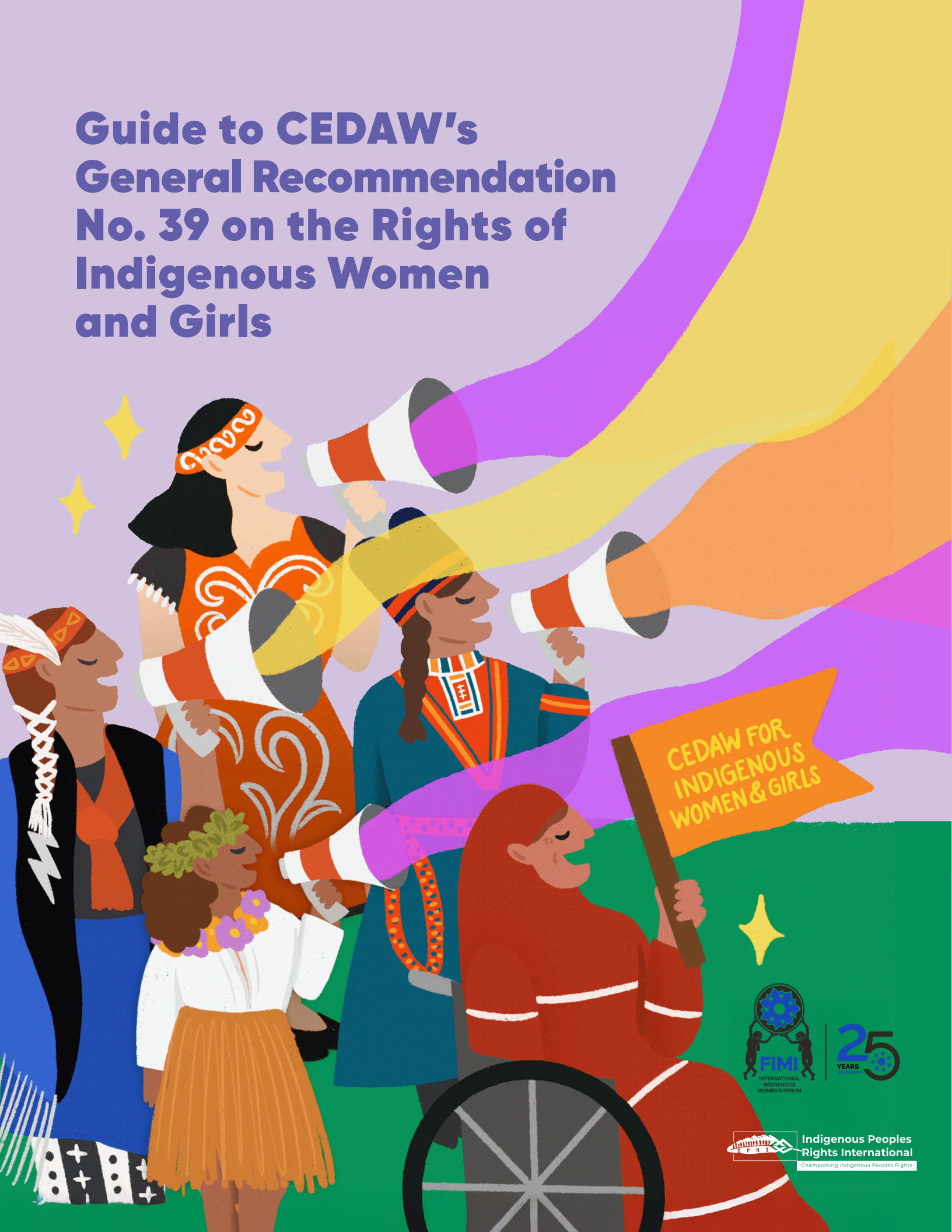
Guide to CEDAW's General Recommendation No. 39 on the Rights of Indigenous Women and Girls



FIMI
INTERNATIONAL INDIGENOUS WOMEN'S FORUM

25 YEARS

Indigenous Peoples Rights International
Championing Indigenous Peoples Rights

Contents

Preface

The adoption of General Recommendation No. 39 (GR 39) by the CEDAW Committee marks a historic and transformative step in the recognition of the rights of Indigenous Women and girls. For the first time, an international human rights instrument comprehensively acknowledges the distinct identities, histories, and experiences of Indigenous Women and girls, and the systemic discrimination they face not only as women, but also as Indigenous peoples. This milestone is the result of many years of tireless efforts, advocacy, and strategic engagement by generations of Indigenous Women, elders, youths, knowledge holders and grassroots defenders at local, national, and international levels. Their persistent voices and collective action were instrumental in placing the realities of Indigenous Women and girls firmly on the global human rights agenda.

As Indigenous Women, we carry a deep and enduring connection to our lands, cultures, and communities. Yet, across the globe, our rights continue to be undermined by colonial legacies, structural inequality, gender-based violence, and the denial of our collective rights. GR 39 affirms that these realities must no longer be ignored. It provides a powerful framework for States to uphold their obligations to respect, protect, and fulfill the rights of Indigenous Women and girls in a way that is rooted in our identities, knowledge systems, and lived realities. GR39 is more than a legal framework it is a political and cultural declaration of the dignity, resilience, and leadership of Indigenous Women. It calls for systemic change and reaffirms the holistic nature of our rights in all spheres of life.

It is vital that Indigenous Peoples, particularly Indigenous Women and girls, are aware of the significance of GR 39 and how to use it. This guide aims to make GR 39 accessible and practical, so it can serve as a strategic tool to hold governments accountable, influence policies, and assert our rights both as women and as Indigenous peoples. We encourage Indigenous communities and organizations to interpret and adapt this guide in ways that reflect their specific contexts, languages, and customary systems ensuring it becomes a living instrument grounded in community realities.

More importantly, GR 39 offers an opportunity to strengthen our unity and collective power. By using this tool together across territories, regions, and movements we can deepen solidarity among Indigenous Women and amplify our voices in the global fight for justice, equality, and self-determination. In doing so, we not only protect our individual and collective rights we help shape a future that honors the dignity and contributions of Indigenous

Women everywhere. Through this guide, FIMI and IPRI reaffirm our commitment to the wide dissemination and effective implementation of GR39, as part of the Global Implementation Plan. We will continue working alongside Indigenous Women and their organizations to ensure this tool reaches communities, informs action, and drives transformative change. The adoption of GR39 is a milestone but not the end. Our shared task now is to ensure its full implementation, so that its principles are reflected in policies, laws, institutions, and daily life Let this guide be a companion in our ongoing struggle for equality, a resource for resistance, and a testament to the strength and leadership of Indigenous women.

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I.

Introduction

I. Introduction

The Guide has been produced by Indigenous Peoples Rights International in partnership with the International Indigenous Women's Forum (FIMI). It concerns the Committee on the Elimination of Discrimination Against Women's ("CEDAW") General Recommendation No. 39 on the rights of Indigenous women and girls ("GR39"). CEDAW is one of the ten United Nations 'treaty bodies'. Treaty bodies are committees of independent experts that monitor compliance with the core United Nations human rights treaties.[1]

CEDAW is composed of 23 experts on women's rights from around the World, elected by the States parties to the 1979 International Convention on the Elimination of All Forms of Discrimination Against Women ("the Convention"). At present, 189 States have ratified the Convention (known as 'States parties'),[2] while 114 have ratified the 1999 Optional Protocol to the Convention ("the OP").[3] The latter allows for the filing of international complaints (known as 'communications') in relation to violations of the Convention, including as these may be interpreted by using GR39. It may also provide for access to the 'inquiry procedure', which can be used where States parties have agreed to it and CEDAW receives "reliable information indicating grave or systematic violations" of the Convention (this and the communications procedure are discussed in **Section III**).

Adopted in October 2022, GR39 is an important instrument that seeks to address the specific experiences of Indigenous women and girls and the various forms of discrimination that they face as well as the intersections or connections between Indigenous Peoples' rights and women's rights, individually and collectively (see **Section II**).[4] An Indigenous legal scholar explains that "for indigenous women, the key issue is to pursue a human rights framework that not only simultaneously advances individual and collective rights, but also explicitly addresses gender-specific human rights violations of indigenous women in a way that does not disregard the continued practices and effects of colonialism."[5]

1 https://www.ohchr.org/en/treaty-bodies/cedaw.

2 https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en.

3 https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&clang=_en.

4 *See e.g.*, L. Cahier, *Indigenous Women at the United Nations: Exploring Their Creative Claims and Critical Perspectives on International Human Rights Law* in A. Beltran y Puga & R. Celorio (eds.), BUILDING BRIDGES. CONTEMPORARY PERSPECTIVES ON GENDER, SEXUALITY AND INTERNATIONAL HUMAN RIGHTS LAW (Ed. U. del Rosario 2024), p. 177, https://www.academia.edu/download/118573925/building_bridges_web_aai3042t.pdf#page=198.

5 I. Knobblock and R. Kuokkanen, *Decolonizing Feminism in the North: A Conversation with Rauna Kuokkanen*, 23 NORDIC J. FEMINIST & GENDER RESEARCH 275 (2015), p. 277.

In addition to violations of their collective rights, Indigenous women and girls experience discrimination and other serious challenges because of their gender, their status as members of Indigenous Peoples, and perhaps for other reasons as well[6] (e.g., as minors or their economic status).[7] This 'intersection' of different forms of discrimination as well as the differential impacts on Indigenous women and girls are explained in GR39. It also stresses the role of Indigenous women and girls as leaders and active agents within their communities and outside of them – not as passive victims – observing also that that they often risk serious harm due to their defense of Indigenous Peoples' and women's human rights (7, 43).

With this in mind, this Guide explains the standards and procedures used by CEDAW and the role of GR39 in relation to both (**Section III and IV**). It aims to make CEDAW and GR39 more accessible to Indigenous Peoples, women and girls and to facilitate engagement in support of their rights, both nationally and internationally. While GR39 is a product of CEDAW, importantly, it was promoted by and then developed following substantial consultation with Indigenous Peoples and women and their organizations. It may be (and has been) used to address the rights of Indigenous women and girls by other international and national human rights bodies, national courts or other mechanisms.[8] It is, therefore, relevant beyond just CEDAW.

We hope that this Guide assists with this advocacy as well as respect for Indigenous Peoples' rights more broadly. We also strongly recommend that you read and refer to the original text of GR39 if approaching CEDAW or other bodies, not the summarized text herein. **References to GR39 in the text or footnotes** will be followed by the paragraph number.

6 *See e.g., Ramírez Escobar et al. v. Guatemala*, IACtHR, Ser C No. 351 (2018) (finding that discrimination was intersectional as the product of numerous factors that interacted with and affected each other).

7 *See e.g.,* FIMI, *Global Study on the Situation of Indigenous Women and Girls* (2020), https://perma.cc/Y6S2-EAEC.

8 *See e.g.*, *Tagaeri and Taromenane Indigenous Peoples v. Ecuador*, IACtHR, Ser C No. 537 (2024) (repeatedly citing GR39, e.g., 362, 369, 383, 401, 429-30, 468).

II.

Why is GR39 Important?

II. Why is GR39 Important?

GR39 is discussed in detail in Section IV below. This present section simply lists and summarizes some of the main reasons that GR39 is important.

- Indigenous women and girls are more than one half of the global Indigenous population (normally at least 51%). Because individual and collective rights are mutually interdependent and not exclusive, it is difficult to talk about the realization of self-determination where the impairment or denial of the rights of more than one half of the 'self' continue to be prevalent.[9]
- GR39 concerns international guarantees against discrimination and for equality. These are fundamental guarantees in the international human rights system. They crosscut all other rights and are immediate obligations. GR39 explains that "Discrimination against Indigenous women and girls and its effects should be understood in both their individual and collective dimensions" (17).
- It is the most comprehensive articulation of the rights of Indigenous women and girls produced by a UN treaty body, to-date. While CEDAW has referred to some of the rights of Indigenous women and girls before,[10] as have some other treaty bodies,[11] GR39 is first detailed framework that has been developed.
- Because general recommendations are rarely revised or replaced, GR39 likely will be used by CEDAW for decades to inform its work (and by others too, e.g., other treaty bodies, Special Procedures of the Human Rights Council and national authorities). This consideration will be greatly enhanced if GR39 is also promoted and used by Indigenous Peoples, both before CEDAW and elsewhere.

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9 *See e.g.*, R. Kuokkanen, *Self-Determination and Indigenous Women's Rights at the Intersection of International Human Rights*, 34 HUMAN RIGHTS Q. 225 (2012).

10 *See e.g., CEDAW Jurisprudence on Indigenous Women and Girls, 2017-2024* (IPRI 2024), https://iprights.org/index.php/en/component/content/article/cedaw-jurisprudence-on-indigenous-women-and-girls-2017-2024-compiled-and-edited-by-fergus-mackay?catid=9&Itemid=102.

11 *See e.g., McIvor and Grismer v. Canada*, Communication 2020/2010 and *L.N.P v. Argentina*, Communication 1610/2007 (in the Human Rights Committee); *Leo v. Australia*, Communication No. 17/2013, para. 7.6 (in the Committee on the Rights of Persons with Disabilities); CERD, *General Recommendation No. 25 on gender-related dimensions of racial discrimination* (2000), para. 2-3; *Rosendo Cantú et al. v. Mexico*, IACtHR, Ser C No. 216 (2010) (a judgment of the Inter-American Court); and, more generally, IWGIA, *Implementing UN Recommendations on Indigenous Women: Understanding barriers and enablers* (2022), https://iwgia.org/en/resources/publications/4840-implementing-un-recommendations-indigenous-women.html.

- Article 44 of the UN Declaration on the Rights of Indigenous Peoples ("UNDRIP") states that "All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals." The "rights and special needs" of Indigenous women and girls are also underlined in UNDRIP, Articles 21 and 22. In general, then, GR39 can be seen as illuminating what is required to implement the guarantee in UNDRIP, Article 44 for gender equality concerning the rights codified in UNDRIP, while also firmly connecting those rights to the rights and obligations contained in the Convention, a legally binding treaty.[12] The same is also the case with respect to UNDRIP, Articles 21 and 22, including as related to the measures to be taken, "in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination."

- The above conclusion is supported by the text of GR39, which provides that UNDRIP is "an authoritative framework for interpreting State party and core obligations under the Convention…," and it is highly relevant to the guarantees against discrimination therein (13).[13] Consequently, UNDRIP should be read together with GR39 and it is of "fundamental importance" to understanding the rights of Indigenous women and girls under the Convention.[14]

- As the preceding illustrates, GR39 recognizes that Indigenous women and girls are also members of their communities and peoples and that their individual rights as women and their collective rights as Indigenous Peoples are interconnected (19, 22 and 56).[15] Violations of collective rights also negatively – sometimes also disproportionately, meaning more and/or in different ways – affect Indigenous women and girls. To some extent, therefore, GR39 also addresses the collective rights of Indigenous Peoples. For instance, GR39 states that "failure to protect the rights to self-determination, collective security of tenure over ancestral lands and resources, and effective participation and consent of Indigenous women in all matters affecting them constitutes discrimination against them and their communities" (18). This is important as it does not separate Indigenous women and girls from their communities

[12] Consistent with GR39, the Human Rights Council's Expert Mechanism on the Rights of Indigenous Peoples confirms that UNDRIP is "a contextualised elaboration of general human rights principles" and the standards therein "connect to existing State obligations under international human rights law…." A/HRC/EMRIP/2023/3, para. 8

[13] *See also M. E. V., S. E. V. and B. I. V. v. Finland*, Communication No. 172/2022, para. 9.12 (where the Committee on the Rights of the Child decided that it will "read the Convention in the light of the evolutionary interpretation of Indigenous Peoples' rights, in particular, [UNDRIP], as an authoritative framework for interpreting State party obligations under the Convention concerning Indigenous peoples' rights…").

[14] 16, stating that 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 the interpretation of the Convention in the current context."

[15] *See also* A/HRC/50/26, para. 50 (where the SRVW explains that "individual and collective rights interact together; they are mutually interdependent and not exclusive").

and peoples, while also acknowledging that discrimination and equality require action, both internally and externally.

- Technically, GR39 is not binding on States parties to the Convention. Nonetheless, it does authoritatively identify and explain their legally binding obligations under the Convention and the corresponding legal rights that are vested in Indigenous women and girls. In the words of GR39, it "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 the Convention…" (16). CEDAW is the body that is authorized to interpret and monitor compliance with the Convention. Therefore, GR39 is highly relevant and persuasive in relation to understanding the legal obligations of States parties to the Convention, both as those obligations derive from the rights guaranteed by the Convention and as they connect to the rights in UNDRIP.[16]
- Depending on whether your country has ratified CEDAW alone or ratified CEDAW as well as the OP, CEDAW offers several procedures in which GR39 can be used to seek protection for the individual and collective rights of Indigenous women and girls and, by extension, the rights of the Indigenous Peoples to whom they belong in some cases.
- For Indigenous Peoples in some countries (in Asia, especially), the procedure under the OP *is the only available option* to file a *formal international complaint* about violations of Indigenous women's or Indigenous Peoples' rights. In others, it is one out of two options.

[16] *See e.g.*, R. Celorio, *The Rights of Indigenous Women and Girls: General Recommendation 39 of the CEDAW Committee*, 27 ASIL INSIGHTS 1, p. 5 (GR39 is "an authoritative interpretation of the content of CEDAW obligations and their applicability to Indigenous women and girls"), https://www.asil.org/sites/default/files/ASIL_Insights_2023_V27_I11.pdf.

III.

CEDAW: The Framework for Implementation of GR39

III. CEDAW: The Framework for Implementation of GR39

This section explains the Convention and the OP and the related mechanisms/procedures that they have established. The function and role of general recommendations, such as GR39, is also outlined. If engaging with CEDAW for the first time, it would be helpful to seek the advice and assistance of other Indigenous Peoples or civil society organizations that have experience with CEDAW. In addition to organizations focused on Indigenous women, who are an invaluable resource, the NGO, International Women's Rights Action Watch closely interacts with CEDAW and likely is a useful resource: https://cedaw.iwraw-ap.org/. If your concern also involves Indigenous girls and may raise issues under the Convention on the Rights of the Child, you may also wish to contact the NGO, Child Rights Connect as it works closely with the Committee on the Rights of the Child: https://childrightsconnect.org/un-treaty-bodies/.

A. The Convention, the OP and General Recommendations

1. A Quick Overview of the Convention[17]

This section briefly explains keys aspects of the Convention, which, as noted above, is a legally binding treaty.[18] Part I of the Convention Articles 1-6) is mainly about the implementation measures that States parties are required to adopt. Some of the major points are noted below. Parts II-IV concern specific rights and specific actions that are required to avoid discrimination and to achieve equality. Part V establishes CEDAW and broadly describes its mandate (its authority) and operations, while Part VI concerns rules pertaining to ratification of the Convention, dispute settlement and other technical considerations.
In Part I, **Article 1 of the Convention** provides a definition of discrimination against women.

[17] For the text of the Convention *see* https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women. *See also* https://blogs.lse.ac.uk/vaw/int/cedaw/ (containing an overview of the Convention, English only).

[18] For more comprehensive discussion of the content of the Convention, *see* E. Dictaan-Bang-oa and H. Tugendhat, *Realizing Indigenous Women's Rights: A Handbook on the CEDAW* (Asia Indigenous Women's Network/Tebtebba 2013); and *CEDAW-based Legal Review: A Brief Guide* (UN Women 2019). *See also Indigenous Women and their Human Rights in the Americas*, OEA/Ser.L/V/II. Doc. 44/17 (2017) (at the regional level).

It defines the term 'discrimination against women' to mean "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." This can be broken down into the following elements: 'discrimination against women' means

- any distinction, exclusion or restriction
- made on the basis of sex
- which has the effect or purpose ('effect' means that it does not have to be deliberate or intended, just the result/outcome)
- of impairing or nullifying (in other words, harming or invalidating)
- the recognition, enjoyment or exercise by women ('recognition' generally means in law and/or policy)
- on a basis of equality of men and women (among other things, comparing men to women)
- of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (basically, anything that may be classified as a human right or fundamental freedom, including as recognized in national law).

Note that, in some places, GR39 specifically identifies that certain acts or omissions (doing something prohibited or not doing something that is required) are discriminatory towards Indigenous women and girls and, thus, consistent with the above definition. For instance, it identifies a "set of rights," including rights to territory, FPIC and self-determination, which lay "the foundation for a holistic understanding of the individual and collective rights of Indigenous women," and states that violation of "any of these or related rights constitutes discrimination against Indigenous women and girls"(6).[19] Therefore, in general, anything that can be attributed to the State and which may be said to harm or invalidate any of the set of rights identified in GR39 can be presumed to be discrimination for the purposes of Article 1.[20] Recall also that GR39 explains that the rights recognized in UNDRIP "are relevant to

[19] *See also* 18 and 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 and autonomy and related guarantees, as manifested, inter alia, in their continued dispossession of their lands, territories and natural resources").

[20] *See e.g.*, 34 and 37 (explaining, respectively, that "[g]ender-based violence against Indigenous women and girls is a form of discrimination under article 1 of the Convention," and "[f]orced displacement is a major form of violence that affects Indigenous women and girls…"); and CEDAW, *General Comment No. 28 on the core obligations of States parties under article 2*, para. 19 ("Discrimination against women on the basis of sex and gender comprises … violence against women, gender-based violence, namely, violence that is directed against a woman because she is a woman or vio-

Indigenous women, both as members of their peoples and communities and as individuals, and, ultimately, in relation to the guarantees against discrimination" in the Convention (13). Thus, violation of the rights in UNDRIP likely are also discriminatory under Article 1 where they affect Indigenous women and girls.

Article 2 is the primary implementation clause, requiring that States parties adopt, amend or repeal policies, laws and practices to eliminate discrimination against women and to achieve equality in fact. GR39 explains that to "ensure compliance with articles 1 and 2 and other relevant provisions of the Convention, State action, legislation and policies must reflect and respect the multifaceted identity of Indigenous women and girls" (3). Additionally, the prohibition of discrimination under articles 1 and 2 of the Convention "must be strictly applied to ensure the rights of Indigenous women and girls … to self-determination and to access to and the integrity of their lands, territories and resources, culture and environment" (6). In that sentence, the term 'strictly' elevates the nature of the obligation (alternative words include rigorously, exactly, precisely or without deviation).

Article 4 concerns "temporary special measures," which generally seek to correct inequalities through specific measures that give preference to one group or category of people and which are aimed at accelerating equality (verifiably).[21] Article 4(2) explains that special measures shall not be considered to be discriminatory (the same applies to protections for pregnancy and maternity in the Convention). Given that Indigenous Peoples often fall at the lower/lowest end of most social, economic other indices – despite the flaws inherent in these measurements when applied to Indigenous Peoples[22] – and this is often even more pronounced for Indigenous women and girls, special measures may be justified in various situations. Any such measures must be developed with Indigenous Peoples' effective participation as well as be closely tailored to their rights and needs.[23] In common with CEDAW, CERD has cautioned that special measures "should not be confused with specific rights" held by Indigenous Peoples; the latter "are permanent rights, recognized as such in human rights instruments…," whereas special measures are temporary and designed only to correct documented inequalities through specific and targeted actions.[24]

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lence that affects women disproportionately").

21 *See e.g.*, *General recommendation No. 25 on Article 4, paragraph 1 (temporary special measures)* (2004).

22 *See e.g.,* J. Waldmüller et al, *Remaking the Sustainable Development Goals: Relational Indigenous Epistemologies*, 41 POLICY AND SOCIETY 471 (2022), p. 480 (the "infrastructure of measurement makes visible and is therefore representative of only particular worldviews. …[T]his approach (at best) ignores and (at worst) oppresses the worldviews of Indigenous communities …").

23 *See e.g.,* CEDAW/C/CAN/CO/10, para. 17-8.

24 CERD, *General recommendation No. 32 on the meaning and scope of special measures* (2009), para. 15; and CEDAW, *General recommendation No. 25 on Article 4, paragraph 1 (temporary special measures*) (2004), para. 19 ("provision of general conditions in order to guarantee the civil, political, economic, social and cultural rights of women and the girl child, designed to ensure for them a life of dignity and non-discrimination, cannot be called temporary special measures").

Parts II-IV of the Convention contain a set of rights to which the non-discrimination/equality requirements apply. These include: the right to vote and political participation rights; rights to health, education and work; cultural rights; rights with respect to inheritance, nationality and Indigenous identity, including as it applies to children of marriages; access to justice and effective remedies; protections against gender-based violence; and specific protection for rural women (where CEDAW would sometimes address Indigenous women and girls prior to GR39).[25] GR39 contextualizes, albeit not fully, these rights and guarantees to the situation of Indigenous women and girls, explaining also the corresponding obligations of States parties. As discussed above, it also integrates UNDRIP, making it a fundamental aspect of understanding these rights and obligations, and acknowledges the interrelated importance of securing and protecting the collective rights of Indigenous Peoples.[26] For instance, it explains that "States are required under international law to delimit, demarcate, title and ensure security of title to Indigenous Peoples' territories to prevent discrimination against Indigenous women and girls" (56).

Parts V and VI of the Convention are largely administrative provisions, e.g., concerning the establishment and operation of CEDAW (Articles 17, 19-21), its reporting procedure (Article 18), the conditions under which States may ratify, amend or leave the Convention (Articles 22, 24-28), and how to resolve disputes about the Convention (Article 29). Article 23 is noteworthy mainly because it provides that nothing in the Convention "shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained: (a) In the legislation of a State Party; or (b) In any other international convention, treaty or agreement in force for that State." This means that CEDAW will apply the highest standard, whether in the Convention, national law or another convention, treaty or agreement. In principle, this should include interpretations of other conventions e.g., by other treaty bodies or the regional mechanisms, and perhaps also treaties or agreements made between Indigenous Peoples and States (e.g., UNDRIP, art. 37).

2. The Basics of the OP

The OP is simply a mechanism to allow States parties to accept the communications procedure (to allow for the filing of complaints) and, unless they decide otherwise, the inquiry procedure (both are described in more detail in sub-sections B(2) and (3) below). It also sets out in general terms how to use these procedures. For instance, Article 2 defines who can submit communications; Articles 3-4 describe the admissibility requirements; Article 5 is on 'interim measures' that may be "necessary to avoid possible irreparable damage" to the victim(s); Articles 6-7 govern how communications will be examined; Articles 8-10 concern

[25] *See e.g., General recommendation No. 34 on the rights of rural women*, CEDAW/C/GC/34 (2016).

[26] *See e.g.,* 34 (illustrating these interconnections).

the inquiry procedure; and Article 18 concerns how CEDAW may follow up on any decision adopted on a communication or under the inquiry procedure.

For now, a key point is to verify and bear in mind the date that the OP 'entered into force' for your country as it is generally impermissible – meaning there are exceptions (see below) – to submit communications in relation to alleged violations that occurred prior to this date. The date of entry into force is the date of deposit of the instrument of ratification of the OP plus three (3) months (OP, art. 16).[27] The same consideration also applies to the Convention when filing a communication under the OP. The Convention entered into force for a specific State party 30 days after the date of deposit of the instrument of ratification of the Convention (art. 27).

3. An Overview of CEDAW General Recommendations

The numbering of GR39 indicates that there are at least 38 other general recommendations that have been adopted by CEDAW.[28] As of March 2025, there are 40 general recommendations, the most recent adopted in October 2024, and CEDAW is now working on number 41.[29] To some extent, GR39 builds on, refers to and incorporates these other general recommendations, some of which are relevant depending on the issue(s) at hand. As with GR39, the other general recommendations explain an aspect of the Convention, either a specific article or articles or a particular theme. Some of these will provide more details on their subject than is found in GR39 and these also should be referred to where relevant or necessary. They are especially helpful insofar as they not only explain the right or rights, but, as discussed further below, they also delineate the corresponding obligations and their aspects, often in some detail.

Note that only CEDAW can decide to draft and adopt a general recommendation. Normally,

[27] For dates of the instrument of deposit of ratification, *see* https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&clang=_en. *NB*. "Ratification, Accession, Succession" in this list mean the same thing in practice and should not be differentiated for the purposes of identifying the date of entry into force.

[28] *See e.g.,* R. Vijeyarasa, *Three Decades of CEDAW Committee General Recommendations: A Roadmap for Domestication, Reporting and Stronger Accountability for Women's Rights*, 25 MAX PLANCK YEARBOOK OF U.N. LAW ONLINE 797-826 (2022).

[29] https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=11.

a member will seek CEDAW's collective approval to do so. However, it is possible to raise the possibility of doing so with a member, directly or indirectly. For instance, the need for a general recommendation on the rights of Indigenous women and girls was specifically raised in various fora by Indigenous women, by the UN Permanent Forum on Indigenous Issues, and by Victoria Tauli-Corpuz in a 2015 report that was issued in her capacity as Special Rapporteur on the Rights of Indigenous Peoples ("SRIP").[30] This report is also important background information and is referenced in various places in GR39 as is a useful 2022 report written by the Special Rapporteur on Violence against Women ("SRVW").[31]

B. Mechanisms/Procedures

The Convention and the OP provide for three main mechanisms or procedures that may be used by Indigenous Peoples to highlight concerns about the rights of Indigenous women and girls, including as explained in GR39. Described in more detail below, these are: 1) the reporting procedure, 2) the communications procedure, and 3) the inquiry procedure. The first is available in relation to any State party to the Convention (1), whereas the latter two require additional ratification of the OP (2) and acceptance of the inquiry procedure, (really, a decision to not opt-out of the procedure) (3).

1. Reports

Under Article 18 of the Convention, States parties commit to submit an initial report within one year of entry into force and every four years thereafter or as requested by CEDAW. However, there is a significant backlog in the review of reports and States parties are also often late in submitting their periodic reports. This means that a State party is often not reviewed every four years. When that occurs, States may submit 'consolidated reports' (e.g., the third and fourth reports together in one report). These periodic reports ("State party report") explain progress and challenges in the implementation of the Convention at the national level. This includes implementation in law, policy and practice with the objective of eliminating discrimination and ensuring the full exercise and enjoyment of the rights guaranteed by the Convention.

Generally, the first step is for CEDAW to meet and adopt a 'list of issues prior to reporting', which takes place in a 'presessional working group'. Indigenous Peoples/women and girls

[30] https://docs.un.org/A/HRC/30/41, para. 82 (stating also, at para. 81, that "United Nations human rights mechanisms should direct additional attention to the nexus between individual and collective rights and how that impacts indigenous women and girls, as well as how intersecting forms of discrimination and vulnerability impact human rights violations"). *See also* SRIP, *Indigenous women and the development, application, preservation and transmission of scientific and technical knowledge*, A/HRC/51/28 (2022), https://docs.un.org/A/HRC/51/28.

[31] *Violence against indigenous women and girls*, A/HRC/50/26 (2022), https://docs.un.org/A/HRC/50/26

may make a verbal presentation during the presessional working group meeting. The State then submits its report, which is either a response to the list of issues prior to reporting or a separate document (depending on whether the State has agreed to the simplified reporting procedure). Either at the time of the presessional working group or when the State party report is submitted, Indigenous Peoples and their organizations may submit their own written reports ("the Shadow report") commenting on or providing alternative or additional information to that contained in the State party report. These reports are publicly available on CEDAW's website, which also lists which States parties will be reviewed and at which session (sessions are shown generally one year in advance – or three to four sessions.[32] Looking at other shadow reports may also be helpful when considering how to draft one.

This is followed by a review of the State party report and any other information received by CEDAW. This takes place during a specified CEDAW session, usually over an afternoon and a morning session. This is called the "interactive dialogue" and occurs between CEDAW members and members of the State delegation. While any CEDAW member can participate, the interactive dialogue is led by a member who has been appointed to be the "country rapporteur". If seeking to inform or lobby a member, the country rapporteur is often a key person to identify and meet, if possible. It is not possible for Indigenous Peoples to intervene during the interactive dialogue, only to observe.

This process results in a document referred to as 'concluding observations' ("COBs"). COBs are a set of conclusions based on the information available to CEDAW and corresponding recommendations that seek to address any concerns identified.[33] For example, in CEDAW's October 2024 review of Chile, the following conclusion was adopted (this format is used for all States):

> *"The Committee commends the State party for its efforts to preserve Indigenous languages and cultures through educational initiatives, as well as the Indigenous training and specialization subsidy programme, which provides university scholarships for Indigenous students. However, it remains concerned that Indigenous women face intersecting forms of discrimination, racial hatred, gender-based violence, poverty and marginalization. It also notes with concern that: (a) The State party remains one of the few countries in Latin America where Indigenous peoples are not recognized in the Constitution, and efforts to address this in the 2022 draft constitution were rejected by referendum; (b) Indigenous communities, including Indigenous women, lack legal title to and face forced evictions from lands traditionally occupied or used by them.*

[32] https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/SessionsList.aspx?Treaty=CEDAW.

[33] For compilations of CEDAW and other concluding observations *see e.g.*: https://www.iprights.org/images/articles/resources/2023/A%20Compilation%20of%20UN%20Treaty%20Body%20Jurisprudence/COs_UNtreatyBodyJurisprudence_english.pdf.

The corresponding recommendation reads:

> *With reference to its general recommendation No. 39 (2022) on the rights of Indigenous women and girls and recalling its previous concluding observations … the Committee urges the State party to: (a) Fully recognize Indigenous peoples in the Constitution and expedite the establishment of a ministry for Indigenous Peoples and strengthen dialogue with Indigenous women to ensure their full participation in decision-making at all levels; (b) Strengthen measures to formally recognize Indigenous women's collective and individual land tenure and ownership, eliminate discriminatory norms and customs that limit their access to land ownership and ensure their free, prior and informed consent, equitable benefit-sharing and meaningful participation in decision-making processes in relation to the use of the natural resources and lands traditionally occupied or used by them.*[34]

CEDAW COBs often now include a section entitled 'Indigenous women'. They also refer to Indigenous women and girls under various other headings (e.g., education or health). These sections on Indigenous women often start by referring to GR39, as above, even if the substance of the recommendation lacks much detail of the content of GR39. While it may be better to have a fuller recitation of the content of GR39, at least, this draws the attention of the State party and others to the whole text of GR39. On the other hand, there is a danger that it becomes merely rhetorical if only referenced as part of the preamble to a specific recommendation. Also, while a deep analysis of CEDAW COBs and their consistency with GR39 may be useful, CEDAW will be most attuned to GR39 and Indigenous women's issues and concerns where Indigenous Peoples and women actively engage with it by submitting shadow reports or making oral presentations, especially where these make direct reference to specific aspects of GR39.

There is no set format for a shadow report. Key considerations are:

- be aware of and comply with the date it is due (specified on the website for each session);
- be kind to the reader by writing clearly and concisely in an official UN language (it must be in one of the official languages and the UN will not translate shadow reports), use headings/sub-headings and include an executive summary and a table of contents. The executive summary should be an overview of the main points of the shadow report and be no more than three pages long;
- include information on who is submitting the report, either in an introduction of no more than a few paragraphs or in an annex that is cross-referenced in the introduction,

[34] CEDAW/C/CHL/CO/8, para. 45-6.

explaining also how the report was made e.g., if it was the outcome of consultations. Consider joint submissions involving more than one organization, community or people as they tend to be more powerful;

- try to be fact-based, rather than presenting opinions;
- when making factual assertions or contradicting statements in the State party report provide a reference to supporting evidence;
- do not use insulting language e.g., do not say the State is lying, say that what the State says 'is difficult to understand in light of the available evidence' or that it is 'contradicted by other sources or the State's own documents or statements';
- pose questions that CEDAW members can ask the State during the interactive dialogue; and
- if possible, include recommendations in language that can be easily converted into the concluding observations.
- International Women's Rights Action Watch has a number of helpful guides to reporting on CEDAW, either on specific rights or specific themes: https://www.iwraw-ap.org/search-resources/?_sft_resource_type=shadow-report-guideline.

- The **UN document numbering system** shows what kind of treaty body output is contained in the document. For example: in CEDAW/C/CHL/CO/8 – 'CEDAW' refers to the treaty body, 'CHL' is the country (Chile), 'CO' refers to concluding observations adopted under the reporting procedure, and '8' refers to the number of the corresponding periodic report (the eighth). For communications, the name of the case will be listed e.g. *Matson et al v. Canada* and the document number, CEDAW/C/81/D/68/2014, which includes: the CEDAW session number at which it was adopted '81', 'D' for decision (instead of 'CO'), and the registration number and date of the communication: 'No. 68 of 2014'. For the inquiry procedure, the document number includes OP.8 prior to the acronym for the country involved, referring to OP, Article 8: e.g., CEDAW/C/OP.8/CAN/1.

2. Communications

When a State ratifies the OP, it agrees pursuant to **OP, Article 1** that CEDAW – really, CEDAW's working group on communications, at least initially – may receive and consider communications submitted in accordance with OP, Article 2.[35] Communications, which feature in the practice of six of the treaty bodies, are formal complaints. They are made against a specific State party by a specific person or persons, they are based in specific facts, allege that the State has violated the Convention, and seek a decision on the same from CEDAW. If submitting a communication, it is important to seek advice as this is a more technical process than the reporting and inquiry procedures. Also, if doing so, it is important to build GR39 and UNDRIP into the arguments that are presented to CEDAW. This is to ensure that CEDAW is properly briefed on both the individual and collective rights, the nexus between the two, and the specific characteristics of the affected Indigenous women and girls, including intersectional discrimination.

a) Who can submit a communication? OP, Article 2 provides that communications "may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party." Those submitting are called "the author(s)." Where a communication is submitted on behalf of others, the person or organization doing so must submit proof that the person(s) in question consented to this, unless they "can justify acting on their behalf without such consent" (e.g., if the person has been disappeared).

CEDAW has an online submission form to draft and submit communications as well as a downloadable form if you are unable to use the online form.[36] If not using the online submission format, the email address is: **petitions@ohchr.org.**

b) What are the requirements for submitting a communication? OP, Article 3 requires that communications are submitted in writing and cannot be anonymous (however, those submitting, directly or on behalf of others, may request that their identity is not disclosed to the State). **OP, Article 4** contains the main requirements that must be met – the 'admissibility requirements' – before CEDAW can admit a communication and decide if there have been violations. The latter is called the merits phase. The best way to understand these

[35] https://www.ohchr.org/en/treaty-bodies/cedaw/individual-communications.

[36] https://www.ohchr.org/en/documents/tools-and-resources/form-and-guidance-submitting-individual-communication-treaty-bodies. There is also a Guidance note available in four languages: https://www.ohchr.org/sites/default/files/Documents/HRBodies/Guidance-note-for-complaints-form-E.docx.

admissibility requirements is by reading CEDAW's decisions, most of which have a section on admissibility. In brief, these admissibility requirements are:

- all available domestic remedies have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief (4(1)) (normally, this means judicial remedies);
- the same matter cannot have been examined previously by CEDAW or pending before or previously examined by another international procedure (generally, this means by one of the regional mechanisms or another treaty body) (4(2)(a));
- the communication cannot be incompatible with the provisions of the Convention (4(2)(b)) (for instance, it doesn't concern discrimination against women or girls);
- it cannot be manifestly ill-founded or insufficiently substantiated (4(2)(c)) (e.g., the facts and/or evidence do not indicate possible violations or not enough evidence has been submitted);
- it cannot abuse the right to submit a communication (4(2)(d)) (e.g., by using inappropriate language); and
- the facts on which the communication is based must have occurred prior to the entry into force of the OP for the State Party concerned, unless those facts continued after that date (4(2)(e)).

Determining if domestic remedies have been exhausted or whether an exception to the rule is applicable under OP, Article 4(1) is generally the most complicated part of the communications procedure. It is important to consult a national lawyer, preferably one that is also familiar with international complaints processes, if there are any doubts because a communication may be rejected by CEDAW if this condition is not met. It is also often a key feature of the State parties' response to a communication that normally must be commented on by the author(s). If there is a final decision of the highest national court, it is safe to say that remedies have been exhausted. However, the judicial process is often just delayed. The question then becomes whether that delay can be considered "unreasonable". This can only be assessed in the context of the specific case and its complexity and involves consideration of whether the author(s) is at fault, at least in part, for the delay.

The requirement that remedies must be effective is also relevant in some instances. For instance, if seeking restitution of lands, domestic remedies would be ineffective where they only allow for compensation for lost lands, not their return. In some instances, domestic remedies are simply unavailable – they do not exist – related to some rights held by Indigenous Peoples e.g., where Indigenous Peoples are not recognized as collectives and cannot seek protection for collective rights. Last, but not least, if litigating a case nationally,

it is important to also consider what international mechanisms may be available should the litigation fail to protect the right(s) in question and ensure that the relevant international admissibility issues are addressed as part of the domestic litigation. This may save a lot of time in the long run as well as increase the likelihood that the international body will admit a communication.

c) What is the process? OP, Articles 6 and 7, together with the more detailed Working Methods of the Working Group on Communications, set out the procedure by which CEDAW considers and decides on communications.[37] This involves the confidential transmission of information from the communication to the State, which may submit observations within six months about its admissibility and/or merits (art. 6). Normally, the authors are provided with an opportunity to comment on the observations provided by the State. Sometimes the same will apply should CEDAW decide that the State should comment on the author(s)' additional submissions (they will be sent to the State either way). Finally, and taking into account all available information provided to it (7(1)), CEDAW will consider the communication in a closed meeting (7(2)). It then makes a decision (known as 'views'), which shall be transmitted to the parties (7(3)). The State has six months from the date it was notified of the decision to provide a written report to CEDAW on the measures it has taken to comply with the decision and its recommendations (7(4)). Last, **OP, Article 11** requires that State parties ensure that persons submitting communications "are not subjected to ill treatment or intimidation as a consequence" of doing so.[38]

d) Is it possible to intervene in the proceedings related to a communication as a non-party? Yes, this is called a third-party intervention ("TPI"). CEDAW has adopted helpful guidelines related to TPI, which explain that TPI may be requested by CEDAW's WG on communication or submitted at the request of an interested third party, provided that the author(s) and the WG each consent.[39] Generally, a TPI allowed by the WG because a communication raises important or new legal issues, and CEDAW is interested in different or expert views on those issues. Note that TPI cannot contest or focus on the specific facts and/or allegations raised by the parties in the communication. They address more general legal or other issues. For instance, a communication may raise issues concerning the individual and collective harm suffered in cases of gender-based violence against Indigenous women. To assist it to make a decision, CEDAW may accept or solicit a TPI to obtain information or jurisprudence on this subject, including, for example, as related to Indigenous women as human rights defenders. A TPI is the primary way that Indigenous Peoples can highlight GR39 and related issues

[37] The Working Methods of CEDAW's Working Group on communications may be accessed at: https://www.ohchr.org/sites/default/files/Documents/HRBodies/CEDAW/WorkingMethods.docx.

[38] The Chairs of the treaty bodies endorsed the *Guidelines against Intimidation or Reprisals* in 2015, http://undocs.org/en/HRI/MC/2015/6.

[39] https://www.ohchr.org/sites/default/files/documents/hrbodies/cedaw/2022-09-14/CEDAW-Guide-

in pending cases before CEDAW without being the author of the communication itself.[40] This would seem to be particularly important to assist CEDAW to understand UNDRIP, including how Articles 21, 22 and, especially, 44 should be interpreted and applied. This is also important, to quote the former SRIP, to assist CEDAW to understand "the nexus between individual and collective rights, as well as the intersectionality between different forms of inequality and discrimination" from an Indigenous perspective.[41] A TPI can also be discussed and coordinated among Indigenous organizations prior to the submission of a communication (assuming CEDAW agrees to the subsequent request to submit the TPI). The decision on the communication submitted against Peru, discussed below, likely would have benefitted from such inputs.

e) Can 'Interim measures' be requested? Yes. **OP, Article 5(1)** allows the author(s) to request interim measures – these are temporary protection measures – "as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation." These may be requested at any time after the communication is submitted and before a final decision on the merits. CEDAW adopted such interim measures on 2 October 2023 in a case involving violence against an Indigenous woman leader in Mexico. Those measures seek to prevent further acts of violence that put her life and integrity at risk as well as that of her family and her community. These measures are like precautionary measures adopted in the regional systems.[42]

[40] Pending cases are listed on the website: https://www.ohchr.org/sites/default/files/documents/hrbodies/cedaw/cedaw-pending-cases.xlsx.

[41] A/HRC/30/41, para. 76.

[42] *See e.g.,* IACHR, Res.3/2023, *Pascuala López López and her family unit regarding Mexico*, 26 January 2023, https://www.oas.org/en/iachr/decisions/mc/2023/res_3-23_mc_892-22_mx_en.pdf.

f) Prior communications on Indigenous women or girls.[43] Unfortunately, to date, CEDAW has adopted only three decisions on communications involving Indigenous women, all submitted prior to the adoption of GR39. The most recent, decided in October 2024, did not adequately address the collective rights raised or sufficiently focus on the fact that most of the affected women were Indigenous women. Nonetheless, although it was submitted a year before GR39 was adopted, CEDAW's decision refers to it four times.[44] It is unknown if a TPI may have effectively drawn CEDAW's attention to these collective issues in that case, but it seems more likely than not. As summarized below, the first two cases involved situations in Canada and the last involved forced sterilization in Peru.[45]

i) *Kell v. Canada*, Communication No. 19/2008[46]

In this communication, the author is an aboriginal woman, who returned to her community after attending university. She applied for housing via special programme for Indigenous people and was successful in obtaining a house. On the advice of the housing bureau, she was listed as a co-owner of the property together with her non-aboriginal partner (para. 2.2). She suffered from domestic violence over the next three years, more than once being forced to live in a shelter for battered women. Without her knowledge, her partner removed her name from the title to the house and evicted her in 1995 after she obtained a job without his permission (2-5-2.6). She unsuccessfully sought the return of her house as well as damages for physical and mental abuse in the judicial system, first against her former partner and then against his estate after he died (2.6-2.12). She claims that Canada (namely, the provincial and Indigenous housing authorities) violated Article 1 of the Convention due to discrimination against her based on her sex, marital status and cultural heritage (i.e., Indigenous status) (3.1). She also alleged that Canada had violated subsections of Articles 2, 14, 15 and 16 (3.2-3.6).

On admissibility, CEDAW determined that the communication was not before another relevant international procedure and that, even if domestic remedies had not been exhausted, the application of those remedies was unlikely to be effective (7.2-7.4). CEDAW observed that the author was "subject to domestic violence by her abusive partner; that she belongs to an indigenous community; and that the housing in question was earmarked for the indigenous community, despite which the author was advised by the Housing Authority to include her partner as her spouse and apply for

[43] For an important compilation of CEDAW jurisprudence based on communications *see* R. de Silva de Alwis, *Compendium of Cases Under the Optional Protocol to the Convention on the Elimination of Discrimination against Women (CEDAW). Submission of Complaints Case Summaries of the CEDAW Committee Decisions* (U. Pennsylvania Law School, April 2024), https://www.law.upenn.edu/live/files/13041-compendium-of-cases-under-the-cedaws-optional.

[44] CEDAW/C/89/D/170/2021, para. 3.1.

[45] *See also* 'IACHR Files Case Concerning Peru with IA Court on Sterilization without Consent', 18 August 2023, https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2023/186.asp.

[46] CEDAW/C/51/D/19/2008.

a family unit, thereby denying her the sole right…" (7.4). Further, despite its obligations to protect women, Canada had failed to do so, including via the judicial proceedings in which specific of claims of sex-based discrimination were made. The author had been forced to find alternative accommodation due to fear of physical harm, serious injury or death and because she was evicted from the property and land, and she had suffered financial and emotional hardship (7.4). For these reasons and for the purposes of admissibility, CEDAW was satisfied that the author's allegations had been sufficiently substantiated in connection with the requirements of OP, Article 4(2)(c) (7.4).

Turning to the merits, CEDAW first recognized that there was discrimination pursuant to Article 1 of the Convention because "the author has established a distinction based on the fact that she was an aboriginal woman victim of domestic violence … and that such violence had the effect of impairing the exercise of her property rights" (10.2). In this instance, it found that the author suffered from "an act of intersectional discrimination," which States parties are required to legally recognize and prohibit (10.2). Observing that the Article 2(e) of Convention requires that State parties adopt measures to eliminate discrimination against women, it explained that the author is an aboriginal woman, who is in a vulnerable position, and the State obligated to ensure the effective elimination this intersectional discrimination (10.3).

Second, after finding violations of other provisions, CEDAW recommended that Canada provide the author with housing equal to housing she had lost and monetary damages for the harm suffered. More generally, it recommended that Canada recruit and train "more aboriginal women to provide legal aid to women from their communities, including on domestic violence and property rights [and;] [r]eview its legal aid system to ensure that aboriginal women who are victims of domestic violence have effective access to justice" (11).

ii) *Matson et al v. Canada*, Communication 68/2014[47]

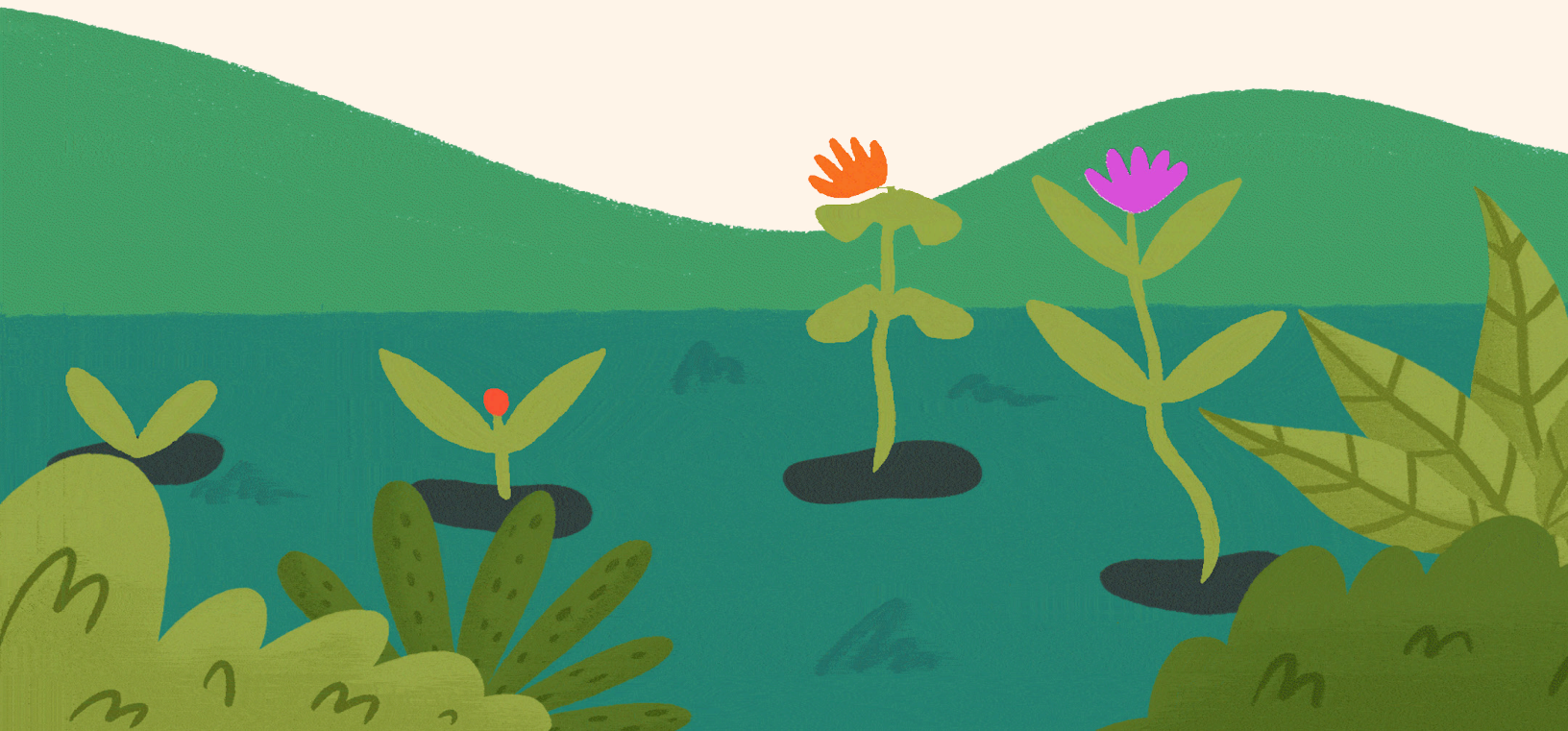
This is a lengthy, complicated and important decision that was adopted while CEDAW was debating and approving GR39. The author of the communication is a male member of the Squamish Nation. He submitted it on his own behalf and on behalf of his children, both minors at the time of submission. He asserts that Canada's laws that require obtaining "status" as an "Indian," which provides access to legal rights and benefits (e.g., the right to live in indigenous territory), discriminate "against indigenous women and their descendants, denying them indigenous status, the right to determine their indigenous identity and their fundamental right to belong to a group of indigenous people" (para. 2.1). 'Status' includes "the ability to transmit it to one's children, as well as a sense of acceptance within indigenous communities" (2.2). He alleges that this

[47] CEDAW/C/81/D/68/2014.

violates Articles 1, 2 and 3 of the Convention. While the law that denied status to Indigenous women who married non-Indigenous men had been previously repealed, other amendments to that law – the Indian Act – allowed individuals with only one parent with status to pass that to their children, provided both parents of that child also had status (2.4).[48] The law was amended again in 2011 following a court order, whereby the grandchildren of women "who had lost status by marrying someone without status regained their eligibility for status, provided that they were born after 1951" (2.5). However, this conferred only a limited form of status, particularly in terms of passing status to their descendants. These restrictions did not apply to those who traced status through the male line, however. This scheme was amended again in 2019 in response to another court order but the gender-based discrimination was still not fully addressed.

Consequently, thousands of Indigenous people and their children were denied status and their right to determine their own identity. This included the author, whose grandmother belatedly obtained status under the amended Indian Act even though she had married a non-indigenous man in 1927. She was able to pass status to the author's father but not the author until the law was again amended in 2011. He successfully obtained status thereafter but his children, born to a non-indigenous woman, were denied due to the limited form of status provided for by the 2011 amendments. The 2019 amendments allowed his children to obtain status, but they were not permitted to pass that status to any future children of theirs, unless the other parent would also have status. The same would not be the case if he/they traced their status to an indigenous grandfather, rather than matrilineally from his grandmother.

[48] *See also Lovelace v. Canada*, Comm. 24/1977, CCPR/C/OP/1 (1979) (finding that the *Indian Act* violated rights guaranteed by Article 27 of the ICCPR because Ms. Lovelace was denied the right to live on her reserve land because she married a non-Indigenous man).



The author was not successful when seeking to correct this situation before Canadian administrative and judicial bodies. He then filed a complaint with CEDAW, asserting that because he is "of matrilineal, and not patrilineal, indigenous descent," he has been denied his Indigenous status and identity, a situation that also affects his children as well as having "an impact on their cultural acceptance within the Squamish Nation. [Thus] … the Indian Act constitutes a violation of the fundamental right … to belong to an indigenous community or nation, in accordance with its traditions and customs" (para, 3.2). He further alleged that this situation also entails a violation of Indigenous Peoples' right to participate in decision making insofar as the revisions of the Indian Act were not subject to meaningful consultations and, additionally, because the national courts has failed to protect his and his children's rights.

Having decided that the communication was admissible under requirements in the OP (17.1- 17.8), CEDAW then examined the merits, commencing with the definition of discrimination in Article 1. First, it concluded that, despite the prior amendments to the Indian Act, that the law still perpetuates "differential treatment of descendants of previously disenfranchised indigenous women, which constitutes transgenerational discrimination, falling within the scope and meaning of article 1 of the Convention" (18.3).

Second, citing UNDRIP, article 9, the CEDAW decided that Indigenous Peoples "have the fundamental right to be recognized as such," reaffirming that "indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned" (18.4). CEDAW concluded that this is also essential to prevent forced assimilation (as addressed in UNDRIP, Article 8) (id). In sum, it explained that "the unequal criteria [employed in Canadian law] by which men and women are permitted … to transmit their indigenous identity to their descendants, is an element which is precisely contrary to this fundamental right to self-identification" (id).

Third, CEDAW assessed the Indian Act in relation to Articles 2 and 3 of the Convention, observing that due to the removal of status from his maternal ancestor, the author "cannot freely transmit his indigenous status, and his indigenous identity, to his children and, as a consequence, his children in turn will not be able to transmit freely their status to their own children" (18.10). Thus, and in violation of Arts. 2 and 3, "the consequences of the denial of Indian status to the author's maternal ancestor has not yet been fully remedied, being precisely the source of the current discrimination faced by the author and his children" (id). Fourth, CEDAW held that the "failure to consult indigenous peoples and indigenous women whenever their rights may be affected constitutes a form of discrimination" (18.11).[49]

[49] Referring to the UN Committee on the Elimination of Racial Discrimination's decision in *Ågren et al. v. Sweden* (CERD/C/102/D/54/2013), an unnumbered footnote on the same page explains that "the obligation to obtain free, prior and informed consent has been qualified as a general principle of international law."

Finally, CEDAW recommended that Canada recognizes the author and his children as Indigenous People "with full legal capacity, without any conditions, to transmit their indigenous status and identity to their descendants" (20(a)). More generally, it also recommended that Canada amends its laws, after informed consultations with Indigenous Peoples, to fully resolve the adverse "historical gender inequality in the Indian Act and to enshrine the fundamental criterion of self-identification, including by … taking all other measures necessary to provide registration to all matrilineal descendants on an equal basis to patrilineal descendants," and that it allocates sufficient resources to implement these amendments (20(b)).

iii) *María Elena Carbajal Cepeda et al v. Peru*, Communication No. 170/2021[50]

This communication was submitted by four mostly Indigenous women, citing violations of Articles 2, 3, 12, 14 and 24 of the Convention. It concerns systematic forced sterilization as part of a national birth control policy in effect in Peru from 1995-2001. Peru ratified the OP in 2001. Pursuant to this policy, "more than 300,000 women … most of them indigenous, were reportedly sterilized without their consent…. To a lesser extent, men, mostly indigenous, would have also been subjected to vasectomies" (para. 2.2). While Peru had initiated some form of investigations into some of these acts, these failed to reach any meaningful conclusion and that was also the case for the authors. The authors all sought redress in multiple domestic procedures without success, even though Peru recognized in various ways that forced sterilization was a gross violation of human rights (3.5-3.6, 7.1-7.8). The authors alleged that these violations included not only violations of their individual right to consent in a manner adapted to their language and customs but also caused physical and emotional harm and severely disrupted their personal and family lives (3.4). They also affected their status in their communities because their cultures consider sterility to be a "punishment" (3.3).

CEDAW first reviewed whether the communication satisfied the admissibility criteria in OP, Article 4. It decided that, even though the events occurred mostly prior to the entry into force of the OP for Peru, the consequences were ongoing, including the lack of investigation and reparation (7.2). It next turned to the requirement that domestic remedies must be exhausted and the State's claim that there were available remedies that had not been invoked by the authors (7.3). Noting that the authors had used various remedies, CEDAW explained that "no victim is obliged to resort to multiple remedies to have exhausted domestic remedies" and that the authors had not known for several years that they had been sterilized or even that it was a crime (7.4). It then referred to GR39 (para. 26 and 30), explaining that "justiciability, availability, accessibility, provision of resources to victims, among others, are necessary components to ensure access to justice with an intersectional and intercultural gender perspective" (id). Also, for

[50] CEDAW/C/89/D/170/2021 (unofficial translation).

Indigenous women, "the remoteness of their territories, illiteracy and lack of knowledge about existing laws and judicial remedies constitute an obstacle to access to justice" (id). The delays in the criminal proceedings filed by the authors were also deemed unreasonable and, therefore, the exception to the exhaustion requirement in OP, Article 4(1) applied (7.5-7.6). CEDAW then dismissed Peru's claim that the communication was inadmissible for lack of substantiation (OP, 4(2)(c)) because, Peru argued, the birth control programme "was aimed at the general population" (7.7). CEDAW responded that 93 per cent of those affected were women, the vast majority Indigenous women, and that this was a question to be decided on the merits (7.7).

On the merits, CEDAW, first, reviewed the arguments made by the parties, noting various factors such as the disproportionate impact on Indigenous women; that forced sterilization is discriminatory against women and a severe form of gender-based violence; the intersectional nature of the discrimination; the increased medical risks to women of sterilization compared to men; and the context in which the authors were sterilized, "namely by unskilled medical personnel and in inadequate sanitary conditions, which constitutes a form of discrimination on the basis of sex" (8.2-8.3).

Second, it highlighted that forced sterilization is a serious human rights violation that may rise to the level of a crime against humanity (8.3, 8.9). Attempts to address these issues nationally were ineffective (8.4), including because the State has disregarded a judicial order on reparations (8.6). Therefore, CEDAW concluded that the authors had been denied effective remedies and reparation (8.5). It then explained that the reparation programme ordered by the national court had not been implemented, that Peru failed to provide information on "the impact that the measures implemented have had on improving the authors' life projects, nor does it indicate to what extent the authors have been able to benefit from comprehensive reparation, including the collective impact it has on an indigenous and rural woman, having been sterilized" (8.6).

Third, CEDAW again highlighted the inadequate and unreasonably delays in the criminal proceedings and alluded to the differentiated impacts on Indigenous women and girls. Referencing GR39 (4), it explained that to facilitate access to justice, States are obligated to "take appropriate measures to modify or abolish not only laws and regulations, but also customs and practices" that discriminate against Indigenous women; and that "measures to prevent and combat discrimination against indigenous women and girls must also integrate an intersectional gender perspective that considers the multitude of factors that combine to exacerbate unequal treatment" (8.7).

Finally, CEDAW recommended that Peru provides compensation and psychological support to the authors and their family members and accelerates the investigations (9(a)). However, while redress for the cultural harm caused to the women could be implicit

in this general compensation requirement, it would have been much better to specify this, including in its collective aspect. More generally, CEDAW also recommended that Peru complete investigations of the forced sterilization programme, develop and implement a comprehensive reparation programme, and amend the legal framework to ensure that it is able to conduct diligent investigations and provide reparations (9(b)). Again, while it could be implicit, it is important that the need for "comprehensive reparation, including the collective impact" on Indigenous women (identified in paragraph 8.6) is specified and elaborated on. It is disappointing that this was not done, even more considering the history and motivations behind forced sterilization of Indigenous women and girls, CEDAW's classification of this a severe form for gender-based violence (51), and the overwhelmingly disproportionate impact on Indigenous women (and men) in Peru,[51] which could be seen as targeted and intentional.[52]

3. Inquiry Procedure

The inquiry procedure under the OP allows CEDAW to examine allegations of patterns of violations as well as serious instances of violations, including, in some cases, through on-site visits. One major difference to the communications procedure is that the inquiry procedure need not be about specific and identified persons, but it can be about patterns of violations. As above, the date of entry into force of the Convention and the OP must be ascertained.[53] **Article 10 of the OP** provides that States parties may specifically opt out of the Inquiry procedure (art. 10(1)), provided that they do so at the time they become a party (they also may revoke this later (art. 10(2)).[54]

A) What is the inquiry procedure for? Where a State party does not opt out, **OP, Article 8** allows for the submission of information to CEDAW that indicates "grave or systematic violations by a State Party of rights set forth in the Convention" (art. 8(1)). When such information is received, it is transmitted to the State party for its comments.

[51] *See also* CERD, *General Recommendation No. 25 on gender-related dimensions of racial discrimination* (2000), para. 2 ("Certain forms of racial discrimination may be directed towards women specifically because of their gender, such as … the coerced sterilization of indigenous women"); and CERD, *General Recommendation No. 37 on Racial discrimination in the enjoyment of the right to health* (2024), para. 32 ("Forced sterilizations is a violation under ICERD to reproductive autonomy, access to information, personal integrity and privacy, and to be free from racial and gender-based violence and discrimination").

[52] *See e.g.,* Ñ. Carranza Ko, *Making the Case for Genocide, the Forced Sterilization of Indigenous Peoples of Peru*, 14 GENOCIDE STUDIES & PREVENTION: AN INT'L J. 90 (2020), https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=1740&context=gsp.

[53] CEDAW/C/OP.8/CAN/1, para. 88-92.

[54] Most states parties have not opted out. *See* https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&clang=_en.

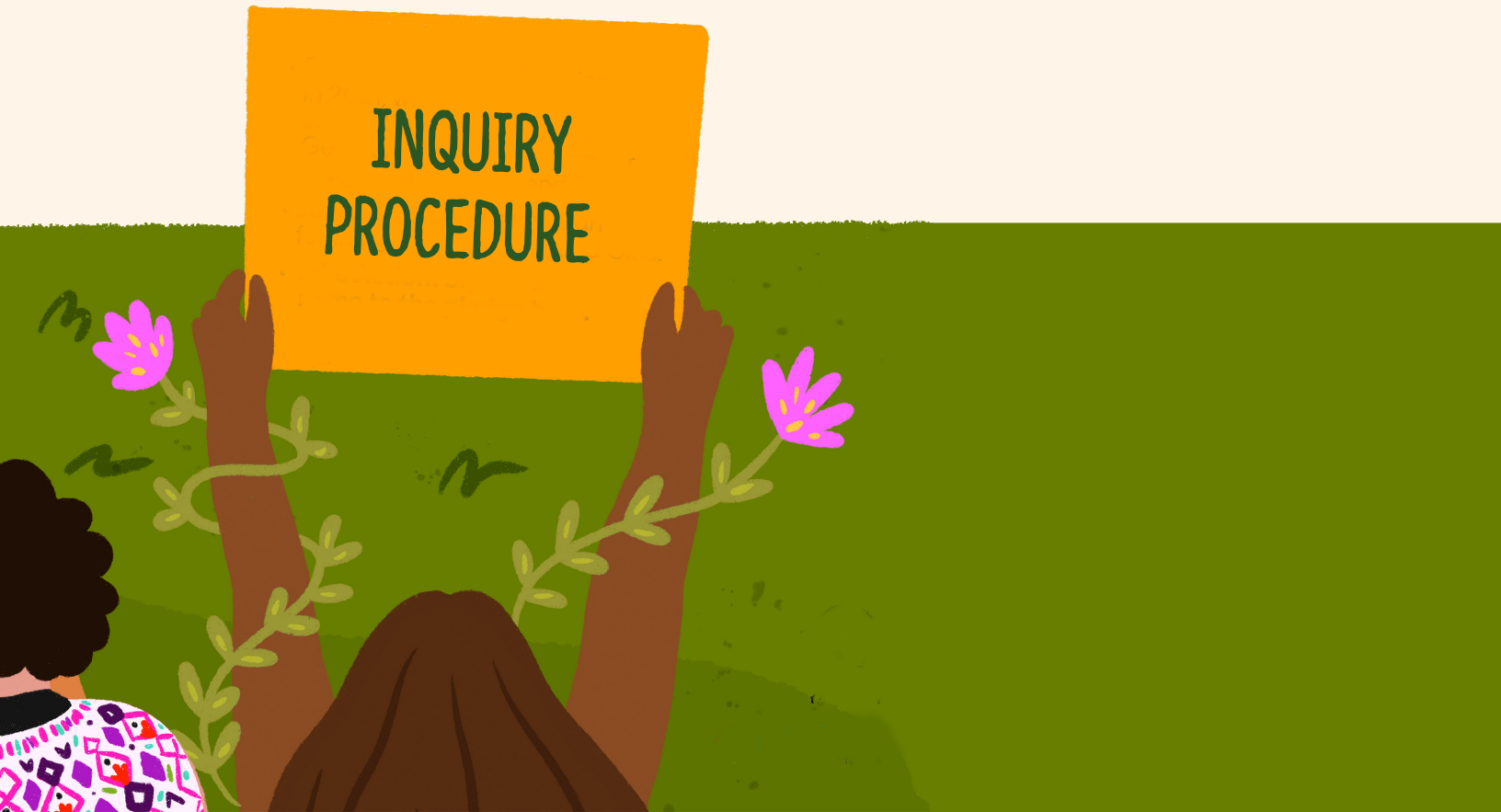
B) What is the process? Together with any other reliable information received, CEDAW may appoint one or more of its members "to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory" (art. 8(2)). The findings and any recommendations are then transmitted to the State, which then has six months to submit comments (art. 8(3) and (4)). **Article 9** provides that the State may be requested to include information on the implementation of the recommendations made in its next State Party report (art. 9(1)) or after the expiration of the six-month long period (art. 8(4)). Most of these reports as well as follow-up reports[55] are available on CEDAW's website.[56]

C) Who can submit? Provided that the State in question is a party to the OP and has not opted out, Indigenous Peoples, communities, their organizations and others can submit information seeking the initiation of the inquiry procedure. The OHCHR advises that this should be submitted by email to ohchr-cedaw@un.org, specifying that it concerns the 'inquiry procedure'.

D) What should be included? The submission should be no more than 7,000 words (excluding annexes), be written in one of the official UN languages, and should include the following:

[55] *See e.g., Response of Canada to the Chair of the Working Group on Inquiries of the Committee on the Elimination of Discrimination against Women*, CEDAW/C/OP.8/CAN/3/Add.1, 23 January 2024.

[56] https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeCategoryID=7.



- The name of the State party that is alleged to be responsible for violating rights under the Convention;
- Information about the person(s) and/or organization(s) making the submission i.e., name, postal address, phone number and email address. They may request to be anonymous;
- A description of the facts, an indication of the alleged violations of specific rights under the Convention, and an explanation of the extent to which infringement of these rights by the State party is "grave or systematic;"
- Be succinct and avoid abusive language, and the submission should be in a typed format but if handwritten, it should be legible;
- Must contain supporting data or other evidence, including in cross-referenced annexes, which should be numbered consecutively and indexed in chronological order, and the information cannot be exclusively based on reports in the mass media.

E) Inquiry on violence against Indigenous Women and Girls in Canada

To date, the inquiry procedure has been invoked and commenced only once in relation to Indigenous women and girls, namely, in Canada. This was initiated in 2011, involves the situation of murdered and missing Indigenous women,[57] and resulted in a 2015 report that was issued following an on-site visit.[58] It especially focuses on the high number of Indigenous women who are victims of violence in comparison with non-aboriginal women (at least five to ten times higher by some estimates) and Canada's prolonged failure to take effective, corrective action.[59] While it was adopted prior to GR39, it is noteworthy that this extensive report finds that "States parties have special obligations to ensure that aboriginal people are entitled without discrimination to enjoy all human rights, as affirmed in [UNDRIP]."[60]

In its report, CEDAW found a series of violations of the Convention, including because Canada had failed to adopt adequate corrective measure and had not considered the specific situation of Indigenous women when thinking about the need for urgent measures.[61]

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[57] *See also* IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II. Doc. 30/14 (2014).

[58] *Report of the inquiry concerning Canada*, CEDAW/C/OP.8/CAN/1, 30 March 2015, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FOP.8%2FCAN%2F2&Lang=en.

[59] R. Shinde, *No More Stolen Sisters: Jurisdictional Barriers to Justice for Missing and Murdered Indigenous Women*, 3 GEORGETOWN J. GENDER & LAW (2020), p. 1 ("...the murder rate of these Indigenous women is [at least] ten times the average national murder rate," and "when Indigenous women are victims of violent crime, 88 percent of the perpetrators are non-Indigenous").

[60] CEDAW/C/OP.8/CAN/1, para. 200.

[61] CEDAW/C/OP.8/CAN/1, para. 210 (CEDAW "finds that the State party has failed to strengthen its institutional response

It also concluded that the violations were "grave" for the purposes of the inquiry procedure because, among other things, widespread "gender based violence seriously inhibits the ability of aboriginal women and their children to enjoy their rights and freedoms."[62] It decided that it was unnecessary to also consider if these violations were systematic in addition to being grave. In reports on other countries, it has explained that 'systematic' discrimination involves a "significant and persistent pattern" of violations that occurs due to laws, policies or practices that disproportionately affect women, irrespective of whether discrimination was intended or simply the result.[63] It concluded its report by adopting extensive recommendations, including to address socio-economic conditions; to take measures to overcome the legacy of the colonial period and to eliminate discrimination against aboriginal women; and to establish a national public inquiry into cases of missing and murdered aboriginal women and girls and, based thereon, to develop a plan of action.[64]

GR39 should greatly assist in identifying key issues that could be the basis for requests that CEDAW initiate an inquiry procedure as well as provide both broad guidelines and specific principles to conduct an inquiry procedure focused on Indigenous women and girls. Numerous situations around the world contain grave or systematic violations, many of which seem suited to the inquiry procedure should Indigenous Peoples wish to invoke it. For instance, the criminalization of home births assisted by a traditional practitioner disproportionately affects Indigenous women in some countries, even more so where access to a hospital is limited and the evidence indicates increased rates of untreated complications or worse for mothers and babies. This would likely illustrate both systematic and grave violations of the Convention. Likewise, where forcible sterilization or incarceration disproportionately affect Indigenous women.[65] Similarly, where State-authorized or tolerated displacement from traditional lands is shown to have increased, serious and disproportionate impacts, for instance, depriving women of resources that they traditionally own or use. The fact that a particular Indigenous people is matrilineal may also raise various issues that could require attention under this procedure if the harm is tied to related violations.

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commensurate with the vulnerabilities identified and the seriousness of the situation in order to provide aboriginal women with effective protection and remedies, taking into account their disadvantaged position").

62 CEDAW/C/OP.8/CAN/1, para. 214 (also stating that "the measures taken to protect aboriginal women from disappearance and murder have been insufficient and inadequate, that the weaknesses in the justice and law enforcement system have resulted in impunity and that no efforts have been made to bring about any significant compensation or reparation. The Committee observes that the protracted failure of the State party to take effective measures to protect aboriginal women, even though a coordinated response was clearly required, continues to have repercussions and serious consequences…").

63 *See e.g.*, CEDAW/C/OP.8/PHL/1, para. 48.

64 CEDAW/C/OP.8/CAN/1, para. 217.

65 A/HRC/54/31/Add.2, para. 42 ("Indigenous women represent about 50 per cent of federally incarcerated women in Canada, even though they make up less than 4 per cent of the country's population"); and A/HRC/50/26, para. 55 ("The disproportionately high incarceration rate of indigenous women compared to their non-indigenous counterparts, such as in Australia, Canada and Costa Rica, is a reflection of structural discrimination and of the barriers to accessing fair and effective judicial processes…").

IV.

IV. What does GR39 say?

IV. What does GR39 say?

Having looked at CEDAW and how the rights of Indigenous women and girls may be raised before CEDAW, this section looks at the contents of GR39. GR39 can be seen as a manual of sorts, although not complete, for Indigenous Peoples, women and girls to engage with CEDAW and its various mechanisms as well as with competent national authorities. At the national level, most national constitutions prohibit discrimination based on sex and race/ethnicity in the section on fundamental rights. This is often further implemented in legislation and administrative law. In some cases, CEDAW may be incorporated into law, sometimes via the constitution, alone or together with other international human rights treaties. Therefore, as an authoritative interpretation of the Convention, GR39 should be of interest to judges, lawyers, policy makers and national human rights institutions, to name a few. This includes Indigenous authorities, legal, political or otherwise. It may also constitute evidence before national tribunals of a State's obligations in national and/or international law, including constitutional rights.

GR39 is divided as follows:

- an introduction (1-7);
- an explanation of its objectives (8-12);
- a description of the applicable legal framework (13 – 15);
- a discussion of the general legal obligations of States parties under Articles 1 and 2 (16-33); and
- a section on specific legal obligations, broken down by themes and corresponding to specified articles of the Convention (34 – 61).
- Most of these sections conclude with a series of recommendations.

A. Introduction

The introduction begins by explaining that GR39 advises State parties on how to ensure the implementation of their obligations concerning the rights of Indigenous women and girls under the Convention, noting that it applies when they are both inside and outside of their territories (1). It recalls that CEDAW has "consistently identified patterns of discrimination faced" by Indigenous women and girls as well as various factors that make that discrimination worse, and that discrimination is perpetrated by State and non-State actors alike (2). It is

"often intersectional," meaning it is based on multiple grounds, such as combinations of "sex; gender; Indigenous origin, status or identity; race; ethnicity; disability; age; language; socioeconomic status; and HIV/AIDS status" (2).[66] This intersectional discrimination, which is structural(5),[67] must be considered together with Indigenous women's perspectives and experiences and their "inextricable link and relation to their peoples, lands, territories, natural resources and culture"(3). Consequently, to comply with the Convention, "State action, legislation and policies must reflect and respect the multifaceted identity of Indigenous women and girls," at a minimum, as women and as Indigenous women, as individuals and as members of collective Indigenous peoples and communities that have collective rights (3).

To prevent and address discrimination against Indigenous women and girls, it explains that State actions must integrate a gender perspective, an intersectional perspective, an Indigenous women and girls' perspective, an intercultural perspective and a multidisciplinary perspective (4). These terms or concepts are defined as follows:

- 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;" and
- an 'intersectional perspective'[68] requires States to consider "the multitude of factors that combine to increase the exposure of Indigenous women and girls to, and exacerbate the consequences of, unequal and arbitrary treatment" based on various factors (4).
- An 'Indigenous women and girls perspective' involves "understanding the distinction between their experiences, realities and needs in the area of human rights protection and those of Indigenous men, based on their sex and gender differences." It also entails "considering the status of Indigenous girls as developing women, which requires interventions to be appropriate to their age, development and condition;"
- an 'intercultural perspective' involves considering "the diversity of Indigenous Peoples, including their cultures, languages, beliefs and values, and the social appreciation and value of this diversity;" and

[66] Citing UNDRIP, Article 2: "Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity."

[67] Explaining also that intersectional discrimination "is structural, embedded in constitutions, laws and policies, as well as government programmes, action and services."

[68] *See also* CERD, *General Recommendation No. 25 on gender-related dimensions of racial discrimination* (2000).

- a 'multidisciplinary perspective' requires attention to the multifaceted identity of Indigenous women and girls and "how law, health, education, culture, spirituality, anthropology, economy, science and work, among other aspects, have shaped and continue to shape the social experience of Indigenous women and girls and to promote discrimination against them" (5).

CEDAW then identifies a set of rights that must be "strictly applied" to comply with Articles 1 and 2 of the Convention. This set of rights "lays the foundation for a holistic understanding of the individual and collective rights of Indigenous women," confirming also that violation of these or related rights constitutes discrimination against Indigenous women and girls (6). These rights include: self-determination; access to and the integrity of their lands, territories and resources;[69] to culture and environment; 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"(6).[70]

The introduction concludes by alerting States parties to the need to also consider "the challenging context in which Indigenous women and girls exercise and defend their human rights" (7). This includes threats and different impacts related to climate change, environmental degradation, the loss of biodiversity and extractive industries as well as when Indigenous women act as rights defenders. It also notes the 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" (7).

B. Objectives

The section on objectives and scope concerns the reasons that motivated CEDAW to draft GR39 and its intended reach. It has several key points. First, it refers to the principle of self-identification for "determining the status of rights holders as Indigenous women and girls" (8).[71] Second, it explains that gender-based violence, including "psychological, physical, sexual,

[69] *See also Lars-Anders Ågren et al. vs. Sweden*, CERD, Communication No. 54/2013, para. 6.7 (disregard for indigenous territorial rights and "for their right to offer free, prior and informed consent … constitutes a form of discrimination…").

[70] *See also* CESCR, *General Comment 21 on right of everyone to take part in cultural life*, E/C.12/GC/21 (2009), para. 55(e) (identifying the following "core obligations applicable with immediate effect:" Indigenous Peoples' participation "in the design and implementation of laws and policies that affect them. … States parties should obtain their free and informed prior consent when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk").

[71] Citing UNDRIP, arts. 9 and 33. *See also Matson v. Canada* below.

economic, spiritual, political and environmental violence," against Indigenous women and girls occurs in multiple places. They are disproportionately at risk of various kinds of severe human rights violations, such as rape and sexual harassment, gender-based killings and femicide, disappearances and kidnapping, trafficking in persons and contemporary forms of slavery (9). Third, it highlights the need for disaggregated data collection "to fully assess and address the situation of Indigenous women and girls and the forms of discrimination and gender-based violence that they face" (10). CEDAW also stresses that Indigenous Peoples "must have control over data collection processes in their communities and over how the data are stored, interpreted, used and shared" (10).

Last, CEDAW discusses some of the root causes of discrimination against Indigenous women and girls, including past and ongoing assimilationist policies. The root causes include "lack of effective implementation of their rights to self-determination and autonomy and related guarantees, as manifested, inter alia, in their continued dispossession of their lands, territories and natural resources" (11).[72] The latter is in part related to a lack of legal recognition of their rights, "wide gaps in the implementation of existing laws to protect their collective rights," and various violations due to the failure to secure Indigenous Peoples' effective participation and consent (11).

Citing UNDRIP, Article 8, CEDAW explains that past and existing assimilationist policies and other large-scale human rights violations may amount to genocide or cultural genocide, the latter including "the displacement of Indigenous Peoples from their territories in the name of development" (12). It then highlights that States parties also must pay attention to Indigenous women and girls living in urban locations as well as address and repair the consequences of historic injustices "as part of the process of ensuring justice, reconciliation and the building of societies free from discrimination and gender-based violence against Indigenous women and girls" (12).

C. Applicable legal framework

This section provides information on the legal standards that CEDAW believes are relevant to understanding the rights of Indigenous women and girls. It observes that, while all the main human rights instruments are relevant, these standards are primarily the Convention, CEDAW's other general recommendations and international standards on the rights of Indigenous Peoples (13).[73] It highlights that UNDRIP is especially important. As noted above,

[72] Explaining also that CEDAW "has a broad understanding of the right of Indigenous women and girls to self-determination, including their ability to make autonomous, free and informed decisions concerning their life plans and health."

[73] Citing especially CERD, General Recommendation No. 23 on Indigenous Peoples, paras. 3-6, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FGEC%2F7495&Lang=en (all languages)).

it is "an authoritative framework for interpreting State party and core obligations under the Convention" (13). All the rights recognized therein "are relevant to Indigenous women, both as members of their peoples and communities and as individuals, and, ultimately, in relation to the guarantees against discrimination in the Convention itself" (13). Recall that the rights in UNDRIP are "the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world" (UNDRIP, Art. 43). Therefore, it is entirely appropriate that GR39 relies on UNDRIP to interpret the obligations of States parties under the Convention.[74]

Because GR39 also addresses Indigenous girls, CEDAW highlights the relevance of General Comment No. 11 on the rights of the Indigenous child, adopted by the Committee on the Rights of the Child in 2009.[75] It observes that "States parties have an obligation to protect Indigenous girls from all forms of discrimination"(14).[76] It also refers to the 2030 Agenda for Sustainable Development, the Beijing Declaration and Platform for Action and resolutions adopted by the UN Commission on the Status of Women related to Indigenous women (15).[77]

While not specifically referenced in this section, Articles 21, 22 and 44 of UNDRIP deserve mention. This is not to say that UNDRIP in total is not relevant; it is and GR39 explicitly says that all the rights in UNDRIP are relevant in relation to the guarantees in the Convention and, more specifically, to understanding the nature of discrimination. In principle, this means that CEDAW, although without say so directly, is following the practice of CERD insofar as this approach treats violations of Indigenous Peoples' rights, by themselves, as a form of discrimination and without necessarily requiring comparison with others.[78]

UNDRIP, Article 21 recognizes the right, "without discrimination," to the improvement of Indigenous Peoples' economic and social conditions, emphasizing, for present purposes, that particular attention "shall be paid to the rights and special needs of Indigenous women, youth, children." This recalls the need for disaggregated data – data that is separated to illustrate the situations of Indigenous women and girls. Their effective participation is also required to assess what these special needs may be as well as the kinds of specific attention that may be required to the rights of Indigenous women and girls, among other things, in

[74] *See also Differentiated Approaches with Respect to Certain Groups of Persons Deprived of Liberty,* IACTHR, Ser A No. 29 (2022), para. 285 (explaining that Inter-American Court uses UNDRIP to interpret the ACHR precisely because it represents "international minimum standards applicable to the protection of the human rights of indigenous peoples").

[75] https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGC%2F11&Lang=en.

[76] This requires, among other things, actions that are "tailored to their best interests and needs and the adaptation of government procedures and services to the age, development, evolving capacities, and condition of Indigenous girls."

[77] *See e.g.*, https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/indigenous-women/indigenous-women-and-the-commission-on-the-status-of-women.html#:~:text=The%20Commission%20also%20recognizes%20that,and%20environmental%20conservation%20and%20management.

[78] For a detailed discussion *see* M. Åhrén, *Indigenousness as a Protected Ground of Discrimination*, 68 SCANDINAVIAN STUDIES IN LAW 67 (2022), https://scandinavianlaw.se/pdf/68-3.pdf.

"education, employment, vocational training and retraining, housing, sanitation, health and social security." Article 22 makes this point more generally, importantly adding that States must adopt measures, "in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination." These issues are all to some extent elaborated on in GR39.

Article 44 is more far reaching, requiring that the rights and freedoms recognized in UNDRIP "are equally guaranteed to male and female indigenous individuals." With respect to Indigenous women and girls, Article 44 extends non-discrimination and equality norms to each, and every, right recognized in UNDRIP. As noted above, GR39, while not exhaustive, can be seen as part of elaborating what this means in terms of the rights in Convention. Doing so with respect to all rights in UNDRIP is likely easier said than done, however, and considerable thought is required to articulate, let alone implement, what this equality guarantee may mean in practice. This is not to say that certain ways to implement Article 44 are unknown, they are not. Nonetheless, what Article 44 requires in practice, considering the diversity of Indigenous Peoples and with respect to the various rights in UNDRIP is a broader and longer-term process that is only partially addressed in GR39, even if its general principles are helpful to guide various discussions within that process. These are not only internal discussions involving Indigenous Peoples, women and men. The former SRIP explains that States also "must find a way to strike a delicate balance between protection of indigenous women and respect for self-determination and autonomy of indigenous peoples. Engagement and consultation with indigenous women and girls [are] central to finding that balance."[79]

[79] A/HRC/30/41, para. 75.

D. General obligations under Articles 1 and 2

This section is divided into two subsections, one on equality and non-discrimination rules and intersecting forms of discrimination, the other on access to justice in State and Indigenous legal systems. Each concludes with a set of corresponding recommendations. On equality and non-discrimination rules, GR39 highlights that discrimination against Indigenous women and girls is not only "perpetuated by gender stereotypes but also by forms of racism fuelled by colonialism and militarization," and these and other underlying causes of discrimination are reflected directly and indirectly in laws, policies and practices (20).

1. Equality and non-discrimination and intersecting forms of discrimination

This subsection informs about the application of Articles 1 and 2 of the Convention. It begins by reaffirming that the prohibition of discrimination "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 the interpretation of the Convention in the current context" (16). Reference to the centrality of UNDRIP reaffirms, among other things, that discrimination against Indigenous women and girls and its effects "should be understood in both their individual and collective dimensions." It also explains how discrimination should be understood considering that violations of collective rights also affect Indigenous women and girls and often in different ways from Indigenous men (17).[80] For example, the former SRIP explains that "Land appropriation is not gender-neutral and indigenous women's rights interact with violations of collective land rights."[81] Among other things, the "secondary effects of violations of land rights, such as loss of livelihood and ill health, often disproportionally impact women in their roles of caregivers and guardians of the local environment."[82]

GR39 explains certain aspects of these individual and collective dimensions. Starting with the individual dimension, it explains that "discrimination against Indigenous women and girls takes intersecting forms and is carried out by both State and non-State actors…" (17). Moreover, discrimination and gender-based violence "threaten the individual autonomy, personal liberty and security, privacy and integrity of all Indigenous women and girls

[80] *See e.g.,* 20 discussing the different ways Indigenous women and girls may be affected by inadequate or inexistent guarantees for rights to lands and resources.

[81] A/HRC/30/41, para. 16.

[82] *Id. See also* CERD, *General Recommendation No. 37 on Racial discrimination in the enjoyment of the right to health*, para. 51(h) and (i) (articulating the obligation to respect, it provides that states should refrain from "imposing restrictions on the permanent rights of Indigenous Peoples endangering their self-determination, traditional livelihoods and cultural rights…").

and may also harm the collective and its well-being" (17). These individual violations may concern discrimination in marriage and family relations, including custody of children, and their economic consequences. Indigenous women also sometimes "lack the capacity to conclude contracts and administer property independent of their husband or a male guardian" (21). They may also face other problems in "owning, holding, controlling, inheriting and administering land" and inheritance laws also often discriminate against Indigenous women in State and Indigenous legal systems (21).[83] As illustrated in the CEDAW decisions discussed above, many laws still discriminate against Indigenous women and girls concerning "the transmission of their nationality and Indigenous status to their children when they marry non-Indigenous persons," which can result in "transgenerational discrimination and forced assimilation."[84] Intersecting forms of discrimination that affect Indigenous women with disabilities are also highlighted (21-2, 29, 36, 47).

Turning to the collective dimension, GR39 focuses first on how discrimination and gender-based violence affect "the social fabric of Indigenous Peoples and communities … and have a harmful effect on the continuance and preservation of the knowledge, cultures, views, identities and traditions of Indigenous Peoples" (18).[85] Also, it clearly states that the "failure to protect the rights to self-determination, collective security of tenure over ancestral lands and resources, and effective participation and consent of Indigenous women in all matters affecting them constitutes discrimination against them and their communities" (18). Lack of legal title to lands and territory "increases vulnerability to illegal incursions and to the implementation of development projects without their free, prior and informed consent by both State and non-State actors," which also and often disproportionately affect Indigenous women and girls (20). It explains that these rights are guaranteed to Indigenous women and girls "as members of their peoples and communities by [UNDRIP] and related international legal norms" (22).[86] Note in this context that the SRVW observes that "the lack of recognition of indigenous peoples' overarching rights to self-determination and land rights can facilitate the perpetration of gender-based acts of violence against indigenous women and girls."[87]

[83] Citing Article 15 of the Convention.

[84] Citing Article 9 of the Convention and observing also that "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 spouse and have access to information on these rights, as part of ensuring their rights to self-determination and self-identification."

[85] In General Recommendation No. 19, para. 7, CEDAW advises that "Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms" is discrimination within the meaning of Article 1 of the Convention.

[86] Referring to "the rights of Indigenous women to land and collective ownership, natural resources, water, seeds, forests and fisheries under article 14 of the Convention," and noting also a series of "key barriers" to the enjoyment of these rights.

[87] A/HRC/50/26, para. 71 (explaining also, at para. 72, that "preventing and responding to such violence will allow indigenous women and girls to participate more fully and equally in advancing collective self-determination rights"). *See also* A/HRC/39/17 (concerning the distinctive characteristics of attacks against Indigenous Peoples defending their rights and the collective and individual impacts).

Noting that collective rights are indispensable "for the existence, well-being and integral development of Indigenous Peoples, including Indigenous women and girls," GR39 explains that the "individual rights of Indigenous women and girls should never be neglected or violated in the pursuit of collective or group interests, as respect for both dimensions of their human rights is essential" (19). This may be seen as prioritizing individual rights over collective rights, but this is likely an overly restrictive view of this statement. Rather than prioritizing one over the other, it explains that both dimensions are essential, which suggests that the two may have to be considered together and/or balanced against each other where a conflict may arise. All legal systems employ such methods, and this balancing does not necessarily violate rights as such. The former SRIP explains that this process may also require "reconceptualizing rights issues to include the nexus between individual and collective rights, as well as the intersectionality between different forms of inequality and discrimination."[88] She concluded that this is part of finding the right balance between protection of Indigenous women and respect for self-determination and autonomy of Indigenous Peoples. As with the discussion on UNDRIP, Article 44 above, this likely means that, while some general principles are evident, some of this will have to be worked out on a case-by-case basis and by taking various factors into account.

The subsection concludes with nine recommendations. They, and the other recommendations in GR39, should be read together with the analysis that precedes them (as summarized above). The recommendations in this subsection concern adopting or amending laws, policies and programmes to eliminate discrimination, including by the private sector, and to foster equality, including in marriage and economic relations (23 (a-d), and (g)). States should also 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, and take steps to fully ensure respect for their rights to [FPIC]," including the rights of Indigenous women and girls to land, water and other natural resources and to a clean, healthy and sustainable environment (23 (e) and (h)). States should also put in place measures "to eliminate and prevent all forced assimilation policies and other patterns of denials" of Indigenous Peoples' cultural and other rights and investigate and repair harm "for past and present assimilation policies and practices that significantly compromise Indigenous cultural identity…" (23(i)).

2. Access to justice and Indigenous legal systems[89]

This subsection begins by reaffirming that Indigenous Peoples "must have access to justice that is guaranteed both by States and through their Indigenous customary and legal systems,"

[88] A/HRC/30/41, para. 75-6.

[89] *See also* A/HRC/53/31, para. 38-9 (where the UN Special Rapporteur on the Independence of Judges and Lawyers decides to dedicate a study to Indigenous Peoples' rights in State and Indigenous legal systems including the impact on the rights of Indigenous women and girls).

observing that this also requires attention to discrimination that affects Indigenous women and girls (24).[90] It recalls that UNDRIP recognizes Indigenous Peoples' rights to maintain and strengthen their distinct legal and cultural institutions and to promote, develop and maintain their legal systems, "in accordance with international human rights standards."[91] With respect to the latter, CEDAW explains that the Convention and, presumably, also its interpretation in GR39, is "an important reference for both non-Indigenous and Indigenous justice systems in addressing cases related to discrimination against Indigenous women and girls" (25). Indigenous women and girls must be provided with access to justice and remedies that follow international standards[92] and to the various perspectives outlined above (e.g., a gender, intersectional and Indigenous women and girls' perspectives, as defined in 4 and 5) (26). This pertains to both State and Indigenous justice systems.

GR39 also recites some of the barriers faced by Indigenous women and girls in both the State and Indigenous justice systems. In the State system, these include racism, structural and systemic racial discrimination, other forms of marginalization, lack of interpretation services, and lack of culturally appropriate procedures that do not consider Indigenous traditions and practices (30). Justice officials also lack training on the rights of Indigenous Peoples and Indigenous women and girls in their individual and collective dimensions. Indigenous systems are often male dominated and discriminate against women and girls (31). The high levels of involvement of Indigenous women and girls in the States' criminal justice system is also highlighted, noting that Indigenous women also tend to be "overrepresented in prisons, affected by arbitrary pretrial detention and face discrimination, gender-based violence, inhumane treatment and forms of torture…" (32).[93] The recommendations correspond to these and related issues (33).

[90] The Inter-American Commission on Human Rights has emphasized that respect for indigenous legal systems is "a manifestation of the right to self-determination" and that it "must be recognized as a human right of a collective nature, without any implication that the State may be exempt from providing indigenous peoples with the services of the official justice system." *Indigenous Women and their Human Rights in the Americas*, OEA/Ser.L/V/II. Doc. 44/17 (2017), para. 172-3. CERD has found that "self-determination is linked to the effective realization of the rights of indigenous peoples, specifically their right to maintain and develop their own political, judicial, cultural, social and economic institutions." *Yaku Pérez Guartambel v. Ecuador*, CERD/C/106/D/61/2017, para. 4.6.

[91] UNDRIP, arts. 5 and 34. UNDRIP, art. 35, also provides that "Indigenous peoples have the right to determine the responsibilities of individuals to their communities" and this should not be read as limited to the responsibilities of members only.

[92] Some of these are explained in 27-8 (e.g., explaining, at 27, that "it is key to respect the different conceptions of justice and processes that non-Indigenous and Indigenous systems have, and to actively listen to and collaborate with Indigenous Peoples").

[93] *See also Differentiated Approaches with respect to Certain Groups of Persons in Detention*, IACTHR, Ser A No 29 (2022) (concerning human rights norms as applied, among others, to Indigenous Peoples); and Sub-Committee on the Prevention of Torture, CAT/C/50/2, para. 81-94 (stating, at para. 93, that "[f]or many indigenous persons, imprisonment constitutes cruel, inhuman and degrading treatment and even a form of torture"); and A/HRC/50/26, para. 55 ("[t]he disproportionately high incarceration rate of indigenous women compared to their non-indigenous counterparts, such as in Australia, Canada and Costa Rica, is a reflection of structural discrimination and of the barriers to accessing fair and effective judicial processes…").

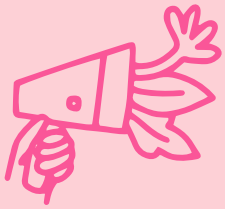
E. Specific dimensions of the rights of Indigenous women and girls

This section of GR39 concerns various aspects of the rights of Indigenous women and girls. It also lists the articles of the Convention that CEDAW thinks are relevant to these aspects. As above, each subsection concludes with a set of recommendations. These specific aspects and articles are as follows (discussed in turn below):

1

Prevention of and protection from gender-based violence against Indigenous women and girls *(Convention, Arts. 3, 5, 6, 10(c), 11, 12, 14 and 16) (34-42)*

2

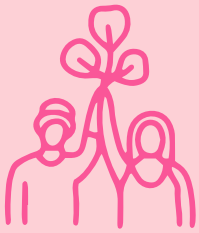


Right to effective participation in political and public life *(Arts. 7, 8 and 14) (43-6)*

3

Right to education *(Arts. 5 and 10) (47-8)*

4

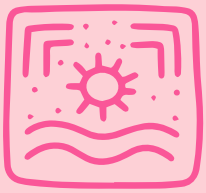


Right to work *(Arts. 11 and 14) (49-50)*

5

Right to health *(Arts. 10 and 12) (51-2)*

6



Right to culture *(Arts. 3, 5, 13 and 14) (53-5)*

7

Rights to land, territories and natural resources *(Arts. 13 and 14) (56-7)*

8

Rights to food, water and seeds *(Arts. 12 and 14) (58-9)*

9

Right to a clean, healthy and sustainable environment *(Arts. 12 and 14) (60-1)*

1. Gender-based violence against Indigenous women and girls[94]

This lengthy section begins by recalling that gender-based violence is "a form of discrimination under article 1 of the Convention and, therefore, involves all obligations under the Convention," including the requirement in Article 2 that States "must adopt measures without delay to prevent and eliminate all forms of gender-based violence against Indigenous women and girls" (34).[95] Gender-based violence occurs in all spaces and spheres of human interaction. Additionally, 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" (36). This may also have larger impacts insofar as it also "undermines the collective spiritual, cultural and social fabric of Indigenous Peoples and their communities and causes collective and sometimes intergenerational harm" (40).

GR39 acknowledges that, while there is little verified data globally, existing evidence supports the view that gender-based violence disproportionately affects Indigenous women and girls (35). This illuminates the need for States to collect data, in collaboration with Indigenous organizations and communities, to better understand the scope of the problem, and for States to effectively address "discrimination, stereotypes and social legitimization of gender-based violence against Indigenous women and girls (presumably, the same obligation applies to Indigenous authorities) (35). Because gender-based violence against Indigenous women and girls is severely underreported, the "perpetrators regularly enjoy impunity, owing to Indigenous women's and girls' extremely limited access to justice, as well as biased or flawed criminal justice systems" (38).[96] States parties and Indigenous justice systems have "a due diligence obligation to prevent, investigate and punish perpetrators and to provide reparations to Indigenous women and girls who are victims of gender-based violence" (39). This extends to all levels of the State – legislative, executive and judicial, regional, national and local, and privatized services – and requires the formulation of laws and public policies, programmes and monitoring mechanisms to eliminate gender-based violence against Indigenous women and girls in all its forms as well as services to address and alleviate its harmful effects (41).

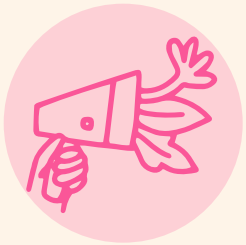
[94] *See also General Recommendation No. 35 on gender-based violence against women, updating general recommendation No 19* (2017), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FGC%2F35&Lang=en.

[95] Recalling the analogous requirement in UNDRIP, art. 22.

[96] *See e.g., Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II. Doc. 30/14 (2014), p. 12; K. Cripps, *Indigenous women and intimate partner homicide in Australia: confronting the impunity of policing failures*, 35 CURRENT ISSUES IN CRIMINAL JUSTICE 293 (2023); and S. Crane-Murdoch, 'On Indian Land, Criminals Can Get Away with Almost Anything', *The Atlantic*, 22 Feb. 2013.

Importantly, given its prevalence in some parts of the world, GR39 defines 'forced displacement' as a major form of violence that affects Indigenous women and girls. Among other things, it severs "their connection to their lands, territories and natural resources and permanently harming their life plans and communities" (37). Other forms of violence include severe environmental degradation, including the foreseeable impacts of climate change; contemporary forms of slavery; targeting of older unmarried women as witches; the stigmatization of married women who cannot bear children; and trafficking in persons that results from "the militarization of Indigenous territories by national armies, organized crime, mining and logging operations and drug cartels, as well as the expansion of military bases on Indigenous lands and territories" (37).

The subsection concludes with nine recommendations, some of them addressed to Indigenous authorities and justice systems (42(c)). States should adopt or amend and implement legislation to prevent, prohibit and provide redress for gender-based violence, taking into account the specific characteristics and needs of Indigenous women and girls, and "sanction and eradicate all forms of gender-based violence … including environmental, spiritual, political, structural, institutional and cultural violence, as well as violence attributable to extractive industries" (42(a), (b) and (d)). They should provide support services and access to legal aid and other resources to access the legal system (42(e) and(f)). These obligations apply to and are increased for women deprived of liberty and in situations of armed conflict and include the prohibition of harm to land, natural resources and the environment in accordance with international human rights and humanitarian law (42(g) and (h)). Finally, jointly with Indigenous peoples, States should "collect disaggregated data and undertake studies … to assess the magnitude, gravity and root causes of gender-based violence against Indigenous women and girls, in particular sexual violence and exploitation, to inform measures to prevent and respond to such violence" (42(i)).



2. Right to effective participation in political and public life[97]

Pursuant to Article 7 of the Convention, Indigenous women and girls have a right to participate in decision making at all levels: "within their communities, as well as with ancestral and other authorities; [in] consent and consultation processes over economic activities carried out by State and private actors in Indigenous territories; public service and decision-making positions at the local, national regional and international levels; and their work as human rights defenders" (43). GR39 lists various barriers to the equal exercise and enjoyment of this right, noting that they are particularly acute in armed conflicts and transitional justice processes (44). It then addresses in some detail the situation of Indigenous women human rights defenders, observing that

[97] *Cf.* UNDRIP, arts. 18, 19 and 32.

they are especially at risk when defending territorial rights of their Indigenous Peoples and opposing the implementation of unwanted development projects (45).[98] It highlights 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…" (45). They must also "ensure safe conditions and an enabling environment for their advocacy work, free from discrimination, racism, killings, harassment and violence" (45).

This section contains lengthy recommendations focused on participation rights, one of which cites UNDRIP, Articles 18, 19, 32.1 and 44 (46(a)). States should establish mechanisms, including legislation, to prevent political parties, trade unions and others from discriminating against Indigenous women and girls (46(b) and (e)). They should also "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" (46(d)). States should also "ensure and create spaces for Indigenous women and girls to participate as decision makers and actors in peacebuilding efforts and transitional justice processes" (46(g)). They should adopt effective measures 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" (46(h)). Importantly, it also recommends that States parties

> *Ensure that economic activities, including those related to logging, development, investment, tourism, extraction, mining, climate mitigation and adaptation programmes, and conservation projects are only implemented in Indigenous territories and protected areas with the effective participation of Indigenous women, including full respect for their right to free, prior and informed consent and the adequate consultation processes. It is key that these economic activities do not adversely impact human rights, including those of Indigenous women and girls (46(f)).*

3. Right to education

This section recites various of barriers faced by Indigenous women and girls in education, observing that gender-based violence and discrimination in education is "particularly acute when forced assimilation policies are implemented in schools"(47).[99] Some important barriers are "the lack of education

[98] Explaining also that 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."

[99] *E.g.*, they "frequently must travel long distances to schools and are at risk of gender-based violence en route and upon arrival."

facilities designed, established or controlled by Indigenous Peoples; poverty; discriminatory gender stereotypes and marginalization; limited cultural relevance of educational curricula; instruction solely in the dominant language; and the scarcity of sexuality education" (47). It also lists various factors that may limit the access of Indigenous girls to education. Some of these issues are also raised in relation to the right to work discussed below (49).[100]

The recommendations note key considerations to ensure that Indigenous women and girls fully enjoy the right to education. These include supporting Indigenous Peoples to realize the rights guaranteed in UNDRIP, Articles 14 and 15, correcting "discriminatory stereotypes related to Indigenous origin, history, culture and the experiences of Indigenous women and girls," creating educational scholarships for Indigenous women and girls, recognizing Indigenous scientific and other knowledge, and providing certain kinds of support to allow Indigenous women and girls to participate more fully in education (48(a)). Others include ensuring that education is inclusive, accessible and affordable and promoting curricula, with the participation of Indigenous women and girls, that reflect Indigenous education, languages, cultures, history, knowledge systems and methodologies, which should extend to all schools (48(b) and (c)).[101]

4. Right to work

This section lists certain challenges in employment, formal, informal and traditional, which undermine Indigenous women's economic autonomy. These include low pay and unsafe working conditions. In some cases, this can amount to forced labour and forms of slavery (49). Discriminatory gender stereotypes, racial prejudice and forms of gender-based violence and harassment exist in the workplace (e.g., prohibition of Indigenous women wearing their clothes or using their languages). States should also guarantee that Indigenous Peoples and women can continue to pursue and benefit from their occupations, without discrimination. This includes traditional occupations, which often require simultaneous protection for land and other rights.[102] This is acknowledged in one of the recommendations (50(a)(iv)).[103] The other

[100] Stating that "States should create equal opportunities for Indigenous women and girls to gain access to the needed education and training necessary to increase their employment prospects and to facilitate their transition from the informal to the formal economy."

[101] *See also* 55(d).

[102] *See also ILO, Direct Request (CEACR), published 113rd ILC session (2025) on Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Indonesia* ("promoting and ensuring access to material goods and services required to carry out an occupation, such as secure access to land, without discrimination, is one of the objectives of a national policy on equality under Article 2 of the Convention").

[103] "Guaranteeing that Indigenous Peoples and women can continue to pursue and benefit from their occupations, without discrimination, and also guaranteeing the collective rights to the land on which these occupations take place…."

recommendations concern ensuring equal, safe, just and favourable conditions of work and income security, preventing, among other things, discrimination, racism, stereotypes, gender-based violence against Indigenous women in the workplace, and improving access to vocational and professional skills training, particularly in fields from which Indigenous Peoples have historically been excluded (50(a), (b) and (c)).

5. Right to health

This section reviews various impediments to the equal enjoyment of the right to health by Indigenous women and girls. This includes limited access to adequate health-care services, racial and gender-based discrimination in health systems (51). This discrimination is also perpetrated by health professionals, who are often "insensitive to the realities, culture and views of Indigenous women and do not speak Indigenous languages, and they rarely offer services respecting the dignity, privacy, informed consent and reproductive autonomy of Indigenous women" (51). Gender based violence, inclusive of coercive practices, such as involuntary sterilizations or forced contraception, also feature. It also records that "Indigenous midwives and birth attendants are often criminalized, and technical knowledge is undervalued by non-Indigenous health systems" (51). The recommendations closely correspond to these and a few other points. They include ensuring that quality health services and facilities are available, accessible, affordable, culturally appropriate and acceptable for Indigenous women and girls;" and the "recognition of Indigenous health systems, ancestral knowledge, practices, sciences and technologies," which includes preventing and punishing the criminalization thereof (52(a) and (d)).

6. Right to culture

This section adopts a wide view of culture, understanding that it is not only an "essential component" of the lives of Indigenous women and girls, but it is also "intrinsically linked to their lands, territories, histories and community dynamics" (53).[104] Dispossession, lack of legal recognition and unauthorized use of Indigenous territories, lands and natural resources and various forms of environmental degradation "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 practice, and cultural heritage by State actors and third parties" (54).[105] Culture also includes languages, dress and food preparation, the practice of Indigenous medicine, respect for sacred places, religion, traditions, and transmission of the history and heritage of their communities and peoples (53). Consequently, States should protect the corresponding rights, including through protecting the lands, territories and sacred places of Indigenous Peoples (54).

The recommendations elaborate on the preceding, for instance, calling on States to "respect, protect and expand the rights of Indigenous Peoples to land, territories, resources and a safe, clean, sustainable and healthy environment as a precondition for preserving the culture of Indigenous women and girls" (55). They also refer to protection against unauthorized use or appropriation of cultural knowledge and heritage without FPIC, adequate benefit-sharing and positive measures to recognize and protect Indigenous women's "intellectual property; 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" (55(c) and (f)).[106] States should also act "with due diligence to respect and protect the sacred places of Indigenous Peoples and their territories and hold those who violate them accountable" (55(g)).

[104] *See also Moiwana Village v. Suriname,* IACTHR, Ser. C No. 125 (2005), para. 101, 102-3 (observing that, "for the culture to preserve its very identity and integrity, [indigenous and tribal peoples] … must maintain a fluid and multidimensional relationship with their ancestral lands").

[105] Note also that the Inter-American Court defines the terms 'survival' to mean indigenous and tribal peoples' "ability to 'preserve, protect and guarantee the special relationship that they have with their territory', so that 'they may continue living their traditional way of life, and that their distinct cultural identity, social structure, economic system, customs, beliefs and traditions are respected, guaranteed and protected'." It is more than physical survival, incorporating also a right to cultural integrity and heritage, and transmission of the same, and the collective right to live in freedom, peace and security as distinct peoples e.g., as restated in part in UNDRIP, art. 7). *Saramaka People v. Suriname, Interpretation of the Judgment*, IACTHR, Ser. C No. 185 (2008), para. 37.

[106] The latter also stating that "States should also respect the principle of free, prior and informed consent of 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."

7. Rights to land, territories and natural resources

This section restates well established legal rules that require recognition, protection and provision of legal certainty to Indigenous Peoples' lands, territories and resources as well as the discrimination that arises when States fail to do so (acknowledged more than once in GR39). In this regard, it recalls that States are required "to delimit, demarcate, title and ensure security of title to Indigenous Peoples' territories to prevent discrimination against Indigenous women and girls" (56). Lands and territories are also intertwined with "the identity, views, livelihood, culture and spirit of Indigenous women and girls" and their "lives, well-being, culture and survival…" (56). Inadequate recognition of rights to land "can lead to poverty; food and water insecurity; and barriers to access to natural resources needed for survival, and can create unsafe conditions, which give rise to gender-based violence against Indigenous women and girls" (56).

The recommendations recognize that Indigenous Peoples' territorial rights require securing their "ownership and control over lands encompassed by their customary land tenure systems," in law and practice, which also cannot be separated from respect for the right to self-determination (57(a) (b)).[107] FPIC is also required "before authorizing economic, development, extractive and climate mitigation and adaptation projects on their lands and territories and affecting their natural resources," and FPIC 'protocols' should be designed to guide these processes (57(c)). States should also prevent and regulate activities by businesses and other private actors that may negatively affect the rights of Indigenous women and girls to their lands, territories and environment, including by providing remedies and reparations and adopting comprehensive strategies "to address discriminatory stereotypes, attitudes and practices that undermine Indigenous women's rights to land, territories and natural resources" (57(d) and (e)).

8. Rights to food, water and seeds[108]

This section concerns the "key role" that Indigenous women and girls have in their communities "in securing food, water and forms of livelihood and survival" (58). This role and the activities it support are harmed by dispossession or impairment of access to land and resources as well as by the impact of extractive and other economic activities and development projects. It includes

[107] On the connection between self-determination and land rights *see also* CESCR, *J.T., J.P.V. and P.M.V. v. Finland*, Communication Nos. 251/2022, 289/2022, para. 14.2-14-4; and *Lhaka Honhat Association v. Argentina*, IACTHR, Ser. C No. 400 (2020), para. 153 ("the adequate guarantee of communal property … includes … respect for the autonomy and self-determination of the indigenous communities over their territory").

[108] *Cf.* UNDRIP, arts. 20 and 31.

environmental degradation and the impact of climate change. "States should adopt urgent measures to ensure that Indigenous women and girls have adequate access to sufficient food, nutrition and water" (58 and 59(a)). It also addresses the commercialization of seeds, which are "an essential part of the ancestral knowledge and cultural heritage of Indigenous Peoples," and proliferation of transgenic or genetically modified crops (58).

GR39 recommends that States parties "protect ancestral forms of farming and sources of livelihood for Indigenous women, and ensure the meaningful participation of Indigenous women and girls in the design, adoption and implementation of agrarian reform schemes and the management and control of natural resources" (59(b)). It also recommends that they exercise "due diligence to prevent, investigate and punish gender-based violence committed against Indigenous women and girls when they are performing agricultural work, procuring food and fetching water for their families and communities" (59(b)). States parties should also ensure that Indigenous women and girls have access to scientific information and technology to be able to achieve food and water security, that they are credited and compensated for their scientific contributions and knowledge (59(c)).

9. Right to a clean, healthy and sustainable environment

This section explains that the 'right to a clean, healthy and sustainable environment' includes the following elements: "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" (60). This right appears in three ways in this section. First, where a State does not to take adequate action to prevent, adapt to and correct serious instances of environmental harm, it "constitutes a form of discrimination and violence against Indigenous women and girls that needs to be promptly addressed" (60). Second, States should recognize Indigenous women's knowledge of biodiversity conservation and restoration, ensuring that they fully participate in environmental decision-making. Third, they should support Indigenous women and girls who defend environmental human rights and ensure their protection and security (60). The four corresponding recommendations address different aspects of these points and, notably (61), recommend that States should:

> *Ensure the free, prior and informed consent of Indigenous women and girls in matters affecting their environment, lands, cultural heritage and natural resources, including any proposal to designate their lands as a protected area for conservation or climate change mitigation purposes or carbon sequestration and trading or to implement a green energy project on their lands, and any other matter having a significant impact on their human rights (61(d)).*

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