accordance with their age and maturity.<sup>61</sup> States should also ensure that Indigenous Women and Girls can participate fully and free from all forms of discrimination in sports and recreational activities.

54. The dispossession, lack of legal recognition and unauthorized use of indigenous territories, lands, and natural resources as well as environmental degradation, including biodiversity loss, pollution, and climate change, are direct threats to the self-determination, cultural integrity, and survival of Indigenous Women and Girls, as are the unauthorized use and appropriation of their technical knowledge, spiritual practices, and cultural heritage by state actors and third parties. States should protect and preserve indigenous languages, culture and knowledge, including through digital tools; sanction their unauthorized appropriation and use; and respect and protect the lands, territories, and sacred places of Indigenous Peoples.

55. **The Committee recommends that States parties:**

(a) **Ensure the individual and collective rights of Indigenous Women and Girls to maintain their culture, identity, and traditions, and to choose their own path and life plans;**

(b) **Respect, protect, and expand the rights to land, territories, resources, and a safe, clean, sustainable, and healthy environment of Indigenous Peoples as a precondition for preserving the culture of Indigenous Women and Girls;**

(c) **Act with due diligence to prevent, investigate, punish transgressors, and provide reparations to victims in cases of unauthorized use or appropriation of Indigenous Women's cultural knowledge and heritage, without their free, prior and informed consent, and adequate benefit sharing;**

(d) **Collaborate with Indigenous Peoples, including women, to develop culturally appropriate education programs and curricula;**

(e) **Study the relationship between technology and culture, as digital tools can be important to transmit and preserve indigenous languages and culture. Where digital tools are used to support transmission and the preservation of indigenous cultures, these tools should be made accessible to and be culturally appropriate for Indigenous Women and Girls;**

(f) **Recognize and protect Indigenous Women's intellectual property and their cultural heritage; scientific and medical knowledge; forms of literary, artistic, musical, and dance expressions; and natural resources. In adopting measures, States parties must take into account the preferences of Indigenous Women and Girls. Measures can include the recognition, registration, and protection of the individual or collective authorship of Indigenous Women and Girls under national intellectual property rights regimes and should prevent the unauthorized use of the intellectual property, cultural heritage, scientific and medical knowledge, forms of literary, artistic, musical, and dance expressions; and natural resources of Indigenous Women and Girls by third parties. States should also respect the principle of free, prior and informed consent of the Indigenous Women authors and artists, and the oral or other customary forms of transmission of their traditional knowledge, cultural heritage and scientific, literary, or artistic expressions;<sup>62</sup> and**

<sup>61</sup> Committee on the Rights of the Child, General Comment No. 11 (2009), Indigenous Children and their Rights under the Convention, para. 38.

<sup>62</sup> Committee on Economic, Social, and Cultural Rights, General Comment No. 17 (2006), *The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph 1 (c), of the Covenant)*, E/C.12/GC/17, para. 32.

(g) **Act with due diligence to respect and protect the sacred places of Indigenous Peoples and their territories, and hold those who violate them accountable.**

## **G. Rights to land, territories, and natural resources (articles 13 and 14)**

56. Land and territories are an integral part of the identity, views, livelihood, culture, and spirit of Indigenous Women and Girls. Their lives, well-being, culture, and survival are intrinsically linked to the use and enjoyment of their lands, territories, and natural resources. The limited recognition of ownership of their ancestral territories; the absence of titles to their lands and legal protection of their traditions and heritage; and the lack of recognition of Indigenous Peoples' land and native title rights at the treaty, constitutional, and legislative levels in many countries<sup>63</sup> undermine and fuel disrespect by state and private actors for their rights to collective ownership, possession, use and enjoyment of land and resources. Lack of recognition of indigenous land rights can lead to poverty; food and water insecurity; barriers to access natural resources needed for survival; and create unsafe conditions, which give rise to gender-based violence against Indigenous Women and Girls. States are required under international law to delimit, demarcate, and title, and ensure security of title to Indigenous Peoples' territories to prevent discrimination against Indigenous Women and Girls.

57. **The Committee recommends that States parties:**

(a) **Recognize the rights of Indigenous Peoples and Women to individual and collective ownership and control over lands encompassed by their customary land tenure systems, and develop policies and laws that adequately reflect this recognition in the local and national economies;**

(b) **Recognize legally the right to self-determination and the existence and rights of Indigenous Peoples to their lands, territories, and natural resources in treaties, constitutions, and laws at the national level;**

(c) **Require the free, prior and informed consent of Indigenous Women and Girls before authorizing economic, development, extractive, and climate mitigation and adaptation projects on their lands, territories, and natural resources. It is recommended to design free, prior, and informed consent protocols to guide these processes;**

(d) **Prevent and regulate activities by businesses, corporations, and other private actors that may undermine the rights of Indigenous Women and Girls to their lands, territories and environment, including measures to punish, ensure the availability of remedies, grant reparations, and prevent the repetition of these human rights violations; and**

(e) **Adopt a comprehensive strategy to address discriminatory stereotypes, attitudes, and practices, which undermine Indigenous Women's rights to land, territories, and natural resources.**<sup>64</sup>

## **H. Rights to food, water and seeds (Articles 12 and 14)**

58. Indigenous Women and Girls have a key role in their communities in securing food, water, and forms of livelihood and survival. The dispossession of territories, forced displacement, and lack of recognition of indigenous land rights limits the opportunities for Indigenous Women and Girls to achieve food and water security, and to manage these needed natural resources. The implementation of extractive and other economic activities and development projects can cause food and water contamination, disruption, and degradation, and interfere with key forms of ancestral farming. Climate change and other forms of environmental degradation also threaten food security, and contaminate and disrupt water

<sup>63</sup> Study of the United Nations Expert Mechanism on Indigenous Peoples, *Right to Land under the United Nations Declaration on the Rights of Indigenous Peoples: A Human Rights Focus*, A/HRC/45/38, July 15, 2020, paras. 5-9.

<sup>64</sup> CEDAW Committee, General Recommendation 34 on rural women, para. 57.

supplies. States should adopt urgent measures to ensure that Indigenous Women and Girls have adequate access to sufficient levels of food, nutrition, and water. Of particular concern is the increasing commercialization of seeds, which are an essential part of the ancestral knowledge and cultural heritage of Indigenous Peoples. This commercialization of seeds often occurs without benefit sharing with Indigenous Women. The proliferation of transgenic or genetically modified crops are of concern to Indigenous Peoples and often take place without any participation from Indigenous Women or Girls.

59. **The Committee recommends that States parties:**

(a) **Ensure adequate access to sufficient food, water, and seeds by Indigenous Women and Girls and acknowledge their contribution to food production, sovereignty, and sustainable development;**

(b) **Protect ancestral forms of farming and sources of livelihood for Indigenous Women and ensure the meaningful participation by Indigenous Women and Girls in the design, adoption, and implementation of agrarian reform schemes and the management and control of natural resources;**

(c) **Exercise due diligence to prevent, investigate, and punish gender-based violence against Indigenous Women and Girls when performing agricultural work, procuring food and fetching water for their families and communities; and ensure that Indigenous Women and Girls have access to the benefits of scientific progress and technological innovation to be able to achieve food and water security, and are compensated for their contributions and technical knowledge. Their scientific contributions should also be recognized by States parties.**

## **I. Right to a clean, healthy, and sustainable environment (articles 12 and 14)**

60. The right to a clean, healthy, and sustainable environment encompasses, inter alia, a safe and stable climate; safe and adequate food and water; healthy ecosystems and biodiversity; a non-toxic environment; participation; access to information; and access to justice in environmental matters.<sup>65</sup> Indigenous Women and Girls refer to “Mother Earth”, a concept that reflects the vital link they have with a healthy environment and their lands, territories, and natural resources. Human-caused pollution, contamination, deforestation, burning fossil fuels, and biodiversity loss threaten the link between Indigenous Women, and the environment. The failure of states to take adequate action to prevent, adapt to, and remediate these serious environmental harms constitutes a form of discrimination and violence against Indigenous Women and Girls that needs to be promptly addressed. Moreover, states should take steps to recognize the contribution of Indigenous Women through their technical knowledge of biodiversity conservation and restoration, including them in the decision-making, negotiations, and discussion concerning climate action, mitigation, and adaptation measures. States should also act promptly to support the work of Indigenous Women and Girls who are environmental human rights defenders and ensure their protection and security.

61. **The Committee recommends that States parties:**

(a) **Ensure that laws and policies related to the environment, climate change, and disaster risk reduction reflect the specific impacts of climate change and other forms of environmental degradation and harm, including the triple planetary crisis;<sup>66</sup>**

<sup>65</sup> For reference, see United Nations Human Rights Council Resolution, 48/13, *recognizing the human right to a clean, healthy, and sustainable environment*, A/HRC/RES/48/13 (October 18, 2021), <https://undocs.org/A/HRC/RES/48/13>

<sup>66</sup> CEDAW Committee, General Recommendation 37 on the gender-related dimensions of disaster risk reduction in the context of climate change, para. 26.

(b) **Ensure that Indigenous Women and Girls have equal opportunities to meaningfully and effectively participate in decision-making related to the environment, disaster-risk reduction, and climate change;**<sup>67</sup>

(c) **Ensure that effective remedies and accountability mechanisms are in place to hold those responsible for environmental harm accountable, and ensure access to justice for Indigenous Women and Girls in environmental matters; and**

(d) **Ensure the free, prior, and informed consent of Indigenous Women and Girls in matters affecting their environment, lands, cultural heritages, and natural resources. This includes when any proposal is made to designate their lands as a protected area for conservation or climate change mitigation purposes or carbon sequestration and trading; a green energy project is proposed on their lands; and in any other matter significantly impacting their human rights.**

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<sup>67</sup> CEDAW Committee, General Recommendation 37 on the gender-related dimensions of disaster risk reduction in the context of climate change, para. 36.