

RESPECTING THE INTEGRITY OF INDIGENOUS PEOPLES

*A HUMAN RIGHTS FRAMEWORK TO ADDRESS
GENDER AND ENVIRONMENTAL VIOLENCE*



Artist: Samantha Johnson, Miami Law Human Rights Clinic Legal Intern, Choctaw Nation of Oklahoma.



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ABBREVIATION AND SHORT FORM GUIDE

ACHPR	African Commission on Human and Peoples' Rights
ADRIP	American Declaration on the Rights of Indigenous Peoples
American Declaration	American Declaration on the Rights and Duties of Man
Banjul Charter	African Charter on Human and Peoples' Rights
Belem do Para Convention	Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women
CAT	The Convention against Torture and Other Cruel, Inhuman Degrading Treatment or Punishment
CAT Committee	Committee Against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEDAW Committee	Committee on the Elimination of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CIDT	Cruel, inhuman and degrading treatment
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FAO	UN Food and Agriculture Organization
GBV	Gender-based violence
Genocide Convention	Convention on the Prevention and Punishment of the Crime of Genocide
HRC	Human Rights Council
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
Istanbul Convention	Convention on Preventing and Combating Violence Against Women and Domestic Violence
Maputo Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
OHCHR	Office of the High Commissioner of Human Rights
Protocol of San Salvador	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNDROP	United Nations Declaration on the Rights of Peasants
UNPFII	UN Permanent Forum on Indigenous Issues
WHO	World Health Organization

INTRODUCTION

Gender-based violence (GBV) is a global public health and human rights challenge heightened by climate change, with Indigenous women, girls, and two-spirit people at the epicenter of both of these crises. By GBV, this report refers to violence targeting or disproportionately impacting individuals due to their gender or prevailing gender norms. As the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) has noted, “[h]aving its roots in historical and structural inequality in power relations between males and females, it [GBV] is characterized by the use and abuse of power and control in public and private spheres, and is intrinsically linked to gender stereotypes that underlie and perpetuate such violence, as well as other factors that can increase women’s and girls’ vulnerability to such violence.” [1] This violence can be physical, sexual, psychological, economic, or spiritual. According to the World Health Organization (WHO), GBV affects at least 1 in 3 women, girls and gender-nonconforming persons globally and particularly impacts Indigenous communities. [2] In North America, for instance, Native American and Alaska Native women experience sexual assault at a rate 2.5 times higher than non-Native women, with 86% of perpetrators being non-Native men. [3] In Canada, though Indigenous women make up only 4% of the population, they are 25% of all the female murder victims. [4] Moreover, women are doubly victimized by the criminal justice process, as nearly half of these cases remain unsolved. [5]

Against this backdrop of abuse, the climate crisis is displacing Indigenous communities at increasing rates and leading to economic instability, land disputes, and disruptions in social safety nets, all of which contribute to their increased risk of experiencing GBV. As the United Nations (UN) Special Rapporteur on the Rights of Indigenous Peoples put it, “Indigenous peoples are among those who have contributed least to the problem of climate change, yet they are the ones suffering from its worst impacts.” [6] Moreover, Indigenous leaders have been at the forefront of sounding the alarm on climate change and may also experience GBV as retaliation for their actions as human rights defenders confronting environmental degradation.

Violence against Indigenous Peoples and nature is deeply interconnected. For generations, Indigenous land worldwide has been exploited as a “hunting ground” for natural resources, as well as women. This is an enduring legacy of colonialism, violently displacing Indigenous Peoples from their land and exploiting their resources, “facilitated by ... racist and sexist ideologies in which Indigenous people are dehumanized in ways that excuse or even encourage violence against Indigenous girls and women.” [7] Sexual violence is “a hallmark of colonial progress” and “a central force in creating racial and gendered hierarchies.” [8] Indigenous leaders have highlighted this link between sovereignty over land and bodily autonomy. [9] Usurping sovereignty has further paved the way for erasure of communities and their narratives. Indigenous women who have, for generations, been most impacted by nonconsensual violence to Indigenous lands and communities, have important lessons for all of us as we grapple with the twin crises of GBV and climate injustice.

This report provides an analysis of the international and regional human rights law as it pertains to the intersection of Indigenous rights, GBV and environmental justice. For each of the main human rights systems –the International, Inter-American, African, and European [10]–it examines standards set out in human rights treaties and declarations, as well as interpretations by the human rights bodies charged with monitoring implementation of these instruments. This analysis is based on a review of the relevant documents, as well as interviews and consultations with Indigenous advocates, which shaped the key themes and recommendations. Additionally, this human rights report is accompanied by a series of case studies, selected through interviews with Indigenous leaders, providing an in-depth view of the intersection of Indigenous rights, GBV, and environmental justice in particular regional contexts and with specific groups.

Overall, human rights law provides broad protections in addressing both GBV and environmental injustice. With regards to GBV, this includes rights to equality and non-discrimination, life, health, security of person, privacy, and freedom from cruel, inhuman and degrading treatment. With regards to the environment, this includes rights to a healthy environment, food, and water, as well as rights to protest and safety by environmental defenders. Indigenous Peoples are disproportionately vulnerable to environmental changes due to their unique dependence on the environment for basic necessities. [11] Further, as noted by the Special Rapporteur on the Rights of Indigenous Peoples, “programmes to mitigate and adapt to climate change, if designed without consulting Indigenous peoples, ...may adversely affect... and undermine their customary rights...” [12] Thus, addressing gaps in the realization of promised rights requires recognition of Indigenous sovereignty, as well as opportunities for Indigenous women to shape responses. This entails recognition of Indigenous rights to self-determination, land and resources, cultural life, and access to justice, as well as Indigenous women’s rights to participate in law and policy and freedom of expression. These various rights weave together to form a protective web critical to safeguard the fundamental right to integrity of both Indigenous Peoples and the environment. Yet, all too often, these rights are not considered in connection to each other, leading to gaps in protection. Moreover, there is a gap between law and practice with many countries failing to recognize Indigenous rights. [13]

I. RIGHTS VIOLATED BY GENDER-BASED VIOLENCE

“Violence against Indigenous communities is both an individual and collective experience, and it is important to address both dimensions.” [14] - **Kate Finn, Executive Director of First Peoples Worldwide, University of Colorado Boulder**

“Under colonial constructs, land is transactional. For Indigenous people, land is relational. We have a kinship with Her, a spiritual connection that is rooted in our languages, oral traditions, and ceremony.” [15] - **Caroline LaPorte, Anishinaabe, Descendant Little River Band of Ottawa Indians, Judicial Advisor for the Seminole Tribe of Florida**

As mentioned above, GBV is defined broadly within this report as violence targeting or disproportionately impacting individuals due to their gender or prevailing gender norms. [16] According to the American Psychological Association (APA), gender is a “social construct and social identity” that refers to the “attitudes, feelings, and behaviors that a given culture associates with a person’s biological sex.” [17] This report thus proposes a more expansive definition that is not synonymous with “violence against women.” [18] This is in line with current interpretations by human rights bodies. Over the past decade, the UN Human Rights Council (HRC) has recognized violence against individuals based on their sexual orientation and/or gender identity as a form of GBV, since they are “driven by a desire to punish those defying gender norms.” [19] The UN’s Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has noted that “all persons have some form of gender identity and, depending on how their identity is perceived in a particular context, they can be subject to violence and discrimination on that basis.” [20] Moreover, many Indigenous Peoples recognize and value community members who do not fit into a neat gender binary.

For instance, some North American Indigenous communities call them “two-spirit,” and traditionally, they occupy an essential social and spiritual role. [21] While espousing this broader, more inclusive definition of GBV, we acknowledge the disproportionate devastation of violence impacting Indigenous women and girls.

GBV can manifest through physical, sexual, psychological, economic, spiritual, and environmental violence. According to the UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee), GBV “takes [on] multiple forms, including ... physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.” [22] Regional conventions by the African and European human rights systems echo this definition. [23] Indigenous girls and adolescents also experience specific forms of violence at disproportionate rates, including Female Genital Cutting, early marriage and forced pregnancy, as well as trafficking. [24] Moreover, GBV can be a form of spiritual violence in light of “women’s roles as spiritual guides, midwives, healers, and political leaders,” in many Indigenous communities which forms “a central basis of women’s power and status among their peoples.” [25]

The Inter-American Commission on Human Rights (IACHR) has identified that “spiritual violence takes place when acts of violence and discrimination against Indigenous women not only harm those women individually, but also negatively impact the collective identity of the communities to which they belong.” [26] This is because of the “particular role that Indigenous women play in their communities with regard to their culture and survival of their people...violence against Indigenous women is perceived not only as an attack on those women individually, but often involves harm to the collective identity of the community...”, thus amounting to spiritual violence. [27]

GBV is thus experienced collectively, linked to the forced displacement and exploitation by the settler-colonial state. Scholars describe the “socio-cultural genocide” of Indigenous Peoples. [28] As an Indigenous scholar described, “White supremacy, rape culture, and the real and symbolic attack on gender, sexual identity and agency are very powerful tools of colonialism, settler colonialism and capitalism, primarily because they work very efficiently to remove Indigenous peoples from our territories and to prevent reclamation of those territories through mobilization. These forces have the intergenerational staying power to destroy generations of families, as they work to prevent us from intimately connecting to each other ...They destroy the base of our nations and our political systems because they destroy our relationships to the land and to each other by fostering epidemic levels of anxiety, hopelessness, apathy, distrust and suicide.” [29]

Additionally, GBV can manifest through environmental violence. [30] Human rights bodies recognize a connection between GBV and environmental degradation. [31]

Human rights bodies recognize a connection between GBV and environmental degradation. According to the CEDAW Committee, GBV is often exacerbated by political, economic, social, and environmental factors including “displacement, migration, the increased globalization of economic activities including global supply chains, extractive and offshoring industry, ... [and] armed conflict.” [32] GBV is affected by crises, including “humanitarian emergencies, natural disasters, and destruction or degradation of natural resources.” [33] The CEDAW Committee explained, “Women and girls... face a heightened risk of gender-based violence during and following disasters. In the absence of social protection schemes and in situations in which there is food insecurity combined with impunity for gender-based violence, women and girls are often exposed to sexual violence and exploitation as they attempt to gain access to food and other basic needs.” [34] The CEDAW Committee further highlighted “crimes against women human rights defenders,” which includes environmental defenders, as a form of GBV. [35] The IACHR has stated that some of the most common consequences of extractive projects for Indigenous communities are “forced displacement and migration; ecological degradation or contamination and their impacts on the right to health and culture; ... sexual violence and the trafficking of Indigenous women and girls; as well as land disputes.” [36] The operations of the extractive industry, in particular, requiring the bringing of hundreds, if not thousands of workers, housed in “Man Camps,” [37] has led to a stark increase in GBV, including sex trafficking of Indigenous women. [38]

Acts of GBV infringe on a core set of rights: (1) the rights to equality and non-discrimination; (2) the rights to health and life; and (3) the right to physical integrity, including the rights to security of person, privacy, and freedom from torture and cruel, inhuman and degrading treatment (CIDT).

A. RIGHT TO EQUALITY AND NON-DISCRIMINATION

Realizing the right to equality and non-discrimination is essential to address GBV against Indigenous communities, who face systemic discrimination in access to services and a lack of due diligence in investigating violence. [39] These realities are deeply rooted in colonial history, where GBV, and in particular, sexual violence has been used as a weapon of war against Indigenous Peoples, degrading entire communities. [40] Moreover, GBV itself is a violation of the right to equality. As the CEDAW Committee sets out, fundamentally, GBV “constitutes discrimination,” requiring States “to pursue, by all appropriate means, and without delay a policy of eliminating discrimination against women, including gender-based violence.” [41] Thus, States’ mere lack of actions and policies to eliminate GBV constitutes a violation of women’s rights to equality and non-discrimination.

The right to equality and non-discrimination is at the core of the international and regional human rights systems and so fundamental that it cannot be restricted even during times of conflict or emergency. [42] It is espoused in the foundational human rights instruments, dating back to 1948: at the international level, in the Universal Declaration of Human Rights (UDHR) and at the Inter-American level, in the American Declaration on the Rights and Duties of Man (American Declaration). The UDHR states that “all human beings are born free and equal in dignity and rights.” [43] The American Declaration sets out the right to equality before the law and states that everyone is entitled to the rights and duties established in that declaration, “regardless of race, sex, language, creed or any other factor.” [44]

While these documents are non-binding declarations, they have important normative status. [45] Moreover, the IACHR has interpreted the Organization of American States (OAS) Charter, which is binding, to include the principles of the American Declaration. [46]

This right to equality and non-discrimination is then echoed in binding treaties in each of the human rights systems. At the international level, the International Covenant on Civil and Political Rights (ICCPR) [47] and International Covenant on Economic Social and Cultural Rights (ICESR) [48] both stress the importance of applying rights within them without discrimination. Additionally, the ICCPR contains a stand-alone right to equality, stating that “all person are equal before the law and are entitled without any discrimination to the equal protection of the law.” [49] In the Inter-American system, the American Convention on Human Rights (Pact of San Jose) likewise protects the right to non-discrimination and equality, [50] and in the African system, the African Charter on Human and Peoples’ Rights, commonly known as the Banjul Charter, sets out the right to non-discrimination and equality, [51] as well as a duty for individuals “to respect and consider...fellow beings without discrimination.” [52] It further specifically calls upon States to ensure “the elimination of every discrimination against women” and “protection of the rights of women and the child as stipulated in international declarations and conventions.” [53] In Europe, the European Convention For the Protection of Human Rights and Fundamental Freedoms (European Convention) prohibits discrimination with regards to its provisions, [54] and a Protocol to the Constitution further guards more broadly against discrimination in the “enjoyment of any right set forth by law.” [55]

In addition to the general instruments that recognize the right to equality, and non-discrimination, there are treaties dedicated to addressing specific discrimination against women. At the international level the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) “condemn[s] discrimination against women in all its forms,” and requires States “[t]o pursue by all appropriate means and without delay a policy of eliminating discrimination against women.” [56] This is not just a right to formal equality under law, but a right to substantive equality that requires “women be given an equal start and...be empowered by an enabling environment to achieve equality of results.” [57] In the African system, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, also known as the Maputo Protocol, similarly calls on States to “combat all forms of discrimination against women through appropriate legislative, institutional, and other measures.” [58] The Maputo Protocol further addresses GBV, requiring States to adopt “legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women.” [59] In the Americas, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Belem do Para Convention) was the first legally binding treaty focused specifically on addressing violence against women, calling “for the establishment of mechanisms for protecting and defending women’s rights as essential to combating the phenomenon of violence against women’s physical, sexual and psychological integrity.” [60] Similarly, in the European system, the Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) aims to “protect women against all forms of violence, and prevent, prosecute and eliminate violence against women.” [61] These treaties all require States to take appropriate means “*without delay*” to realize women’s equality. [62] Addressing the climate crisis by prioritizing Indigenous voices is a key means of preventing GBV against Indigenous Peoples.

The international and Inter-American human rights systems further include treaties focused on addressing discrimination on the basis of race. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) defines racial discrimination as “any distinction, exclusion, restriction, or preference based on race, color, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms...” [63] The Committee on Racial Discrimination (CERD) in its General Recommendation on the Rights of Indigenous People affirms that “discrimination against indigenous peoples falls under the scope of the Convention (ICERD) and that all appropriate means must be taken to combat and eliminate such discrimination.” [64] Furthermore, the Inter-American system has two conventions from 2013 on discrimination: the Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance [65] and the Inter-American Convention against All Forms of Discrimination and Intolerance. [66]

Additionally, both the international and Inter-American systems have instruments specifically focused on protecting Indigenous Peoples’ rights. The earliest of these is the International Labor Organization (ILO) Indigenous and Tribal People’s Convention (ILO C169). ILO C169 states, “Indigenous... peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination... without discrimination to male and female members of these peoples.” [67] ILO C169 served as the major forerunner for declarations focused on Indigenous rights at the UN and by the Inter-American system. This includes the UN Declaration on the Rights of Indigenous People (UNDRIP), which states that “individuals are free and equal to all other peoples... 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.” [68]

At the regional level, the American Declaration on the Rights of Indigenous Peoples (ADRIP) decisively states “Indigenous peoples have the right not to be the object of racism, racial discrimination, xenophobia, or related intolerance.” [69] ADRIP further provides Indigenous women specific protection from discrimination and links gender equality with the prohibition against violence, recognizing that “violence against Indigenous peoples and persons, particularly women, hinders or nullifies the enjoyment of all human rights and fundamental freedoms.” [70]

Accordingly, to adequately protect the right to equality and non-discrimination of Indigenous Peoples, States must account for the intersectional identities of Indigenous women and girls. The UN Special Adviser on Gender Issues and Advancement of Women explained that this intersectional approach “recognizes that people’s experience of human rights is mediated by multiple identities, including race, class, ethnicity, religion, sexual orientation, gender, age, disability, citizenship, national identity, geopolitical context, and health.” [71] The CEDAW Committee similarly affirmed that “discrimination against women [is] inextricably linked to other factors affecting their lives... including... ethnicity/race, indigenous or minority status, colour, socioeconomic status . . .” [72] Women thus “experience varying and intersecting forms of discrimination, which have an aggravating negative impact,” and GBV “may affect some women to different degrees, or in different ways.” [73] Intersectional discrimination based on gender and Indigenous identity both “increases the risk of violence and heightens the adverse consequences of violence when it occurs,” as the CEDAW Committee recognized in the context of missing and murdered Indigenous women. [74] These factors compound to disproportionately disadvantage Indigenous women.

B. RIGHTS TO HEALTH AND LIFE

GBV fundamentally violates the rights to health and life. GBV has both short and long-term health impacts for survivors, such as post-traumatic stress disorder, injuries and disabilities, and an increased risk of HIV infection, as well as unwanted pregnancies. [75] At its extreme, GBV can result in the loss of life. The CEDAW Committee has explicitly recognized this link: “women’s right to have a life free from GBV is indivisible from and interdependent with other human rights, including the right to life, [and] health...” [76]

GBV is a major public health concern [77] and violates the right to health under human rights law.

ICESCR sets out “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” [78] Parallel language can be found in the European Social Charter (ESC), [79] the Banjul Charter [80] and the Protocol of San Salvador. [81]

In the African system, the Maputo Protocol assures health and reproductive rights for women specifically: “State Parties shall ensure that the right to health of women, including sexual and reproductive health, is respected and promoted.” In the African system, the Maputo Protocol assures health and reproductive rights for women specifically: “State Parties shall ensure that the right to health of women, including sexual and reproductive health, is respected and promoted.” [82] GBV violates the right to health and can result in a number of negative health consequences, including “injuries, unwanted pregnancies, STIs, pelvic pain, urinary tract infections, fistula, genital injuries, pregnancy complications, and chronic conditions. Furthermore, violence against women increases the risk that women will be infected by HIV. [83] Mental health outcomes include Post Traumatic Stress Disorder (PTSD), depression, anxiety, substance misuse, self-harm and suicidal behavior, and sleep disturbances.” [84]

In the context of Indigenous girls, GBV, including sexual abuse, has contributed to all of these negative mental health impacts, as well as to poor general health and school performance. [85] For older women, health consequences and resulting injuries from sexual assault are particularly severe, more often resulting in hospitalization. [86]

Realization of the right to health requires a focus on addressing the health needs of the of the most marginalized members of society. The Committee on Economic, Social and Cultural Rights (CESCR), which monitors the implementation of ICESCR, has established as part of right to health's minimum core State obligations, regardless of resources, development of "[n]ational strategies and plans [that] must give particular attention to vulnerable and marginalized groups in both their process and content." [87] In the Inter-American system, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) mandates States to focus first on the "satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable." [88] UNDRIP declares that special attention must be given to the protection of the rights of "Indigenous elders, women youth, children, and persons with disabilities." [89] In addition to establishing that Indigenous Peoples have the "equal right, to the enjoyment of the highest attainable standard of physical and mental health," [90] UNDRIP provides for Indigenous autonomy over the development of social and economic conditions, including in the area of health care. [91] UNDRIP further affirms that "Indigenous people have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals." [92]

ADRIP recognizes that Indigenous Peoples have both "collective and individual rights to the enjoyment of the highest attainable standard of physical, mental, and spiritual health," and in nearly identical language states, "Indigenous peoples have the right to their own health systems and practices, as well as to the use and protection of their vital medicinal plants, animals and mineral and other natural resources." [93]

Moreover, while GBV itself is a violation of the right to health, the health care system plays a critical role in addressing GBV. CESCR recognizes four essential elements of health care services under the right to health: *availability*, *accessibility*, *acceptability*, and *quality*. [94] Availability pertains to having health services and facilities in sufficient quantity and meeting certain underlying determinants of health, such as safe and potable drinking water. [95] Accessibility, on the other hand, has four overlapping dimensions: (1) non-discrimination, (2) physical accessibility, (3) economic accessibility (4) information accessibility. The acceptability prong mandates that all health facilities, goods and services be respectful of medical ethics and culturally appropriate, particularly critical to care for Indigenous GBV survivors. [96] Lastly, the quality prong requires that medical facilities and services be "scientifically and medically appropriate and of good quality." [97] While most survivors of GBV do not seek out help, in cases where they do, the health care system is the first point of contact for survivors who do seek care and supportive services. [98] States also have an obligation under CEDAW to provide access to counseling and family planning services, [99] medical services integral to maintaining the health of Indigenous women.

The IACHR has recognized the importance of health care services in the context of GBV. The IACHR concluded that in the case of over 600 disappearances of Indigenous women in Canada, “barriers to full access to health services” led to disproportionate impact of violence on these women. [100] Further, in *Rosendo Cantú Mexico and Fernandez Ortega v. Mexico*, the Inter-American Court of Human Rights (IACtHR) highlighted the State’s failure to provide adequate health care to an Indigenous plaintiff. The Court ordered the State in *Fernandez Ortega* to implement culturally sensitive training programs and courses for officials within the Prosecutor’s Office, the judicial branch, the police, and the health sector in order to properly investigate cases of sexual abuse of women and ensure accountability. [101]

Too often, GBV results in fatalities, depriving victims of the right to life, [102] either directly through femicide or homicide, or indirectly through suicide and maternal complications. [103] The UDHR asserts, “everyone has the right to life.” [104] The ICCPR expands on the right stating that “every human being has the inherent right to life,...this right shall be protected by law...[and]... [n]o one shall be arbitrarily deprived of his life.” [105] In the Inter-American human rights legal system, the first article of the American Declaration mirrors the language in the UDHR. [106] The Belém do Para Convention guarantees that “all women deserve to have their life respected.” [107] In the European system, the ECHR mandates “everyone’s right to life shall be protected by law.” [108] In the African system, the Banjul Charter states that “human beings are inviolable,” and that “[e]very human being shall be entitled to respect of his life and his person.” [109] The Maputo Protocol further declares “every woman shall be entitled to respect for her life” and mandates States to “enact and enforce laws to prohibit all forms of violence against women...whether the violence takes place in public or private.” [110]

GBV is a serious threat to the right to life of Indigenous women and girls. Globally, Indigenous Peoples’ life expectancy is up to 20 years less than their non-Indigenous counterparts. [111] In Canada, Indigenous women and girls are six times more likely to be murdered than non-Indigenous women. [112] In the United States, the Centers for Disease Control and Prevention (CDC) has reported that murder is the third leading cause of death among American Indian and Alaska Native women and girls under the age of 19. [113] In Australia, Indigenous women account for 16% of the homicides, although they only account for 3% of the population. [114] Further, victims of GBV are at an increased risk of dying by suicide. One survey of Indigenous women living in Seattle found that 42% of survivors who had been raped or coerced into sex, attempted suicide at some point in their lives. [115]

C. RIGHT TO PHYSICAL INTEGRITY

GBV violates the right to physical integrity under international human rights law. Several fundamental human rights comprise the overarching right to physical integrity, including the rights to security of person and privacy. Particularly egregious forms of GBV further rise to the level of violations of freedom from CIDT. Moreover, there is also a long history of forced and coerced sterilization of Indigenous women in the Americas—starting in the 1800s, [116] and continuing to this day. Likewise, the Uyghur women, native to the Xinjiang Autonomous Region in China have been subject to widespread sexual abuse, including rape, forced marriage to Han Chinese men, removal of children, and forced contraception and sterilization. [117] These atrocities contribute to not only the violation of Indigenous Peoples’ fundamental human rights, but to the eradication of Indigenous Peoples altogether and can even amount to genocide. They are further “integral to the project of settler colonialism.” [118] As scholars have explained, “In the history of massacres against Indian people, colonizers attempt not only to defeat Indian people, but also to eradicate their very identity and humanity ... Control over women’s reproductive abilities and destruction of women and children are essential to the destruction of a people.” [119]

The right to security of person is well-established under human rights law, underlying the right to physical integrity. At the international level, both the UDHR and ICCPR provide for the right to security of person. [120] This provision is then echoed in UNDRIP. [121] The CEDAW Committee has also found that GBV violates the right to security of person. [122] For example, in the case of *A.T. v. Hungary*, the CEDAW Committee held that Hungary’s lack of specific legislation to combat domestic violence and sexual harassment violated the right to security of person. [123]

Similarly, at the regional level, the American Declaration, Pact of San Jose, [124] ECHR, Belém do Para Convention, and Banjul Charter contain almost identical language protecting the right to security of person. [125] ADRIP specially recognizes that “Indigenous peoples have the right to peace and security.” [126] The Maputo Protocol further provides that, “Every woman shall be entitled to respect for her life and the integrity and security of her person.” [127]

International human rights law additionally protects the right to privacy, a further component of the right to physical integrity. Under the UDHR and ICCPR, “Everyone has the right not to be subjected to arbitrary interference with his privacy, family, home, or correspondence.” [128] In the Inter-American system, the American Declaration states that “everyone has the right to the protection of the law against...interference or attacks [to the right to privacy].” [129] In the European system, the European Convention stipulates that, “Everyone has the right to respect for his private and family life.” [130] Moreover, the Istanbul Convention calls on States to ensure, “that measures may be adopted to protect the privacy and the image of the victim.” [131] States have egregiously interfered with Indigenous women’s private family lives through mass sterilization, forced adoptions, and residential schools, violating their fundamental right to privacy. [132]

Rape and forced or coerced sterilization are egregious violations of the right to physical integrity, amounting to torture or CIDT. The UDHR states that, “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” [133] The ICCPR then reaffirms this right to freedom from torture or CIDT. [134]

The Convention against Torture and Other Cruel, Inhuman Degrading Treatment or Punishment (CAT) further sets out, “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” [135] CAT also prohibits other acts of CIDT. [136] The ECHR similarly provides, “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” [137] Under the Banjul Charter, “All forms of exploitation and degradation of man, particularly . . . torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.” [138] In the Inter-American system under the American Convention on Human Rights, the right to humane treatment requires that, “Every person has the right to have his physical, mental, and moral integrity respected.” [139] The Inter-American Convention to Prevent and Punish Torture focuses on steps States must take “to prevent and punish torture.” [140] In the specific context of GBV, the Belém do Para Convention affirms that “every woman has ... (d) the right not to be subjected to torture; (e) The right to have the inherent dignity of her person respected and her family protected.” [141] In this way, freedom from torture and CIDT is directly linked to a person’s inherent dignity.

Rape constitutes torture or CIDT under international human rights law. The Committee Against Torture (CAT Committee), which monitors implementation of CAT, has explicitly pointed out “rape and acts of sexual violence and ill-treatment. . . amounted to torture.” [142] As the Special Rapporteur on Torture stated, “When Government officials use rape, the suffering inflicted might go beyond the suffering caused by classic torture, partly because of the intended and often resulting isolation of the survivor. . . This rejection greatly hinders the psychological recovery of the victim and often condemns her to destitution and extreme poverty.” [143] The CEDAW Committee has further noted that the rape has been used as a weapon of war, including to deliberately transmit HIV. [144]

Additionally, regional human rights systems provide that rape and sexual assault constitutes torture or CIDT. The European Court of Human Rights (ECtHR) found in *Aydin v. Turkey*, that rape may constitute a violation of the right against torture. [145] Likewise, the IACHR has found that rape may amount to torture in the context of Indigenous women. [146] In Inter-American case, *Ana, Beatriz and Celia Gonzalez Perez*, the IACHR concluded that rape and other abuses that targeted the physical, mental, and moral integrity of three Tzeltal Native sisters amounted to torture under the Pact of San José. [147] The Commission emphasized that the pain and humiliation they experienced was exacerbated by their identity as Indigenous People because of the language barrier between them and their aggressors, and the violations forced them to flee their community out of fear, shame, and humiliation. [148] The IACHR further explained that their mother, in witnessing these atrocities, experienced CIDT in violation of the Pact of San Jose, “In this case, the IACHR holds the view that the treatment extended to Delia Pérez de González, who had to stand by helplessly and witness the abuse of her three daughters by members of the Mexican Armed Forces and then to experience, along with them, ostracism by her community, constitutes a form of humiliation and degradation that is a violation of the right to humane treatment guaranteed by the [Pact of San José].” [149] Also specific to Indigenous women, the Inter-American cases of *Rosendo Cantú v. Mexico*, and *Fernández Ortega v. Mexico* involve Indigenous women who were raped by Mexican military officials. [150] Both cases found sexual assault by a State official may constitute a form of torture. Moreover, the Court gave special considerations to the intersectional identity of the aggrieved parties, noting in *Fernández Ortega* that, “the alleged violations may have been aggravated by the pain and humiliation of the alleged victim due to her condition as an Indigenous person and lack of knowledge of the language of her aggressors.” [151]

Forced and coerced sterilization of Indigenous Peoples also constitutes torture and CIDT in violation of international human rights law. The Human Rights Committee recognized that forced sterilization can rise to a violation of torture or CIDT, requesting that states provide the Committee information on measures to prevent these coercive practices. [152] The Special Rapporteur on Torture stated, “Forced sterilization is an act of violence, a form of social control, and a violation of the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment.” [153] In its General Recommendation on GBV, the CEDAW Committee likewise noted, “Violations of women’s sexual and reproductive health and rights, such as forced sterilization, forced abortion...are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.” [154] Forced and coerced sterilization is also an egregious right to health violation. The CEDAW Committee explained, “Acceptable [health] services are those which are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality, and is sensitive to her needs and perspectives. State parties should not permit forms of coercion, such as non-consensual sterilization...that violate women’s rights to informed consent and dignity.” [155] A joint U.N. interagency statement from UNAIDS, UNDP, UNFPA, UNICEF, and WHO reaffirmed, “sterilization as a method of contraception and family planning should be available, accessible, acceptable, of good quality, and free from discrimination, coercion, and violence, and that laws, regulations, policies and practice should ensure that the provision of procedures resulting in sterilization is based on the full, free and informed decision-making of the person concerned.” [156]

Forced and coerced sterilization of Indigenous women in Peru violates their right to freedom from torture or CIDT. Peru’s Health Ministry estimates that over 200,000 Indigenous women underwent forced or coerced sterilization in Peru between 1995-2001 as part of the National Program for Reproductive Health and Family Planning (PNSRPF). [157] In response to this mass sterilization of Indigenous women in Peru, in 1999, human rights organizations brought a case of one of the victims before the IACHR, *Mamérita Mestanza Chávez v. Perú*. [158] The IACHR approved a settlement agreement, where the State agreed to investigate the facts, apply legal punishments, and provide Ms. Mestanza’s children free primary and secondary education and guarantee free health insurance for her family. [159] The government failed to provide secondary education to her children and closed the promised investigations, alleging that there was a lack of evidence that mostly poor and Indigenous women were sterilized against their will. [160]

In Canada, Indigenous women have experienced forced sterilization since the 1800s, [161] including in public hospitals. [162] In its 2018 Concluding Observations on Canada, the CAT Committee expressed concern at, “reports of extensive forced or coerced sterilization of indigenous women and girls dating back to the 1970s and including recent cases in the province of Saskatchewan between 2008 and 2012.” [163] The Committee recommended that Canada ensure allegations of forced or coerced sterilization be investigated, provide adequate redress be provided to the victims, and adopt legislative and policy measures to prevent and to criminalize forced or coerced sterilization of women. [164] The Committee additionally recommended Canada to “raise awareness among indigenous women and medical personnel” of that requirement for “free, prior and informed consent with regard to sterilization.” [165]

Indigenous attorney, Alisa Lombard and colleagues successfully requested a hearing with the IACHR on forced sterilization of Indigenous women in Canada, [166] and the IACHR subsequently publicly questioned the Canadian government on its efforts to address the issue. [167] In response, the Canadian government acknowledged its role and promised to implement reforms. [168] In January 2019, the IACHR published a press release expressing “deep concern” over the claims of forced sterilization of Indigenous women in Canada and called on the Canadian government to address these allegations. [169]

Additionally, GBV on a mass scale can contribute to genocide in violation of international law. The Convention on the Prevention and Punishment of the Punishment of the Crime of Genocide (Genocide Convention) defines genocide as, “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.” [170] Additionally, UNDRIP provides the collective right of Indigenous individuals to “freedom, peace and security as distinct peoples and shall not be subjected to genocide or any other act violence, including forcibly removing children of the group to another group.” [171] Furthermore, ADRIP states, “Indigenous peoples have the right not to be the object of any form of genocide or attempts to exterminate them.” [172]

While human rights law has recognized the role of systemic discrimination as a factor that might lead to genocide, it has not sufficiently recognized the role of GBV in genocide. In its Resolution 7/25 on the prevention of genocide, the HRC called upon States to ratify or accede to the Genocide Convention, and to strengthen mechanisms to detect human rights violations that could result in genocide. [173] The HRC “[e]mphasiz[ed] the importance, when addressing complex situations that might lead to genocide as defined in the Convention, of a prompt and comprehensive examination of a set of multiple factors, including . . . the existence of groups of risk, serious and systematic violation of human rights, and the resurgence of systematic discrimination.” [174] Moreover, in its Declaration on the prevention of genocide, CERD provided that, “genocide is often facilitated and supported by discriminatory laws and practices or lack of effective enforcement of the principle of equality of persons irrespective of race, colour, descent, or national or ethnic origin.” [175] International law scholarship reveals an evolving trend to examine intersections such as gender when defining genocide; as one scholar noted, “Gender-based violence will not simply be an aspect in the story of genocide itself, but also a key component in how we understand the emergence of genocidal ideologies and societal vulnerabilities over the *longue durée*.” [176] However, human rights bodies need to pay closer attention to the intersection between GBV and genocide. [177]

Canada's National Inquiry into Missing and Murdered Indigenous Women, recognized GBV as a central aspect of ongoing colonial genocide. A Supplementary Report to the National Inquiry on Missing and Murdered Indigenous women on genocide, states:

Targeting victims in a gender-oriented manner destroys the very foundations of the group as a social unit and leave long-lasting scars within a group's social fabric. It is inherent to its destruction. . . Genocide is a root cause of the violence perpetrated against Indigenous women and girls, not only because of the genocidal acts that were and still are perpetrated against them, but also because of all the societal vulnerabilities it fosters, which leads to deaths and disappearances and which permeates all aspects of Canadian society today. [178]

Canada specifically recognized forced or coerced sterilization as State violence against Indigenous women, [179] contributing to a finding of Colonial Genocide. [180]

Indigenous Rights and COVID-19

While the COVID-19 pandemic has had devastating consequences worldwide, its impact has been particularly severe on Indigenous groups. COVID-19 has aggravated preexisting inequalities in access to health care, clean water, food, and basic services. [181] As a result, Indigenous groups have experienced both increased vulnerability to infection, as well disproportionate negative impacts from infection. For example, Indigenous groups in the U.S. have the highest mortality of any ethnic group, dying due to COVID-19 a twice the rate of their white counterparts. [182] Likewise, the mortality rate of Brazilian Indigenous Peoples in the Amazon is twice as high as the Brazilian average, and in Peru, Indigenous communities are experiencing a mortality rate approximately eight times higher than the national average. [183] With the COVID-19 crisis, Indigenous groups have further experienced violations of the right to food. The Inter-American Commission of Women reported that Indigenous women in rural areas in the Americas have had to confront higher malnutrition rates due to disruptions in food chains, on top of increased burdens of care and the loss of public services. [184] Additionally, COVID-19 threatens the eradication of Indigenous culture as elders, frequently the guardians of language and traditions, are specifically vulnerable to fatality from the virus. [185]

Furthermore, the COVID-19 crisis has served as cover for large-scale land grabs and forced displacement of Indigenous peoples in, for example, Brazil, [186] Kenya [187] and Uganda. [188] It has also helped mask environmental degradation by the extractive industry, which many States have deemed an essential service, effectively enabling it to sidestep regulations. Extractive industry operations in Indigenous communities have contributed to the spread of the virus by bringing outsiders in, as well as increased GBV, while intensifying the expropriation of Indigenous lands and resources. Moreover, environmental degradation diminishes the protective effect of biodiversity that helps limit the pathogen spillover to humans. [189] The risk to Indigenous communities from COVID-19 in remote location where access to health care is scarce [190] is so grave that Oxfam has pointed to extractive activities undertaken during the COVID-19 crisis as a contributor to potential ethnocide of Indigenous Peoples in Latin America. [191]

Indigenous women and girls are at the epicenter of these negative impacts. UN Women has deemed rising rates of GBV, particularly domestic violence, with the onset of the COVID-19 pandemic a “shadow pandemic.” [192] As the UN Special Rapporteur on violence against women explained, due to COVID-19 women experience a disproportionately increased burden in care-taking and domestic roles, which in combination with “restriction of movement, financial constraints and generalized uncertainty embolden perpetrators and provide them with additional power and control.” [193] Furthermore, globally enacted emergency measures, such as stay at home orders, have had negative implications on women and girl’s access to essential services, economic stability and -perhaps most importantly- mandate that women are confined with a violent partner, essentially forcing them to remain in dangerous situations. [194] Relatedly, access to sexual and reproductive health services has decreased, as scarce resources are diverted to combat COVID-19, particularly in emergency settings and rural and isolated areas where Indigenous peoples often reside. [195] Adolescent pregnancies have increased dramatically, due in part to school closures, leading to a rise in unsafe abortions and maternal deaths. [196]

Vulnerability to violence is heightened for Indigenous women, who experience multiple and intersecting forms of discrimination. [197] The Inter-American Commission of Women reported that with the COVID-19 crisis, Indigenous women in rural areas in the Americas must confront higher malnutrition rates due to disruptions in food chains, on top of increased burdens of care and the loss of public services. [198] This leads to greater economic insecurity, a risk factor for GBV. [199] The extractive industry introduces a high concentration of predominantly male transient workers within or near Indigenous communities, which leads to an increase in violence and sexual exploitation. [200] Moreover, transient workers “are potential vectors through which the novel coronavirus could be spread to remote communities,” [201] increased danger for Indigenous women with regards to both GBV and COVID-19. Citing evidence from Colombia, Indonesia, Niger, and the Philippines, Global Witness also reports a steady increase in surveillance, intimidation, and attacks against Indigenous land rights defenders by State and non-State actors under the cover of reduced public scrutiny. [202]

II. ENVIRONMENTAL JUSTICE RIGHTS

"If we can understand environmental justice through the lens of having a relationship or kinship with our mother, then we will be back to a position of being able to live in sustainable ways."

[203] - Aimée Craft, Anishinaabe-Métis, University Research Chair in *nibi miinawaa aki inaakonigewin: Indigenous governance in relation with land and water*, University of Ottawa

"Acts of violence against Native women and violence against Land cannot be viewed as randomized or even consequential occurrences, but rather as manifestations of a larger goal: the eradication of Indigenous people from their lands." [204] - Caroline LaPorte, Anishinaabe, Descendant Little River Band of Ottawa Indians, Judicial Advisor, Seminole Tribe of Florida

Due to a deep cultural relationship with ancestral territories and dependence on natural resources for basic needs, such as food, water and medicine, Indigenous Peoples are acutely susceptible to environmental degradation. Moreover, forced onto marginal lands in many parts of the world, Indigenous Peoples are particularly vulnerable to the climate crisis. Nineteenth century removal and reservation policies in Australia, Canada, New Zealand and the U.S. forced Indigenous Peoples onto remote and unwanted lands, curtailing access to biodiversity and relegating Indigenous Peoples to the political and economic periphery of settler societies. Similar patterns of forced displacement and resettlement can be found across Latin America, Asia, and Africa. [205] Additionally, Indigenous lands continue to fall prey to exploitation by governments and private actors, including as illicit targets for industrial toxic waste disposal. [206]

Indigenous Peoples, and specifically Indigenous women, are often at the intersection of several human rights violations stemming from the degradation, pollution, and unauthorized taking of their land. Environmental harms and degradation are linked to many forms of GBV, with Indigenous women often at an increased risk. [207] As stated by Kate Finn, Osage Nation, executive director of First Peoples Worldwide, University of Colorado Boulder, "violence against land and violence against women are inextricable." [208] For instance, in extractive industry operations in many Indigenous communities, environmental degradation goes hand in hand with targeted violence and sexual exploitation of Indigenous women by industry employees.

Environmental justice rights are thus interconnected with other human rights. This is especially relevant in Indigenous communities where the reliance on land for fulfillment of basic needs and cultural traditions is highly prominent. This section discusses environmental justice rights in relation to Indigenous women, focusing on the rights to a healthy environment, food, and water, as well as the rights of environmental defenders.

A. RIGHT TO A HEALTHY ENVIRONMENT

“We are one extreme weather event away from falling below the poverty line. One extreme weather event from being homeless, from losing your place to live, losing your transportation.”
[209] - **Kimberly Merryman, Choctaw Nation of Oklahoma, Assistant Sustainability Scientist, South Central Climate Science Center, Advocate for Missing and Murdered Indigenous Women and Girls**

Humans cannot exist without a functioning environment. Simply put, humanity cannot secede from nature nor its reliance on operative ecosystems. It thus logically follows for humans to have the right a natural environment conducive to their basic needs, and an environment that does not harm them. The right to a safe, clean, healthy, and sustainable environment, or simply, the right to a healthy environment, broadly encompasses the human right to a sanitary, functional natural ecosystem. The substantive elements of the right include a safe climate, non-toxic environment, and robust biodiversity system, as well as sustainably produced food, clean air and water, and adequate sanitation. [210]

Relatively new, the right to a healthy environment first appeared within the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) of 1972, which states that “man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.” [211] It is also articulated in Principle 1 of the subsequent 1992 Rio Declaration, which asserts that humans are “entitled to a healthy and productive life in harmony with nature.” [212]

There are limited explicit provisions regarding the right to a healthy environment in international human rights instruments, largely as a result of timing; the International Bill of Human Rights, encompassing the UDHR, ICCPR, and ICESCR, was drafted and adopted prior to the beginning of the modern environmental movement in the late 1960’s that raised awareness of the full scope of environmental issues and their impact on humanity. [213] However, UNDRIP acknowledges the rights of Indigenous Peoples “to the conservation and protection of the environment and the productive capacity of their land,” and mandates that States take appropriate measures “to mitigate adverse environmental [...] impact” on Indigenous lands. [214]

Moreover, human rights bodies have recognized the right to a healthy environment through the “greening” of other already recognized human rights, such as the right to life and health, by applying them within the context of environmental issues. Through this greening process, human rights bodies and advocates have interpreted the right to a healthy environment as inherently within the UDHR’s and ICCPR’s protection of right to life. [215] In *Portillo Cáceres v. Paraguay*, the Human Rights Committee held that Paraguay’s failure to protect individuals from environmental degradation violated the right to life guaranteed in ICCPR, stating that “environmental degradation can adversely affect the effective enjoyment of the right to life. Thus, severe environmental degradation has given rise to findings of a violation of the right to life.” [216]

To realize and fully enjoy the right to health, ICESCR recognizes the need for “the improvement of all aspects of environmental and industrial hygiene.” [217] CESCR has further interpreted the right to health as embracing “a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as [...] a healthy environment.” [218] The CEDAW Committee has also affirmed the importance of environmental well-being in the context of rural women, including Indigenous women. [219] It called on States to address and mitigate environmental threats and “ensure that rural women enjoy a safe, clean and healthy environment.” [220]

Furthermore, the right to a healthy environment has gained widespread recognition on both the regional and national levels. In the Americas, the Protocol of San Salvador recognizes that “Everyone shall have the right to live in a healthy environment.” [221] ADRIP explicitly recognizes the right of Indigenous Peoples “to live in harmony with nature and to a healthy, safe and sustainable environment” as essential for their full enjoyment of rights to life and spirituality. [222] In *Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina*, the IACtHR declared that the Argentinian government’s awareness of and failure to stop illegal logging and other harmful activities on Indigenous land constituted a violation of Indigenous Peoples’ collective right to a healthy environment, under the Protocol of San Salvador and the Pact of San Jose. [223] Finding that as a result of extractive activities and subsequent environmental degradation, “Indigenous communities were unable to obtain potable water and sufficient food, and that their indigenous way of life had also been altered,” [224] the Court held “rights to a healthy environment, adequate food, water and cultural identity have been violated.” [225]

The other regional systems likewise recognize the right to a healthy environment. In the African system, the Banjul Charter states, “All peoples shall have the right to a general satisfactory environment favorable to their development.” [226] In *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v. Nigeria*, the ACHPR that pollution caused by the oil industry violated this right of the Ogoni Peoples. [227] While the European Convention does not provide for the protection of a healthy environment, the ECtHR’s jurisprudence recognizes rights violations caused by environmental harm. The Court has held that severe environmental harm violates the rights to life, [228] privacy and family life, and that States have a duty “to ensure the protection of its citizens by regulating the [authorizing], setting-up, operating, safety and monitoring of industrial activities, especially activities that [are] dangerous for the environment and human health.” [229] Similar provisions recognize the right in the Arab Charter on Human Rights, and the Human Rights Declaration adopted by Association of Southeastern Asian Nations. [230]

The right to a healthy environment has also gained extensive national recognition since Portugal became the first State to constitutionally protect it. [231] As of March 2020, 110 States have constitutionally protected the right to a safe, clean, healthy and sustainable environment. [232] Approximately two thirds of these constitutional protections refer to a healthy environment, and others include variations such as rights to a favorable, clean, safe or ecologically balanced environment. [233] The Special Rapporteur on human rights and the environment reports that in States where the right has been protected for decades, improved enforcement of environmental laws, increased public participation in environmental decision-making, enhanced air quality, and reduced greenhouse gas emissions have all been demonstrated. [234]

Despite Indigenous Peoples' negligible contribution to climate change and various environmental harms, they are globally among the most impacted by its consequences. [235] Rates of cancer and intergenerational reproductive issues caused by exposure to toxic pollutants, [236] environmental disaster-induced displacement, [237] food and employment insecurity due to land erosion [238] and lack of access to adequate sanitation are just some of the results of environmental harms disproportionately affecting Indigenous Peoples. Moreover, as the Special Rapporteur on cultural rights has noted, culture is closely intertwined with a functioning environment, particularly for Indigenous groups. [239] Thus, environmental degradation and climate injustice pose a threat to Indigenous Peoples' right to culture [240] and livelihoods that rely on a historical relationship with the land. [241]

The consequences of environmental damage are adversely felt by Indigenous women and girls, because they are commonly at the overlap of gender, economic, and environmental discrimination. Susceptibility to climate-induced disasters is gendered. [242] Women's inequality in access to education, justice, land, health care, and social protection increase their exposure to negative effects of the climate crisis. [243] This is particularly true of rural women, many of whom are Indigenous. [244] Moreover, environmental damage contributes to risk factors for GBV, including economic deprivation and housing and food insecurity, which can increase dependence on men and vulnerability to trafficking and risky behaviors for survival. [245] Gender inequalities, merged with ethnic discrimination, further limit Indigenous women's access to information and resources for preventing or recovering from environmental disaster. [246] While Indigenous women play a leading role in climate justice advocacy, [247] their ability to contribute to climate crisis mitigation and policy formation is often hindered by these inequalities. [248]

A functioning, sustainable environment is critical to well-being of Indigenous Peoples. Thus, international recognition and widespread implementation of the right to a healthy environment is interconnected and pivotal to Indigenous Peoples' full enjoyment of human rights.

B. RIGHT TO FOOD

Closely linked to a healthy environment is the right to food. While this right has been recognized in international and regional law, its realization lags in Indigenous communities. For many Indigenous Peoples, the enjoyment of the right to food is heavily dependent on access to natural resources and has suffered due to land encroachments and climate injustice. This has had a disproportionate impact on Indigenous women due to their traditional role as food providers. Moreover, given the linkages between the right to food and culture, violations of the right to food have also eroded Indigenous cultural identity and practices.

International human rights law sets out a right to food. This right is most prominently recognized in ICESCR. ICESCR calls upon States to "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food." [249] States must also ensure "the fundamental right of everyone to be free from hunger," and "shall take, individually and through international cooperation, the measures" that are necessary for realization for this right. [250] These provisions thus establish a right to be free from hunger, as well as a broader right to adequate food. Specifically relating to rural groups, the UN Declaration on the Rights of Peasants (UNDROP) reaffirms that "peasants and other peoples working in rural areas have the right to adequate food and the fundamental right to be free from hunger." [251]

CESCR elaborates on the essential components of the right to food: First, food must be adequate, or free from harmful substances, provide sufficient nutrition, and be culturally appropriate, which is particularly relevant in the context of Indigenous Peoples. [252] Second, food must be available through either one's own land or from a distribution system that "can move food from the site of production to where it is needed in accordance with demands." [253] Third, food must be physically and economically accessible. [254] This entails that the cost of accessing food cannot be so high that "other basic needs are . . . threatened or compromised." [255] Finally, food must be sustainable. Sustainability means that adequate food is accessible and available for present and future generations, which is also critical at the intersection of Indigenous rights and environmental justice. [256]

The right to food is further recognized at the regional level. In the Inter-American system, the American Declaration provides that "every person has the right to the preservation of his health through sanitary and social measures relating to food . . . to the extent permitted by public and community resources." [257] The San Salvador Protocol states that everyone "has the right to adequate nutrition" [258] and in order to promote the right to food, States must take measures to "improve methods of production, supply and distribution of food" within their respective regions. [259] While the African human rights instruments do not have specific provisions relating to the right to food, the ACHPR adopted a resolution specifically addressing the right to food and the right to be free from hunger. [260] The resolution urges State Parties to "[a]dopt legislative . . . measures to guarantee the right of everyone to be free from hunger." [261] The Commission also addressed the correlation with a healthy environment by urging States to "prioritize and support the most sustainable management and use of natural and other resources for food." [262]

In the context of Indigenous communities, several international instruments further recognize the need for Indigenous sovereignty, or control over the resources needed to produce food. [263] The CEDAW Committee addresses the right to food as it pertains to rural, including Indigenous, women and calls upon States to "ensure the realization of the right to food and nutrition of rural women within the framework of food sovereignty." [264] Both UNDRIP and ADRIP provide that Indigenous Peoples have a right to enjoy and possess "their own means of subsistence and development." [265] ILO C169 recognizes that Indigenous Peoples have the "rights of ownership and possession . . . over the lands which they traditionally occupy" and that measures must be taken to safeguard the lands that they have "traditionally had access for their subsistence." [266]

The fundamental root of hunger in Indigenous communities is often not a lack of food, but a "lack of access to available food." [267] As key drivers of food insecurity and poverty, CESCR points to loss of "culture, land, and insecure access to lands, [and] territories and natural resources." [268] In Indigenous communities, in particular, access to food is reliant on the ability to cultivate land both for food for personal use and for production of commodities to sell. [269] However, as the Special Rapporteur on the Rights of Indigenous Peoples noted, there is a history of encroachment on Indigenous land and a trend of land being "grabbed by political and business actors who want to set up industrial food production farms." [270] While both Indigenous men and women are involved in "agriculture, pastoralism, hunt[ing] and gather[ing]," the CEDAW Commission highlights that Indigenous and rural women "disproportionately experience poverty and exclusions" due to the "systemic discrimination" they faced in "accessing land and natural resources." [271]

Another factor leading to food insecurity in Indigenous communities is the climate crisis. As the Office of the High Commissioner of Human Rights (OHCHR) has explained, the climate crisis is “affecting peoples’ capacity to produce food,” and can “negatively affect the right to food of marginalized groups” such as Indigenous communities. [272] Since many Indigenous communities depend on their land and natural resources for their livelihoods, the impact of climate degradation is particularly pronounced and most severe on Indigenous women, who generally engage in “land based” occupations. [273] As the CEDAW Committee noted, today, a “majority of the world’s subsistence farmers are rural Indigenous women,” and they tend to “land more prone to adverse climatic events than their male counterparts.” [274] Thus, “environmental erosion and disaster disproportionately impact the livelihood and food security of Indigenous women.” [275]

The impact of right to food violations are particularly severe for Indigenous women. The CEDAW has elaborated that rural women “are among the most affected by food insecurity, exposed to food price volatility, malnutrition and hunger, and are amongst the most likely to suffer when food prices escalate.” [276] Moreover, food insecurity disproportionately impacts Indigenous women due to their roles as providers, caregivers, and resource managers. [277] Additionally, despite their vital role in preserving food security for their communities, Indigenous women often see little return on food production. [278] They also are often not able to “participate fully in community decisions” that may impact their roles as primary producers. [279] Loss of land and environmental degradation have further “eroded” their status. [280]

The right to food is further linked to the cultural identity of Indigenous People. As discussed above, the adequacy component of right to food requires food that is “culturally acceptable.” [281] The Special Rapporteur on the Right to Food particularly stressed this link and defined the right as requiring “adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.” [282] Likewise, the UN Food and Agriculture Organization (FAO) remarked, “Culture is an important aspect of the analysis of the right to food of Indigenous Peoples because ‘food’ is indispensable in shaping indigenous peoples’ lives and Indigenous identities.” [283] This is the case since Indigenous Peoples “derive self-worth, individually and collectively, from traditional livelihoods such as hunting, fishing, gathering . . . [and] agriculture.” [284] Thus, the practices of “obtaining food for purposes of livelihood” are an “important aspect of cultural identity.” [285]

C. RIGHT TO WATER

“The right to resources and right to clean water are critical to the right to life.” [286] –
Victoria Sweet, White Earth Band of Ojibwe, NoVo Foundation

Just as a healthy environment is critical to the right to food, it is also critical to the right to water, and foundational for life. The right to water includes access to both safe drinking water and adequate sanitation. Indigenous communities, and Indigenous women, in particular, have faced issues in their enjoyment of this right due to a variety of factors, including infringement by governments, interference by private actors, and the climate crisis.

The right to water is established under international and regional law. A 2010 UN General Assembly Resolution confirms recognition of “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.” [287] The same year, an HRC Resolution likewise affirmed the right to water. [288] While a right on its own, the right to water further derives from the rights to an adequate standard of living, [289] health, [290] and life. [291] CESCR recognizes the right to water as a prerequisite for the realization of the right to an adequate standard of living, highest attainable standard of health, and adequate food. [292] It further States that “the human right to water is indispensable for leading a life in human dignity.” [293] In its Resolution, the HRC echoes that the right to water is “derived from the right to an adequate standard of living and inextricably related to the right of the highest standard of physical and mental health, as well as the right to life and human dignity.” [294] In its General Comment on the right to health, CESCR considers access to “safe and potable water and adequate sanitation” an underlying determinant of health. [295] Moreover, access to “an adequate supply of safe and potable water” is part of the core content of the right to health that needs to be immediately implemented, and is not dependent on resources. [296]

CESCR elaborates on the essential components of the right to water. First, water should be available, in that water supplies should be sufficient and continuous for both personal and domestic uses. [297] Second, water should also be of quality, in that it should be free from micro-organisms, chemical substances, and radiological hazards, as well as have an acceptable color, odor, and taste. [298] Finally water should be accessible to everyone, which includes both physical accessibility and economically accessibility or affordability. [299]

The regional human rights systems have also recognized a right to water. According to the IACHR 2015 Annual Report, although the right to water is not expressly listed Inter-American instruments, the IACHR and ICtHR have found that the right to water derives from other protected rights, including the rights to life, property, and health. These rights that are linked to water and establish a right to quality water that is available and accessible without discrimination. [300] In Africa, while the Banjul Charter does not expressly refer to the right to water, the ACHPR has published Guidelines on the Right to Water in Africa, which highlight that this right derives from the explicitly recognized rights to life, dignity, health, economic, social and cultural development, and to a satisfactory environment. [301] In Europe, the ECHR likewise does not explicitly mention a right to water, but the ECtHR has interpreted the right to respect for private and family life [302] as linked to a right to water in its case law. [303]

Indigenous women are particularly affected by violations of the right to water since they often do most of the water collecting. If water is not available, they may have to seek dirty or unprotected sources, and the heavy burden of carrying water can be detrimental to their health. [304] Moreover, when water is scarce, women and girls may have to travel longer distances to obtain water, and conditions can be more dangerous, especially during natural disasters, conflicts, or other emergencies. [305] To avoid the midday sun, women and girls may have to leave in the early hours of the morning and often travel alone or in small groups to lessen competition for water, becoming prime targets for both physical violence and verbal abuse. [306] Additionally, the stress and costs related to securing water can lead to an increase in domestic violence. [307]

Lack of physically clean water can further “prohibit women and girls from devoting time to the pursuit of education, income generation, and even the construction and management of water and sanitation facilities.” [308] Severe climatic events causing a scarcity of water can lead to further vulnerabilities, discrimination, and exploitation of women and girls. [309]

Moreover, in the context of Indigenous communities, it is important to recognize the link between the right to water and culture and the importance of “non-consumptive uses” of water. While personal and domestic uses of water take priority, CESCR acknowledges that water is “essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life).” [310] Non-consumptive uses of water crucial to Indigenous communities include its centrality in a biological habitat, its spiritual value as a source of healing, and its aesthetic value. [311]

D. RIGHTS OF ENVIRONMENTAL DEFENDERS

“Indigenous women are typically on the frontline in defending the environment, and they will be brutalized by the police.” [312] – **Pam Palmater, Mi’kmaq citizen and member of Eel River Bar First Nation, Chair in Indigenous Governance, Ryerson University**

As the health and safety of the environment is threatened, environmental defenders, including many Indigenous women, are on the frontlines of often hostile interactions with corporations and governments. [313] As defined by Global Witness, environmental defenders are “people who take a stand and peaceful action against the unjust, discriminatory, corrupt, or damaging exploitation of natural resources of the environment.” [314] Moreover, those committed to protecting the environment are increasingly putting their own safety at risk. Global Witness has found a marked increase in violence against environmental defenders, including over 200 lethal attacks in 2019 alone. [315]

International law recognizes the rights of environmental defenders as a subset of human rights defenders. In a resolution recognizing the contributions of environmental human rights defenders, the HRC noted that it was “deeply concerned that human rights defenders working in environmental matters, referred to as environmental human rights defenders, are among the human rights defenders most exposed and at risk.” [316]

The HRC further appointed a Special Rapporteur to focus specifically on “the situation of human rights defenders,” including environmental defenders. [317]

The rights of environmental defenders are derived from established human rights. This includes the right to freedom from violence described above, and protest rights, including the right to association and assembly under the UDHR and ICCPR. [318] The HRC has also reminded States of their obligation to “respect and fully protect the rights of individuals to assemble peacefully and associate freely, including [. . .] human rights defenders.” [319] The UN Declaration on Human Rights Defenders (UNDHRD) is the key document that enumerates relevant rights to human rights defenders, including environmental defenders. It includes rights to promote and strive for the protection and realization of human rights, to assemble, and to participate in peaceful activities against violations of human rights. [320]

Regional human rights systems also protect the rights of environmental defenders. Various regional instruments provide for the right to association and assembly. [321] In the context of Indigenous Peoples, ADRIP provides that “Indigenous peoples have the rights of association, assembly, organization, and expression, and are entitled to exercise them without interference and in accordance, inter alia, with their cosmovision, values, uses, customs, ancestral traditions, beliefs, spirituality, and other cultural practices.” [322] The IACHR passed a resolution supporting human rights defenders, urging member States to protect their rights. [323] The IACHR further set up an Office of the Rapporteur on the Situation of Human Rights Defenders in 2011 and called on States to “develop comprehensive policies to protect human rights defenders, with a focus on prevention, protection, and the investigation of attacks on defenders of land rights, the environment, and indigenous peoples.” [324] The African human rights system similarly adopted a resolution on the protection of human rights defenders, in which it instituted a dedicated Special Rapporteur on Human Rights Defenders in Africa. [325] This Special Rapporteur recommended in 2017 that States pay special attention to the situation of women’s rights defenders and remove laws, policies, and practices that undermine the rights to freedom of association and assembly and stigmatize and discriminate against some categories of human rights defenders according to sex, health status, sexual orientation, identity and expression of gender or other statuses. [326] The ACHPR further adopted a resolution focused specifically on protection of women human rights defenders. [327] In Europe, the Committee of Ministers of the Council of Europe adopted a declaration calling on member States to “take effective measures to protect, promote, and respect defenders and ensure respect for their activities.” [328]

Indigenous communities are often hardest hit by environmental degradation and regularly participate as environmental defenders. [329] Indigenous communities seeking to protect their land and resources have become targets of persecution by private companies, often with the government’s complicity. [330] The Special Rapporteur on the rights of Indigenous Peoples expressed that she was “gravely concerned at the drastic increase in attacks and acts of violence against, criminalization of, and threats aimed, at Indigenous Peoples, particularly those arising around large-scale industrial projects.” [331] Industrial projects by the extractive industry, in particular, lead to both environmental degradation and GBV against Indigenous Peoples, perpetuated by the influx of foreign labor. [332] One egregious example is the Bakken oil boom in North America. [333]

Often at the forefront of these confrontations, Indigenous women are within the most vulnerable section of Indigenous communities, and the hardest hit by encroachments on resources. [334] Female environmental defenders face the same significant risks that male defenders face, as well as additional gendered obstacles. [335] They are often targeted not only for their activism, but also because they are female, which leads to further threats and GBV, [336] including sexual harassment and sexual violence. [337] According to Global Witness, GBV is used to suppress the women’s power and authority, undermine their credibility, dismantle their status within the community, and discourage them and others from coming forward. [338] This is the case since female environmental defenders are confronting not only corporate power, but deeply rooted patriarchy. They may be targeted for defying gender norms and challenging barriers to participation in decision-making. [339] Indigenous women must further contend with multiple, intersecting forms of discrimination based on both their gender and minority status, thus increasing risk of violence. [340]

III. INDIGENOUS SOVEREIGNTY RIGHTS

“Native women cannot be safe until there is a truly local and truly tribal response to these occurrences of violence” [341] – **Caroline LaPorte, Anishinaabe, Descendant Little River Band of Ottawa Indians, Judicial Advisor, Seminole Tribe of Florida**

The well-being of Indigenous Peoples and the environment is tethered to Indigenous sovereignty and the ability to take action to provide protection and remedy violations. At its core, Indigenous sovereignty requires recognition of Indigenous Peoples’ fundamental right to self-determination. [342] As the chairperson of the Permanent Forum on Indigenous Issues, Grand Chief Edward John explained, “the right to self-determination is a fundamental baseline right which is indispensable to the survival, dignity and well-being of indigenous peoples.” [343] Moreover, self-determination entails the right to traditional lands and resources, including deciding on their development, which is closely linked to the right to a cultural life, as well as a right to access to justice to address violations.

A. RECOGNITION OF INDIGENOUS STATUS

As an initial matter, respect for Indigenous sovereignty, including rights to self-determination, land, resources, and culture, requires recognition of Indigenous status. The international community has further recognized that Indigenous Peoples are entitled to special protections, but access to those protections first requires recognition of Indigeneity. This hurdle can be problematic because there is no settled definition in international law as to who is “Indigenous.” However, absence of a definition is a conscious choice to account the diversity of Indigenous Peoples and provide flexibility in access to protections from this designation. [344] According to the UN Permanent Forum on Indigenous Issues (UNPFII), the most effective approach is to identify, rather than define Indigenous Peoples. [345]

Self-identification is central to Indigenous status. UNDRIP affirms that Indigenous Peoples “have the right to determine their own identity.” [346] ADRIP further states that self-identification as Indigenous is the “fundamental criterion” for determining to whom the Declaration applies. [347] Self-identification is favored because the 370 million Indigenous Peoples spread across 70 countries worldwide cannot be reduced to one definition. [348] As the Special Rapporteur on the Sub-Commission on Prevention of Discrimination and Protection of Minorities stated, “this preserves for these communities the sovereign right and power to decide who belongs to them, without external interference.” [349]

Despite the lack of a concrete definition, there are criteria to help define Indigenous Peoples based on shared characteristics. The Martinez-Cobo study, an influential report published in 1986 by the Special Rapporteur on the Sub-Commission on Prevention of Discrimination and Protection of Minorities, sets forth the most widely cited points to discern Indigeneity: [350]

- Occupation of ancestral lands, or at least of part of them;
- Common ancestry with the original occupants of these lands;
- Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.);
- Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);
- Residence on certain parts of the country, or in certain regions of the world;
- Group consciousness;
- Other relevant factors. [351]

These factors are echoed in later publications such as the ILO C169, which stipulates that the Convention applies to tribal peoples “whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.” [352]

Further, it states that the Convention also applies to those regarded as Indigenous because of their ancestry from peoples who inhabited the country at the time of conquest or colonization, and retain at least some of their own social, economic, cultural and political institutions. [353]

Here, it is important to note that recognition of Indigenous status varies in different parts of the world. Whereas in the Americas, Australia, and New Zealand, Indigenous status as first peoples is generally uncontested, the situation in Africa and Asia differs sharply. [354] A long history of forced migration, assimilation, and conquests have resulted in ambiguity in Indigenous status. [355] Thus, countries in Africa and Asia may recognize the existence of Indigenous Peoples in other parts of the world, but not their own. [356] In fact, the African Group, aside from Australia, Canada, New Zealand, and the US, was the most vocal opponent to the General Assembly’s adoption of UNDRIP, [357] concerned with the lack of a definition for Indigenous status. In response, the ACHPR issued an advisory opinion in 2007, contending that a universal definition of Indigenous Peoples in Africa was neither useful nor required. Instead, it considered it “much more relevant and constructive to try to bring out the main characteristics” of Indigenous Peoples in Africa, including self-identification, a special attachment to and use of their traditional lands, and a state of subjugation, marginalization, and discrimination because of cultural difference from the dominant national model. [358]

Indigenous Peoples’ modernization, loss of use of traditional language, or their expansion outside ancestral lands does not preclude them from Indigenous status. In the case of *The African Commission on Human and Peoples’ Rights v. Republic of Kenya*, the Ogiek Peoples demanded recognition of their status to stop the Kenyan government from evicting them from their lands. [359] The government of Kenya argued that the Ogieks were not an Indigenous community, “but rather a mixture of various ethnic communities.” [360]

Further they argued that even though in the past the Ogieks had been an Indigenous People, today, they practiced a modern life like all other Kenyans. [361] The Court disagreed. Basing their reasoning largely on the criteria set forth in the Martinez-Cobo study, it went further to spell out a normative standard based on an understanding of Indigenous identification in international law. [362] The relevant factors included: (1) whether the group's occupation or use of a specific territory preceded the State's; (2) "a voluntary perpetuation of cultural distinctiveness, which may include aspects of language, social organisation, religion and spiritual values, modes of production, laws and institutions;" (3) self-identification and recognition by other groups or institutions; and (4) "an experience of subjugation, marginalisation, dispossession, exclusion or discrimination, whether or not these conditions persist." [363] The Court found that the Ogieks satisfied all of these criteria, asserting that the Mau forest was the Ogiek's ancestral land which they had relied upon for their survival for centuries. [364] Although the Ogiek's were divided into clans, they were found to be one tribe because they were identified as such by neighboring tribes, and they shared a common language, values, religion, and social norms, forming the basis for their cultural distinctiveness and self-identification as Indigenous. [365] Finally, they had experienced all of the components listed in the fourth prong, including the current lack of recognition of their status. [366] In its reasoning, the African Court on Human and Peoples' Rights (ACtHR) expanded Indigenous protections by viewing the criteria through a contemporary lens that takes into account the possible corrosion of language, modernization of culture, and highlights oppression as a crucial aspect of the Indigenous experience.

Protections afforded to Indigenous Peoples can also extend to groups that share Indigenous characteristics but are not Indigenous themselves. In the case of the *Saramaka People v. Suriname*, the Saramaka People were not indigenous to the region they inhabited—they were descendants of African slaves brought during the colonization period in the 17th century. [367] Self-liberated, their ancestors escaped into the interior of the country to establish their own autonomous communities. [368] Their communities, however, shared similar characteristics with Indigenous Peoples, such as "having social, cultural and economic traditions different from other sections of the national community, identifying themselves with their ancestral territories, and regulating themselves, at least partially, by their own norms, customs, and traditions." [369] The IACtHR reasoned that these similarities were sufficient to bring the Saramaka under the protective umbrella of the special rights of Indigenous Peoples to ensure their survival. [370]

B. RIGHT TO SELF-DETERMINATION

International law recognizes the right to self-determination has been recognized as a necessary antecedent for the enjoyment of other human rights. ICCPR and ICESCR's common Article 1 declares, "All peoples have the right of self-determination." [371] By virtue of that right, they are free to "determine their political status and freely pursue their economic, social and cultural development." [372] Both UNDRIP and ADRIP expand on the principle by explicitly stating "Indigenous peoples have the right to self-determination." [373] Further, UNDRIP links the right to self-determination to Indigenous Peoples' "right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions." [374] Recognition of the right to self-determination is paramount for Indigenous Peoples since its denial serves as a backdrop for many of the issues they often face. [375] As the Special Rapporteur on the rights of Indigenous Peoples explained, violations of the right to self-determination include "gross and sustained assaults on the cultural integrity of Indigenous peoples; denigration and non-recognition of customary laws and governance systems; failure to develop frameworks that allow Indigenous peoples appropriate levels of self-governance; and practices that strip Indigenous peoples of autonomy over land and natural resources." [376]

The right to self-determination recognizes Indigenous self-governance and requires meaningful consultation with Indigenous groups and their free, prior, and informed consent (FPIC) on issues affecting them, including use of their land and resources. FPIC thus functions as an important safeguard for the collective rights of Indigenous Peoples. [377]

The UN Expert Mechanism on the rights of Indigenous Peoples described FPIC as a "manifestation of indigenous people's right to self-determine their political, social, economic and cultural priorities, and cannot be achieved without the rights of Indigenous peoples to be consulted, to participate and to their lands and resources. [378]

According to UNDRIP and ADRIP, States must acquire Indigenous Peoples' FPIC in good faith on issues affecting them, including the following:

- Any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."; [379]
- The adoption of legislative or administrative measures which may affect them directly; [380]
- Prior to the use, confiscation, occupation, or damage of any traditionally owned or otherwise occupied lands; [381]
- Prior to relocation of Indigenous Peoples; [382]
- Prior to the disposal of hazardous materials in Indigenous territories; [383] and
- Prior to using their lands and territories for military activities. [384]

In the case of the *Saramaka People v. Suriname*, the IACtHR enumerated a range of State measures that require prior consultation and consent by the Saramaka. [385] These included:

- The process of delimiting, demarcating and granting collective title over the territory of the Saramaka People;
- The process of determining the legal status of the Saramaka People and their access to collective rights as Indigenous Peoples;
- The process of adopting legislative, administrative, and other measures as may be required to recognize, protect, guarantee, and give legal effect to the right of the members of the Saramaka People to the territory they have traditionally used and occupied
- The process of adopting measures necessary to recognize and ensure the right of the Saramaka People to be effectively consulted, in accordance with their traditions and customs;
- Measures regarding environmental and social impact assessments; and,
- Measures regarding any proposed restrictions of the Saramaka People's property rights, particularly regarding proposed development or investment plans in or affecting Saramaka territory. [386]

Similarly, ILO C169 espouses the importance of consultation with Indigenous Peoples. It indicates that "governments shall establish or maintain procedures through which they shall consult these [Indigenous] peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any program for the exploration or exploitation of such resources on their lands." [387]

This consultation should take place at the first stages of a development plan, giving the community enough time to discuss the proposal internally.

[388] Meaningful consultation and consent norms ensure Indigenous nations have control over the use and development of their lands, resources, and societies. Lack of consent undermines tribal sovereignty and dispossesses Indigenous Peoples of their right to self-determination.

The right to self-determination also implicates the right to development as it includes the inalienable right to full sovereignty over their natural wealth and resources. [389] Indigenous Peoples have the right to determine and develop priorities and strategies for exercising their right to development. [390] ICCPR and ICESCR affirm the economic component of the right to self-determination, ensuring that the Indigenous Peoples have the right to profit from their own lands. [391] Despite these protections, the prevalence of poverty in Indigenous communities can be traced to denigration of the right to self-determination as it relates to development pathways and control over natural resources. [392]

Denial of the right to self-determination strips Indigenous communities of wealth and identity, disproportionately affecting women. Women experience layered victimization because of their Indigenous identities, and further subjugation of their individual rights as sub-collectives within the community. [393] Poverty in Indigenous communities is a root cause of domestic violence as it increases stress and strains relationships, leading to greater economic dependence and patterns of control, as well as break downs of community kinships. [394] Further, poverty and lack of development often forces migration from rural communities to larger urban centers, leaving Indigenous women and girls highly vulnerable to trafficking. [395]

C. RIGHT TO LAND AND RESOURCES

“The right to land is the right to live” [396] – **Victoria Sweet, White Earth Band of Ojibwe, NoVo Foundation**

Indigenous sovereignty, including the right to self-determination, is closely tied to the right of Indigenous Peoples to land and resources. Indigenous communities have had to contend with a long history of violations through colonialism and forced migration. [397] As recognized by the IACHR, the relationship between Indigenous Peoples and their ancestral lands is integral to both the “physical and cultural survival of the Indigenous communities and the effective realization of their human rights.” [398] CESCR likewise has acknowledged that degradation of the relationship between Indigenous Peoples and their traditional lands often leads to loss of their “means of subsistence, the loss of their natural resources and, ultimately, their cultural identity.” [399] Weak protections of the rights to land and resources, as the Special Rapporteur on the Rights of Indigenous Peoples explained, expose Indigenous Peoples to “risks of displacement, expropriation and exploitation.” [400] Moreover, these risks are gendered, as “women’s rights interact with collective land rights.” [401] The gendered effects of land appropriation manifest as women lose access to their traditional livelihoods like food gathering and agricultural production and become more vulnerable to abuse and violence. [402] This section discusses Indigenous rights to land and resources, a site of struggle since colonization, and the particular relation of these rights to women.

While human rights law recognizes a right to property, this is a narrow aspect specific to the Indigenous right to land and resources. The UDHR, American Declaration, and ECHR set forth that “[e]veryone has the right to own property” and that no one shall be deprived of that right. [403]

The American Declaration further guarantees that everyone has the right to own property that “meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.” [404]

However, Indigenous Peoples’ right to land extends beyond individual property ownership to encompass a collective relationship to their territories, which has both spiritual and cultural dimensions. [405] As an Indigenous scholar explained, “Being Hwulmuhw [Indigenous] ... is about having a genetic connection to the people of the land and to the land itself. It is about understanding your connection to the land, where you come from, and knowing the origin stories of the land and the sacred responsibility for defending your territories from destruction and exploitation [...] To realize you have a sacred responsibility for the land and help protect it for the next generation, you have to have an intimate relationship with the land. This means the land develops you as a person. It provides places, specific experiences, and wisdom for a person as they grow.” [406] UNDRIP acknowledges “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.” [407] Both UNDRIP and ADRIP provide that “Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship” with their lands, territories, and resources and to “uphold their responsibilities to preserve them for themselves and for future generations.” [408]

In the case of *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, the IACtHR held that under the ACHR's right to property, the scope of the community's right to their lands encompassed "the geographical area where the members of the [c]ommunity live and carry out their activities." [409] The Court clarified that these rights must be protected by the State through "delimitation, demarcation and titling" of the lands. [410]

Indigenous Peoples further have the right to the resources within their territories. UNDRIP recognizes Indigenous Peoples' "right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources." [411] FPIC is vitally important in the protection of the Indigenous right to lands and resources. It seeks to restore Indigenous control over traditional lands lost during colonization, [412] and to redress power imbalances, introducing the potential of "forging new partnerships based on rights and mutual respect between [Indigenous Peoples and States]." [413] In *Yakye Axa Indigenous Community v. Paraguay* the IACtHR held that Paraguay violated the Yakye Axe's right to property and right to life by preventing the community from access to its traditional means of livelihood, clarifying that the right to property also includes Indigenous Peoples' "traditional territories and the resources therein." [414] The Banjul Charter also upholds the right to resources, stating "[a]ll peoples shall freely dispose of their wealth and natural resources," and that the right "shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it." [415] Dispossession of the economic rewards of the land often comes at the hands of foreign extractive industries. The Banjul Charter thus asserts that States parties "shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources." [416]

Exploitation of Indigenous resources often excludes Indigenous Peoples from profits derived and leads to poverty. [417] This is especially concerning for women because, as the Special Rapporteur on the rights of Indigenous peoples has noted, "overall poverty experienced by Indigenous peoples tends to have a disproportionate impact on women, due to their role as caregivers and managers of resources." [418] Moreover, as discussed above, poverty or economic insecurity is risk factor for GBV.

Beyond States, private companies also have obligations with regards to Indigenous lands and resources. The UN Guiding Principles on Business and Human Rights (UNGPs) details the obligations of corporations to respect the human rights of those communities impacted by their operations, and to provide remedies to those harmed by corporate activities. [419] Any corporate entity that causes, [420] contributes, [421] or is linked [422] to human rights abuses through its supply chain must take steps to mitigate their adverse impacts. The UNGPs broadly enumerate prohibited acts, such as abusing local communities, and mandate affirmative actions, such as writing human rights policies or conducting due diligence by commissioning human rights impact assessments. [423] This obligation of "due diligence," which requires companies to vet their operations for adverse human rights impacts, is the cornerstone of the UNGPs. [424] While the precise contours of what constitutes adequate due diligence depends on the size and nature of a corporation's activities, due diligence must be ongoing in order to account for the emergence of new human rights risks as operations evolve. [425]

Other authoritative bodies have issued analogous requirements. Both the UN General Assembly and the ILO, for example, have enshrined the international standard of FPIC when engaging in actions that might impact the land rights of Indigenous communities. [426]

In addition, the Organization for Economic Cooperation and Development (OECD) outlines corporations' human rights obligations, which include due diligence requirements when operating overseas. [427]

For Indigenous Peoples, a way of life relying on the use of land and resources is a manifestation of culture. Access to cultural life "includes the right to follow a way of life associated with the use of cultural goods and resources such as land, water, (and) biodiversity." [428] In a case regarding the Ogiek People, the ACtHR stated that "the most salient feature of most indigenous populations is their strong attachment with nature, particularly, land and the natural environment." [429] Further, their survival depends on it. [430] This special relationship also makes Indigenous Peoples good stewards of their land. As the chairman of the National Toshias Tribe Council put it, "[t]hese forests are our life, but they are being taken from us. Outsiders have a financial view of the land. They see it as money. We see it as life." [431] Thus, violations of Indigenous Peoples' right to land has had devastating consequences not just for the people, but for the environment itself. The UNPFII highlights this intersection between Indigenous Peoples' right to land and protection of the environment:

There is growing recognition that advancing indigenous peoples' collective rights to lands, territories and resources not only contributes to their well-being but also to the greater good, by tackling problems such as climate change and the loss of biodiversity. Indigenous lands make up around 20 per cent of the earth's territory, containing 80 per cent of the world's remaining biodiversity – a clear sign that indigenous peoples are the most effective stewards of the environment. [432]

Realization of Indigenous women's equality is linked to their relation to land and natural resources and their ability to own and manage them. Human rights law affirms women's equal right to access, manage, or inherit property. CEDAW sets forth that States are required to afford women "a legal capacity identical to that of men and the same opportunities to exercise that capacity." [433] In particular, CEDAW holds that States "shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals." [434] According to the Maputo Protocol, States must take measures to "promote women's access to and control over productive resources such as land and guarantee their right to property." [435] UNDROP, which applies to Indigenous communities, [436] stipulates that peasant women and women in rural areas must be granted "equal access to, use of and management of land and natural resources, and to equal or priority treatment in land and agrarian reform and in land resettlement schemes." [437] The CEDAW Committee has recognized the importance of gender equality in mitigating the negative impacts of environmental harm for Indigenous women, and recommended that States enact legislation that guarantees "Indigenous women in rural areas have equal access as Indigenous men to ownership/possession of and control over land [...] and other resources which they have traditionally owned [...], including by protecting them against discrimination and dispossession." [438]

Robust protections of women's right to land and resources are necessary because loss of land disproportionately affects women. As the Special Rapporteur on the Rights of Indigenous Peoples has explained, "[i]n indigenous communities where matriarchy and matrilineal practices exist, the loss of land will likewise undermine indigenous women's status and roles." [439]

Denial of land strips women of their source of income, leading to dependence on men and greater vulnerability to GBV, including economic, physical, sexual, and psychological abuse. [440] The ACHPR's Resolution on Women's Right to Land and Productive Resources further calls for women's access to free legal assistance to ensure restitution and compensation for violations of their right to land and property. [441]

Moreover, the right to land and resources must be upheld throughout a woman's lifetime irrespective of marital status. The HRC has stated that "the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground." [442] During marriage, CEDAW and the Maputo Protocol provide that women must have equal rights with their husbands to own, acquire, and administer property. [443] In its General Recommendation on equality in marriage and family relations, the CEDAW Committee explained that prohibiting women from independently entering into contracts or having access to credit constitutes a denial of legal autonomy. [444] Hinging women's ability to contract on the aid or approval of a male relative or husband, has a "serious impact on a woman's practical ability to divorce her husband, to support herself or her family and to live in dignity as an independent person." [445]

Women's right to property must be respected upon divorce. According to the HRC, "[t]he grounds for divorce and annulment should be the same for men and women, as well as decisions with regard to property distribution." [446] The Maputo Protocol further provides that in cases of separation or divorce, men and women must "have the right to an equitable sharing of the joint property deriving from the marriage." [447] In interpretation this provision, the ACHPR's underscored that it must be understood "through the lens of substantive equality," [448] and that States must take "special measures aimed at ensuring their property rights during separation, divorce, or annulment of marriage." [449]

In determining the division of property upon divorce, courts must consider not only financial contribution, but women's non-financial contributions, such as caring for children and elderly relatives and taking care of the land and property. [450] The CEDAW Committee considers that "any law or custom that grants men a right to a greater share of property at the end of a marriage or de facto relationship, or on the death of a relative, is discriminatory." [451] The CEDAW Committee has called upon States "to eliminate discrimination against women at the inception of marriage, during marriage and at its dissolution by divorce or death." [452]

Thus, women have an equal right to inherit, despite custom which may dictate otherwise. When women are forced to depend on their husbands for economic survival, they are particularly vulnerable at their husband's death. [453] The adverse effects of the climate crisis can exacerbate these issues when women become widowed due to an extreme weather event. [454] The CEDAW Committee has noted that women and girls in many States are denied inheritance upon the death of a spouse, parent, or relative. [455] This is especially concerning considering that "inheritance is a primary means by which wealth and resources are transferred within societies, as well as within families," as the Special Rapporteur on adequate housing has noted. [456] Moreover, as the CEDAW Committee has affirmed, women cannot be forced off of their land by relatives of a deceased husband or forced to marry a relative to remain on the land. [457] In a landmark case before the CEDAW Committee, *E.S. & S.C. v. The United Republic of Tanzania*, two Tanzanian widows evicted from their marital homes following the husband's death, challenged discriminatory provisions of codified Tanzanian customary law. [459] The Committee found that these discriminatory "restraints on inheritance and property rights" violated the women's right to equality and economic security.

In the African human rights system, the Maputo Protocol likewise provides for women's right to inheritance, holding widows "shall have the right to an equitable share in the inheritance of the property of her husband" and an equal right to inherit a parent's property as well. [460] Further, a woman retains the right to "continue to live in the matrimonial house" even if she remarries. [461]

D. RIGHT TO CULTURAL LIFE

Human rights law protects Indigenous Peoples' right to culture and Indigenous women's right to participate in the creation of culture. Centuries of forced assimilation, dispossession of lands, violence and discrimination have caused severe erosion to Indigenous culture and traditional knowledge. [462] The climate crisis further threatens the survival of Indigenous culture, causing destruction and exploitation of habitats and natural resources, and impeding Indigenous Peoples' ability to preserve and practice their culture. [463] Cultural erosion is specifically harmful for Indigenous women because of their roles as custodians of biodiversity and spiritual traditions in many Indigenous communities. Dispossessing them of land devalues their roles as teachers and, by extension, their status within the community.

International human rights law recognizes Indigenous Peoples' right to culture. The UDHR provides "[e]veryone has the right freely to participate in the cultural life of the community." [464] The ICCPR specifically protects minorities' collective right to the enjoyment of culture, stating that "[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language." [465] Interpreting this provision, The HRC has recognized that culture manifests in various forms, "including traditional Indigenous ways of life that are deeply connected and reliant on the use of land for medicine, sustenance, spirituality and preservation of heritage." [466]

ICESCR also recognizes the right of everyone to "take part in cultural life." In its General Comment, the CESCR committee defined culture expansively to encompass "all manifestations of human existence." [468] It explained that culture is the vehicle through which "communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives." [469] As such, States must "respect free access by minorities to their own culture, heritage and other forms of expression, as well as the free exercise of their cultural identity and practices." [470]

Regional human rights standards further address the right to culture. The American Declaration also asserts the right of everyone to "take part in the cultural life of the community." [471] Similarly, the Banjul Charter holds that "[e]very individual may freely, take part in the cultural life of his community." [472] In the *Endorois* case, the ACHPR elaborated on culture's individual and collective dimensions, which both protect the individual's right to practice his or her own culture, and oblige the State to promote and protect a community's traditional culture. [473] The Commission further interpreted culture as "that complex whole which includes a spiritual and physical association with one's ancestral land, knowledge, belief, art, law, morals, customs, and any other capabilities and habits acquired by humankind as a member of society." [474] Essentially, it defined culture as the "sum-total" of activities and values that distinguish it from other groups. [475]

Additionally, as CESCR has clarified, the right to participate in cultural life has three dimensions: (1) participation, (2) access and (3) contribution to cultural life. [476] Participation entails the right “to act freely, to choose his or her own identity, to identify or not with one or several communities or to change that choice, to take part in the political life of society, to engage in one’s own cultural practices and to express oneself in the language of one’s choice.” [477] Access guarantees an individual or group’s right to come to understand their own culture through education and to benefit from the cultural heritage and the creation of other individuals and communities.” [478] Lastly, contribution is “the right of everyone to be involved in creating the spiritual, material, intellectual and emotional expressions of the community.” [479]

Thus, Indigenous women must be afforded equal participation and decision-making power with regards to cultural rights. The Special Rapporteur on cultural rights stated, “To enjoy equal cultural rights, women must become equal participants and decision-makers in all the cultural affairs of their own specific communities and in the wider ‘general’ society . . . In this sense, cultural rights are empowering, for they provide individuals with control over the course of their lives, facilitating the enjoyment of other rights. A large part of the transformative aspect of cultural rights is being able to overturn presumed female and male characteristics and capabilities.” [480] Throughout the world, men, as makers of culture, often impose rigid codes of conduct on women who are regarded as transmitters and bearers of culture. [481]

Additionally, cultural norms that are hostile to women must be reconciled with gender equality. CEDAW sets forth that States parties must take steps, including legislation, “[t]o modify the social and cultural patterns of conduct” that discriminate against women “based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women.” [482]

In the African human rights system, the Maputo Protocol contains a similar provision [483] specifically protecting a woman’s right to live in a “positive cultural context.” [484] As the HRC set out, culture constitutes a “primary source of diverse and sometimes contradictory normative systems that provide the rationale for varied patterns of gender roles and identities, which signify relations of power.” [485] The UN Special Rapporteur on violence against women further explained, “Human rights standards are not in contradiction with culture. They are in contradiction with patriarchal and misogynist interpretations of culture.” [486] Thus, culture or tradition cannot be used to justify discrimination or violence against women. [487]

Human rights standards further elaborate on Indigenous Peoples’ right to culture, ADRIP defines Indigenous Peoples’ right to culture as “the right to full recognition and respect for the ownership, dominion, possession, control, development, and protection of their tangible and intangible cultural heritage and intellectual property, including its collective nature, transmitted over millennia from generation to generation.” [488] UNDRIP further protects Indigenous Peoples’ freedom from “forced assimilation or destruction of their culture” [489] and “right to practice and revitalize their cultural traditions and customs.” [490] This includes a call for the provision of efficient mechanisms for the prevention and redress of actions that aim or have the effect of depriving Indigenous Peoples of “cultural values or ethnic identities.” [491] Specifically protecting religious and spiritual practices, UNDRIP also states “indigenous peoples have the right to manifest, practi[c]e, develop and teach their spiritual and religious traditions, customs and ceremonies.” [492] This encompasses “the right to maintain, protect, and have access in privacy to their religious and cultural sites.” [493]

The climate crisis exacerbates Indigenous Peoples' struggle to maintain their culture. Given the close relationship many Indigenous communities have with land and resources they are often among the first to face the effects of climate crisis. [494] Indigenous culture also includes a particular way of life associated with the use of land resources, [495] which is at risk. Indigenous culture and language further offer insight related to conservation and the preservation of biodiversity. [496] With the climate crisis, this knowledge is more useful than ever. [497] UNDRIP's Preamble recognizes, "respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment." [498] The Special Rapporteur on cultural rights has stated that traditional knowledge about caring and interacting with natural systems will be indispensable and pivotal to stabilizing the climate. [499]

As discussed above, Indigenous Peoples' right to cultural life is further threatened by the COVID-19 pandemic. Globally, COVID-19 has increased lethality for elders due to biologically less viral resistance. [500] Moreover, due to the common arrangements of multi-generational homes in many communities, Indigenous elders are at a particular risk of infection. [501] These factors, combined with the disproportionate vulnerability of Indigenous communities to COVID-19 and inadequate health care systems, place the very foundation of many Indigenous cultures in jeopardy of extinction as elders often play a significant role as the transmitters of Indigenous knowledge, language, and cultural practices. Because elders traditionally pass down knowledge and history through oral retellings, if they die, these pieces of culture could disappear. [502]

In many communities, Indigenous women are keepers of cultural knowledge and thus particularly impacted by the erosion of culture. Indigenous Peoples' culture encompasses deep and rich knowledge "about the natural world, health, technologies and techniques, rites and rituals and other cultural expressions," curated and developed over generations. [503] Further, Indigenous women "often play an essential role in protecting biodiversity, and are the keepers of seeds and of traditional knowledge about their lands and territories and about the nutritional and medicinal value of plants." [504] When women lose this role, they lose their place in their society and, in turn, their society loses valuable "cultural practices, health, prosperity and resilience of their communities." [505]

E. RIGHT TO REMEDY AND ACCESS TO JUSTICE

“Justice for GBV and environmental justice are inextricable. A just future includes redress for both people and place.” [506] – **Kate Finn, Osage Nation, Executive Director of First Peoples Worldwide, University of Colorado Boulder**

Under human rights law, Indigenous Peoples have a right to access justice and remedy violations, including environmental injustice and GBV. This entails access to justice through mainstream State systems, as well as access to Indigenous systems, including restorative justice approaches. Recognizing a history rife with violations against Indigenous Peoples, the UN General Assembly encouraged States to “establish at the national level, in conjunction with the Indigenous peoples concerned, fair, independent, impartial, open and transparent processes to acknowledge, advance and adjudicate the rights of Indigenous peoples pertaining to lands, territories and resources.” [507] Moreover, human rights law is particularly concerned with women’s right to access justice. Nevertheless, Indigenous women face intersecting discrimination on the basis of their gender and ethnicity and are often doubly marginalized in justice systems.

Human rights law broadly defines a right to access to justice. At the international level, the UDHR and ICCPR establish the right to “an effective remedy” for human rights violations. [508] Further, according to the ICCPR, a right to remedy exists for violations “notwithstanding that the violation has been committed by persons acting in an official capacity.” [509] ICERD declares that the right to “effective protection and remedies” must be fulfilled through “competent national tribunals and other States institutions.” [510]

At the regional level, the ACHR mirrors the preceding definitions, stating “[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the State concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.” [511] The Inter-American Court held that recourse “must be truly appropriate to establish whether there has been a violation of human rights and to provide everything necessary to remedy it,” otherwise, the State violates its duty. [512]

Access to justice is necessary for Indigenous Peoples to address GBV and environmental injustice. According to the Rio Declaration, “States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage.” [513] States shall also cooperate in “an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.” [514] Furthermore, the CEDAW Committee calls upon States to “ensure that all policies, legislation plans, programmes, budgets and other activities relating to disaster risk reduction and climate change are gender responsive and grounded in human rights-based principles.” [515]

This includes providing for “accountability and access to justice, which require the provision of appropriate and accurate information and mechanisms in order to ensure that all women and girls whose rights have been directly or indirectly affected by disasters and climate change are provided with adequate and timely remedies.” [516]

Moreover, human rights law specifically recognizes the need to remove impediments to women’s access to justice. CEDAW asserts that States are “required to adopt measures to ensure the practical realization of the elimination of discrimination against women, including measures that enable women to complain effectively about violations of their rights under the Convention and to obtain an effective remedy.” [517] The CEDAW Committee further clarified that “accessibility requires that all justice systems, both formal and quasi-judicial, be secure, affordable and physically accessible to women, and be adapted and appropriate to the needs of women.” [518] Similarly, the Convention of Belém do Para provides “[e]very woman has the right to recognition, enjoyment, exercise and protection” of her right to “simple and prompt recourse to a competent court for protection against acts that violate her rights.” [519] Under the Istanbul Convention, “Parties shall take the necessary legislative or other measures to provide victims with adequate civil remedies against the perpetrator.” [520] The Convention further requires State actors to take measures to provide victims “with adequate civil remedies against State authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers.” [521]

Additionally, without attainable legal support, women’s right to a remedy and access to justice is an illusory promise. The CEDAW Inquiry regarding missing and murdered Indigenous women in Canada noted that women’s barriers to justice are aggravated by a “lack of access to high-quality, gender-competent legal advice, including legal aid.” [522]

CEDAW’s General Recommendation on the rights of rural women, which includes Indigenous women, calls on States to “[e]nsure that victims living in rural areas have effective access to justice, including legal aid, as well as compensation and other forms of redress or reparation, and that authorities at all levels in rural areas, including the judiciary, judicial administrators and civil servants, have the resources needed and the political will to respond to violence against rural women.” [523] Likewise, the Maputo Protocol calls on States to ensure “effective access by women to judicial and legal services, including legal aid” and to support “local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid.” [524]

A lack of access to justice enables impunity by GBV perpetrators. The CEDAW Committee has stated that a State’s failure to take all appropriate measures to prevent GBV in cases where authorities know or should have known of the risk of violence, or fail to investigate, prosecute and punish perpetrators for violent acts “provides tacit permission or encouragement to perpetrate acts of gender-based violence against women.” [525] This was one of the main conclusions that arose from CEDAW’s inquiry on Canada’s missing and murdered Indigenous women—the State’s lack of mobilization to achieve justice for victims made Indigenous women even more vulnerable to perpetrators. [526] Moreover, the State itself is a perpetuator of violence through settlor-colonial policing and violence against Indigenous Peoples on stolen land. As one scholar writes: “In cities and towns across Canada, Indigenous girls are being hunted, harassed, and criminalized by local law enforcement agents and the Royal Canadian Mounted Police. These normalized outbreaks of state control, often punctuated by the use of deadly force, are not isolated incidents in an otherwise just and fair social order.

Rather, they are reflective of Indigenous girls' daily realities embedded within the structure of an ongoing colonial social context that has strategically invented the criminal justice systems to secure and maintain settler sovereignty." [527]

Although Canada's legal system requires remedies for GBV, as the Report stresses, "it is not the formal existence of judicial remedies that demonstrates due diligence, but rather their actual availability and effectiveness." [528] Recognizing this, the Maputo Protocol highlights the need for a judicial response to "punish the perpetrators of violence against women." [529] The Special Rapporteur on the Rights of Indigenous Peoples has recognized, "The failure of Governments to acknowledge and provide remedy for historical abuses of indigenous communities contributes to the ongoing vulnerability of indigenous women." [530]

Furthermore, human rights law is particularly concerned with addressing the historical injustices Indigenous Peoples experience. UNDRIP asserts Indigenous Peoples' right to remedy includes "access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights." [531] The ILO Convention emphasizes that in these cases "[t]he customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts." [532] ADRIP additionally clarifies that States "shall provide the necessary mechanisms" for Indigenous Peoples to exercise the right and allow for their full participation in the process. [533]

However, as the HRC has noted, mainstream State justice systems often "offer extremely limited prospects for Indigenous peoples to obtain redress for human rights violations." [534]

Barriers can include Indigenous women living in rural areas physically unable to access State justice systems, a lack of information about rights available services, economic impediments, a distrust of State authorities, and the historical pattern of crimes against Indigenous women discounted and ignored or receiving reduced penalties. [535] Furthermore, language barriers and other cultural factors may heighten inaccessibility. [536] Victoria Tauli Corpuz, the former Special Rapporteur on Indigenous rights, explained that Indigenous lack of confidence in the State justice systems arises from "a long history of impunity, marginalization, discrimination and stigmatization and procedures that do not accommodate or even recognize their cultural specificities." [537]

Moreover, a lack of communication and coordination by State justice authorities with Indigenous systems can lead communities to fall through the cracks. [538] In the U.S. and Canada, Indigenous Peoples are barred from criminal prosecution of non-Indigenous offenders on their land, even if they commit acts against Indigenous members within the community. This requires reliance on State justice systems that are often not responsive, creating an enforcement loophole. [539] Although the federal government is meant to be responsible for prosecuting these crimes, it has failed to uphold these responsibilities. This enables crimes against Indigenous Peoples, and especially Indigenous women, to occur more frequently and with little to no perpetrator accountability. [540]

Indigenous women are doubly marginalized in State systems of justice. They face barriers to access to justice due to discrimination based on both gender [541] and Indigenous status. As the CEDAW Committee clarified, discrimination against women is "compounded by intersecting factors that affect some women to degrees or in ways that differ from those affecting men or other women." [542]

Grounds for intersecting discrimination include “ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief.” [543] The CEDAW Committee found that when women experiencing intersecting discrimination “lodge complaints, the authorities frequently fail to act with due diligence to investigate, prosecute and punish perpetrators and/or provide remedies.” [544] Human rights law requires addressing this disparity.

Moreover, Indigenous populations are statistically overrepresented in the criminal justice system, exacerbating access to justice concerns. [545] As explained by the OHCHR “Indigenous peoples are often overrepresented in all contact with the criminal justice system: they are more likely to be victims of crimes . . . they are more likely to have contact with police, to be charged with offenses, convicted of offenses and receive harsher sentences.” [546] Moreover, these disparities have led to distrust of State justice systems among Indigenous Peoples, especially Indigenous women, who are reluctant to turn to them for redress. [547]

Under human rights law, Indigenous Peoples must both have equal access to State justice systems, as well as the ability to draw on their own traditional approaches to justice. UNDRIP recognizes Indigenous Peoples’ “right to autonomy or self-government in matters relating to internal and local affairs,” [548] and their right to “promote, develop, and maintain their institutional structures.” [549] ADRIP likewise affirms Indigenous Peoples “right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, judicial systems or customs, in accordance with international human rights standards.” [550]

As interpreted by the Special Rapporteur on Indigenous rights, “the ability of Indigenous peoples to continue to strengthen their own systems of administration of justice is an integral component of their rights to self-governance, self-determination and access to justice under International human rights instruments.” [551]

The barriers to justice that are rooted in a lack of cultural knowledge and proximity can be rectified when Indigenous members can seek redress within their own systems. For example, in many African countries, customary justice structures operate alongside State justice systems, addressing a wide variety of disputes, particularly among rural populations, “where access to the formal court system may be expressly difficult.” [552] Moreover, Indigenous communities’ unique relationship with their territories has resulted in inter-generational practices that protect the environment and respond to climatic events. Thus, Indigenous justice systems are well placed to protect their territories against environmental degradation. [553] Indigenous restorative justice practices can be applied to environmental crimes and the defendants’ commitment to make amends can involve restoration of the natural environment. [554] There are several potential outcomes from a restorative justice approach in cases involving environmental crimes: (1) “restoration of environmental harm and prevention of future harm”, (2) compensatory restoration, and (3) payment to the victims and the broader community if the environment “cannot be restored to its former condition.” [555]

Additionally, Indigenous justice systems may include a restorative justice component, prioritizing the “wants and needs of the victim” [556] and providing an opportunity for community healing. The method for redress utilized by the Indigenous community is chosen by the victim. [557] This justice approach further facilitates a process of healing with all those impacted by an offense, identifying and addressing their needs in the aftermath. [558]

The emphasis is on repairing relations, rather than punishing offenders. [559] As put by the OHCHR in a report on African traditional justice systems, “the use of local leaders, informal procedures, community participation, and a primary focus on reconciliation and reparation differentiate [traditional justice systems] from formal courts, where procedures are adversarial, complex and long, and outcomes such as a prison term . . . may appear ill adapted to reality.” [560] For example, the Navajo Peacemaking Method employs a justice system that resolves disputes “not by rules but by the idea of relationships.” [561] The Navajo program “seeks justice for everyone involved by engaging the skills and perspectives of the community members to come to a mutual solution.” [562] Some effort in this process is also invested in rehabilitating the offender so as to prevent reoccurrence and avoid future harm. [563] This allows for problems to be “handled in their entirety” and provides a holistic approach that is victim-centered. [564]

However, it is also important to ensure that Indigenous women are not marginalized in Indigenous systems of justice and that these systems accord with human rights standards. [565] Indigenous women may be are “marginalized in both national and Indigenous justice systems.” [566] Indigenous systems can be male-oriented which leads to a lack of women voices and/or participation. [567] Furthermore, the tight knit nature of Indigenous communities can lead to a “high level of stigma associated with being a victim of violence . . . so that Indigenous women are often afraid to report violence” within their communities or other communities. These potential barriers highlight the need for a dual system of justice where Indigenous women are free to seek justice in a forum that is appropriate for them. Where States provide for parallel systems of justice, women must have equal access and be able to seek remedies to rights violations in both. [568]

IV. NEED FOR RESPONSES BY INDIGENOUS WOMEN

“Whatever the solutions are to these problems, Indigenous women need to be decision-makers, not consultants and not as tokens.” [569] – Pam Palmater, Mi’kmaw citizen and member of Eel River Bar First Nation, Chair in Indigenous Governance, Ryerson University

“We know our community, and we know what our community needs. Let us be the experts on it, instead of all of these people coming into save us. We don’t need to be saved, we need to be empowered to save ourselves.” [570] – Victoria Sweet, White Earth Band of Ojibwe, NoVo Foundation

Outside solutions often fail Indigenous women, who need an opportunity to shape responses to GBV and the climate crisis. A space in policy debates for the voices of Indigenous women would respect their fundamental rights to participate in law and policy and freedom of expression. Moreover, Indigenous women can share important lessons in addressing the twin crises of GBV and climate injustice.

International and regional human rights law recognize a right to participate in decision-making and play a role in law and policy. Under the UDHR, “Everyone shall have the right and the opportunity to take part in the government of his country.” [571] The ICCPR states, “Every citizen shall have the right and the opportunity, to take part in the conduct of public affairs, directly or through freely chosen representatives. In the Inter-American system, the Pact of San Jose recognizes the right “to take part in the conduct of public affairs, directly or through freely chosen representatives” [572] and “to vote and to be elected in genuine periodic elections.” [573] In the African system, the Banjul Charter states, “Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.” [574]

In the context of Indigenous rights, the right to participate in public policy entails both Indigenous institutions, as well as participation in broader state policies. As UNDRIP states, “Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, which retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.” [575] Additionally, ADRIP sets out, “Indigenous peoples have the right to full and effective participation in decision-making, through representatives chosen by themselves in accordance with their own institutions, in matters which affect their rights, and which are related to the development and execution of laws, public policies, programs, plans, and actions related to indigenous matters.” [576] Moreover, it recognizes that Indigenous participation and consent are critical in matters concerning them. Thus, “States shall consult and cooperate in good faith with the indigenous peoples concerned, through their own representative institutions, in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.” [577]

CEDAW and the Maputo Protocol affirm women's right to participate in law and policy. CEDAW calls on states "to eliminate discrimination against women in the political and public life of the country," enabling women "[t]o participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government." [578] In order to accomplish this, the CEDAW Committee explained that States have "a responsibility . . . to appoint women to senior decision-making roles and, as a matter of course, to consult and incorporate the advice of groups which are broadly representative of women's views and interests." [579] Meaningful participation thus requires representation at all levels of government, including the criminal justice system. [580]

The CEDAW Committee highlights the importance of "[e]quality of representation," [581] which may require States to "implement temporary special measures to ensure the equal representation of women in all fields." [582] The Maputo Protocol likewise calls on states to "take specific positive action to promote ... the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that...women are represented equally at all levels with men in all electoral processes" and "women are equal partners with men at all levels of development and implementation of State policies and development programmes." It further recognizes that women's participation in law and policy is critical not only for women's empowerment "but also for the advancement of society as a whole." [583]

In the rural context, in particular, international law stresses the importance of women's participation in law and policies to shape development. The CEDAW Committee noted that "[r]ural women are also more likely to be excluded from leadership and decision-making positions at all levels" and "are disproportionately affected by gender-based violence, and lack of access to justice." [584]

CEDAW, however, calls on states to ensure rural women's rights "[t]o participate in the elaboration and implementation of development planning at all levels" and "[t]o participate in all community activities." [585] As the CEDAW Committee explained, "the importance of rural women's empowerment, self-determination, and position in decision-making and governance must not be ignored, and when this occurs, States jeopardize their own progress. [586]

Additionally, the CEDAW Committee has specifically recognized the importance of women's leadership in addressing the climate crisis. The CEDAW Committee urged States to prioritize the voices of "women belonging to indigenous and other marginalized groups." [587] Moreover, it affirmed women's role as valuable contributors: "The categorization of women and girls as passive, 'vulnerable groups' in need of protection from the impact of disasters is a negative gender stereotype that fails to recognize the important contributions to disaster risk reduction, post-disaster management and climate change mitigation and adaptation strategies that women are already making." [588] States must, therefore, "ensure that women and girls are provided with equal opportunities to lead and to participate and engage in decision-making in activities relating to disaster risk reduction and climate change." [589] This entails developing programs to support "the participation and leadership by women in political life," "the equal representation of women in forums and mechanisms on disaster risk reduction and climate change" and the allocation of "adequate resources to building the leadership capacity of women." [590] This includes not just participation in the formulation of policy, but also "implementation and monitoring at each level of government, at the local, national, regional and international levels." [591]

The right to participate in law and policy is closely linked to Indigenous women's right to freedom of expression. According to the UDHR, "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." [592] The ICCPR states, "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." [593] These provisions are echoed by the American Declaration, [594] Pact of San Jose, [595] Banjul Charter, [596] and ECHR. [597] However, as discussed above in the section on environmental defenders, females defending their ecosystems all too often pay a high price.

Moreover, it is not enough for Indigenous women to participate in current systems often created by outsiders and colonizers; they also need the opportunity to reshape responses to GBV and the climate crisis according to their values. Approaches taken by Indigenous women can contribute globally to better addressing GBV and ensuring environmental justice.

V. RECOMMENDATIONS

The following recommendations to the international community draw on the above analysis:

A Focus on Addressing GBV and Environmental Violence

- Affirm that respecting the equality of Indigenous women, and Indigenous Peoples in general, requires addressing the disproportionate rates of GBV perpetrated against them. [598]
- Recognize that addressing GBV against Indigenous Peoples requires confronting environmental violence, including the climate crisis. Violence against Indigenous Peoples and violence against nature are deeply intertwined. [599] GBV facilitates colonial exploitation of Indigenous land and resources, creating racial and gender hierarchies that enable the “perpetual disappearance of Indigenous bodies for perpetual territorial acquisition.” [600] Additionally, environmental damage contributes to economic insecurity, a risk factor for GBV, increasing dependence and vulnerability. [601]
- Consider rights to freedom from GBV (including rights to equality and non-discrimination, life, health, security of person, privacy, and freedom from cruel, inhuman and degrading treatment), together with environmental justice rights (including rights to a healthy environment, food, and water, as well as rights to protest and safety by environmental defenders), along with Indigenous sovereignty rights (including rights to self-determination, land and resources, cultural life, and access to justice, as well as Indigenous women’s right to shape policy responses). These rights weave together to form a protective web critical to safeguard the fundamental right to integrity of both Indigenous Peoples and the environment. Yet, all too often these rights are considered in isolation, leading to glaring gaps in protection.

Indigenous-Led Responses

- Affirm that first and foremost, Indigenous Peoples, including Indigenous women, must shape decisions affecting them and their communities. As one Indigenous leader notes, “Whatever the solutions are to these problems, women need to be decision-makers, not consultants and not as tokens.” [602]
- This requires obtaining the “FPIC”—free, prior, and informed consent—of Indigenous communities on issues affecting them, including the use of Indigenous land and resources. [603]
- Moreover, it is not enough to have consultation with Indigenous communities. FPIC should require consent, which entails the opportunity for Indigenous Peoples to reject proposed developments as they are best able to weigh the costs and benefits to their communities. [604]
- Recognize that Indigenous women can share important lessons in addressing the twin crises of GBV and climate injustice. The CEDAW Committee previously highlighted the importance of women’s leadership in addressing the climate crisis, urging States to prioritize the voices of “women belonging to indigenous and other marginalized groups.” [605] This entails developing programs to support “the participation and leadership by women in political life,” “the equal representation of women in forums and mechanisms on disaster risk reduction and climate change” and the allocation of “adequate resources to building the leadership capacity of women” [606] not just in the formulation of policy, but also in implementation and monitoring at all levels of government. [607]

Addressing GBV

- Broadly define GBV beyond a narrow gender binary, to encompass all violence disproportionately impacting individuals based on their gender or due to prevailing gender norms. [608] Many Indigenous Peoples recognize and value community members who do not identify as gender binary, including two-spirit people. [609]
- Define manifestations of GBV to include physical, sexual, psychological, economic, spiritual, [610] and environmental, [611] violence. “Violence against Indigenous communities is both an individual and collective experience, and it is important to address both dimensions.” [612]
- Call on States and international bodies, like the World Health Organization, to collect disaggregated data on GBV in accordance with the multiple identities that Indigenous Peoples carry. Moreover, States should provide law enforcement guidance and trainings, linked to monitoring and accountability mechanisms, that account for intersectional forms of discrimination. [613] States must further investigate and address GBV perpetrated by law enforcement themselves. [614]
- Recognize grave and systemic GBV, including missing and murdered Indigenous women, girls, and two-spirit people, forced and coerced sterilization, and the forced separation of children from Indigenous families, as genocide. [615]
- Urge States to provide Indigenous groups authority and resources to address GBV. This entails eliminating jurisdiction loopholes so that Indigenous groups can prosecute non-Indigenous perpetrators within their territories. Moreover, States should provide resources to improve Indigenous infrastructure, including justice services, health care, and support to survivors on Indigenous lands and in urban centers where significant Indigenous populations live. [616] This should include resources not only for accountability and redress, but also for GBV prevention. [617]

Addressing Environmental Injustice

- Endorse the right to a healthy environment. [618] This would elevate the urgency of preventing environmental harm and create a coherent framework for environmental protection. [619] Further, respect for this right recognizes the deep and interconnected relationship many Indigenous communities have with nature and the environment. [620]
- Recognize that rights to a healthy environment, food, water, and land have a critical cultural dimension for many Indigenous Peoples. The right to food requires food that is “culturally acceptable,” respectful of cultural traditions and livelihoods. [621] Water is essential to life, and its non-consumptive uses are further crucial to many Indigenous communities, including its centrality in a biological habitat, its spiritual value as a source of healing, and its aesthetic qualities. [622] In many communities, Indigenous women are keepers and teachers of cultural knowledge and thus particularly impacted by the erosion of culture. [623] They “often play an essential role in protecting biodiversity, and are the keepers of seeds and of traditional knowledge about their lands and territories and about the nutritional and medicinal value of plants.” [624]

- Recognize that the impacts of violations of environmental justice are especially severe for Indigenous women, serving in many communities as “providers, caregivers, and resource managers.” [625] Indigenous women and girls, who often collect water for their communities, are particularly affected by water scarcity. Travel over long distances amidst dangerous conditions to obtain water increases risk of GBV. [626] Land appropriation has gendered effects as women lose access to their traditional livelihoods, like food gathering and agricultural production, and become more vulnerable to abuse. [627] Moreover, in some countries, as a result of proximity to extraction sites and pollution, Indigenous women and girls experience higher levels of birth complications, miscarriages, reproductive problems, and cancer than other women. [628]
- Call on States to refrain from criminalizing Indigenous Peoples who are peacefully defending their land and resources, and take steps to ensure their protection from non-state actors. [629] This requires States to train law enforcement officials and prosecutors on human rights standards that are applicable to human rights defenders, including environmental defenders. [630] States must also ensure that women defenders have a safe environment to exercise their rights, accounting for their specific experience of discrimination and violence, and that these defenders have representation in matters related to their land and resources. [631]
- Urge States to implement policies to address the climate crisis and provide economic assistance to Indigenous groups that have been disproportionately impacted. [632]

Moving Forward

- Reinforce that Indigenous Peoples must have both equal access to State justice systems, as well as the ability to draw on their own traditional approaches to justice, consistent with human rights standards. [633] This requires ensuring that “all justice systems, both formal and quasi-judicial, be secure, affordable and physically accessible to women, and be adapted and appropriate to the needs” of Indigenous women and communities, [634] including providing translation and legal support. [635]
- Affirm the collective right of Indigenous Peoples, and specifically women and girls, to the truth when it comes to grave and systemic GBV and environmental violence. The Office of the High Commissioner of Human Rights recognized that societies are entitled “to know the truth about serious human rights violations” and that the right to truth serves as a direct mechanism fundamental “to prevent future recurrence of such events.” [636] Former Secretary General Ban Ki-Moon explained that exposing the truth helps “entire societies to foster accountability for violations” and can “provide catharsis and help produce a shared history of events that facilitates healing and reconciliation.” [637]
- Encourage States to engage in a national reckoning with the harms of past and ongoing colonization, impacting Indigenous Peoples, including an open dialogue with Indigenous communities and development of a plan for redress. [638] Although flawed, Canada’s National Inquiry into Missing and Murdered Indigenous Women and Girls, as discussed in the accompanying case study, provides an important precedent and lessons for other national inquiries.

ENDNOTES

- [1] UN Women, *Breaking the Silence on Violence against Indigenous Girls, Adolescents and Young Women* 3 (2013).
- [2] World Health Organization (“WHO”), *Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence* (2013).
- [3] Hum. Rts. Council, *Report of the Special Rapporteur on Rights the Rights of Indigenous Women and Girls*, ¶47(d), U.N. Doc. A/HRC/30/41 (2015).
- [4] Katie Scrim, “Aboriginal Victimization in Canada: A Summary of the Literature” in *Victims of Crime Research Digest*, Issue 03/2010 (Ottawa: Department of Justice Canada, 2010) 15, 16, <https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd3-rr3/rd3.pdf>.
- [5] *Reclaiming Power and Place: The Final Report of the National Inquiry Into Missing and Murdered Indigenous Women and Girls*, Volume 1a, 561 (2019) [hereinafter *Final Report*]; Inter-Am. Comm’n. H.R., *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/SER.L/V/II, doc. 30/14 ¶ 41 # (2014).
- [6] Hum. Rts. Council, *Report of the Special Rapporteur on Rights Indigenous Peoples*, ¶ 6, U.N. Doc. A/HRC/36/46 (2017); see also Mary Kathryn Nagel & Molly Smith, *Sovereignty*, (2018) (a theatrical play revolving around a Cherokee lawyer’s battle to reinstate the Cherokee Nation’s sovereignty and jurisdiction.)
- [7] Sarah Hunt, *Representing Colonial Violence: Trafficking, Sex Work, and the Violence of Law*, 37 *Atlantis: Critical Stud. Gender, Culture & Soc. Just.* 25, 32 (2015).
- [8] *Id.*
- [9] Helen Knott, *Peace River Rising: The Link Between Violence against Indigenous Women and Violence Against the Land* (Mar. 14, 2017), <https://www.youtube.com/watch?v=6GbGL7dmEwA>.
- [10] The Association of Southeast Asian Nations (ASEAN) has also started a human right system with the ASEAN Human Rights Declaration and ASEAN Intergovernmental Commission on Human Rights, operating since October 2009. Int’l. Just. resources Center, Asia, <https://ijrcenter.org/regional/asia/>, (last visit May 31, 2021); Gerald Clarke, *The Evolving ASEAN Human Rights System: The ASEAN Human Rights Declaration of 2012*, 11 *NW. Int’l. J. Hum. Rts.* 1, 27 (2012).
- [11] Hum. Rts. Council, *supra* note 6, ¶6, 7.
- [12] *Id.* at ¶12.
- [13] See Section III.A. for further discussion on Indigeneity in Asia and Africa.
- [14] Video Interview with Kate Finn, Osage Nation, University of Colorado Boulder’s First Peoples Worldwide, (March 24, 2021).
- [15] Video Interview with Caroline LaPorte, Anishinaabe, Descendant Little River Band of Ottawa Indians, Judicial Advisor for the Seminole Tribe of Florida, (Jun. 6, 2020).
- [16] This definition is an expansion on the definition of GBV by the CEDAW Committee and the Istanbul Convention which, in relevant part, defines that “gender-based violence against women’ shall mean violence that is directed against a woman because she is a woman or that affect women disproportionately.” Convention on Preventing and Combating Violence Against Women and Domestic Violence art. 3(d) *opened for signature* May 11, 2011, C.E.T.S. No. 210 [hereinafter *Istanbul Convention*]; Comm. on the Elimination of Discrimination Against Women (“CEDAW Comm.”), General Recommendation No. 35: Gender-Based Violence Against Women, updating GR 19, ¶ 1, U.N. Doc. CEDAW/C/GC/35 (Jul. 14, 2017) [hereinafter *CEDAW Comm. GR No.35: GBV Against Women*].
- [17] American Psychological Association (“APA”), *Definitions related to sexual orientation and gender diversity in APA documents*, (2012), <https://www.apa.org/pi/lgbt/resources/sexuality-definitions.pdf>; See also *Istanbul Convention*, *supra* note 16, art. 3(c) (defining that “gender to “mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men.”)
- [18] CEDAW Comm. GR No.35: GBV Against Women, *supra* note 16, ¶ 1; see also Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa art. 1(j), *adopted* July 11, 2003 [hereinafter *Maputo Protocol*] (“Violence against women” means all acts perpetrated against women...”); see also *Istanbul Convention*, *supra* note 16, art. 3(a). (“violence against women is understood as a violation of human rights and a form of discrimination against women.”).

[19] Hum. Rts. Council *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, ¶ 20, U.N. Doc. A/HRC/19/41 (2011); *see also* Hum. Rts. Council *Human rights, sexual orientation and gender identity*. U.N. Doc. HRC/RES/17/19 (2011); Hum. Rts. Council, *Human rights, sexual orientation and gender identity*. HRC/RES/27/32 (2014); Hum. Rts. Council, *Discrimination and violence against individuals based on their sexual orientation and gender identity*. U.N. Doc. A/HRC/29/23 (2015); Hum. Rts. Council, *Protection against violence and discrimination based on sexual orientation and gender identity*. U.N. Doc. HRC/RES/32/2 (2016).

[20] Hum. Rts. Council, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, Victor Madrigal-Borloz, ¶5, U.N. Doc. A/73/152 (2018).

[21] Indian Health Services; The Federal Health Program for American Indians and Alaska Natives, *Two Spirit*, <https://www.ihs.gov/lgbt/health/twospirit/> (last accessed Jun. 12, 2021).

[22] CEDAW Comm. GR No.35: GBV Against Women, *supra* note 16, ¶14. *See also* Declaration on the Elimination of Violence against Women art. 2, *adopted* Dec. 20, 1993, A/RES/48/104 [hereinafter DEVAW]. (“Violence against women shall be understood to encompass . . . Physical, sexual and psychological violence occurring in the family . . . general community [and] . . . violence perpetrated or condoned by the State, wherever it occurs.”).

[23] The Maputo Protocol defines ‘violence against women’ as “all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war.” Maputo Protocol, *supra* note 18; Similarly, the Istanbul Convention defines violence against women as to include “all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” Istanbul Convention, *supra* note 16, art. 3(a). The European Parliament has likewise found that GBV consists of “physical, sexual, emotional, psychological and economic loss to the victim and may include violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices.” Resolution with Recommendations to the Commission on Combating Violence Against Women, A, Parl. Eur. Doc. 2013/204 (INL) (citing to Directive Establishing Minimum Standards on the Rights, Support, and Protect of Victims of Crime, Parl. Eur. Doc. 2012/29/EU).

[24] United Nations Children’s Fund (UNICEF), the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), the United Nations Population Fund (UNFPA), the International Labour Organisation (ILO) and the Office of the Special Representative of the Secretary-General on Violence against Children (OSRSG/VAC), *Breaking the Silence on Violence Against Indigenous Girls, Adolescents, and Young Women*, (May 2013) https://www.unfpa.org/sites/default/files/resource-pdf/VAIWG_FINAL.pdf, at vi, 3, 10, 37.

[25] United Nations Office of the Special Adviser on Gender Issues and Advancement of Women & the Secretariat of the United Nations Permanent Forum on Indigenous Issues, *Gender and Indigenous Issues*, 20, <https://www.un.org/esa/socdev/unpfii/documents/Briefing%20Notes%20Gender%20and%20Indigenous%20Women.pdf> (last accessed Jun. 12, 2021).

[26] Inter-American Commission on Human Rights., *Indigenous Women and their Human Rights in the Americas*, OEA/Ser.L/V/II/. Doc. 44/17 ¶80 (2017). The American Declaration on the Rights of Indigenous Peoples further recognizes the spiritual dimension of collective and individual rights to health. American Declaration on the Rights of Indigenous Peoples, art. 18(2), AG/RES. 288 (XLVI-O/16), *adopted* June 15, 2016 [hereinafter ADRIP].

[27] Inter-Am. Comm’n on H.R., *supra* note 26, ¶ 49.

[28] Tuck et al., *Land education: Indigenous, post-colonial, and decolonizing perspectives on place and environmental educational research*, 20 *Envtl. Educ. Res.* 1, 6 (2014) (citing to Lisa Korteweg & Jan Oakley, *Eco-heroes out of place at relations: decolonizing the narratives of Into the Wild and Grizzly Man through land education*, 20 *Envtl. Educ. Res.* 131, 143 (2014)).

[29] Leanne Betasamosake Simpson, *Centering Resurgence: Taking on Colonial Gender Violence in Indigenous Nation Building in Keetsahnak / Our Missing and Murdered Indigenous Sisters* 218, 219 (Kim Anderson et al. eds., 2018).

[30] UN Permanent Forum on Indigenous Issues (UNPFII), *Indigenous Women and Environmental Violence: A Rights-Based Approach Addressing Impacts of Environmental Contamination on Indigenous Women, Girls and Future Generations*, (2012), https://www.un.org/esa/socdev/unpfii/documents/EGM12_carmen_waghiyi.pdf.

[31] This analysis would be important to apply to the climate crisis, highlighting the particular impact on GBV against Indigenous Peoples and identifying opportunities for collaboration between women’s rights, Indigenous rights, and environmental justice movements.

[32] CEDAW Comm. GR No.35: GBV Against Women, *supra* note 16, ¶14.

[33] *Id.*

[34] CEDAW Comm., General Recommendation No. 37: Gender-Related Dimension of Disaster Risk Reduction in the Context of Climate Change, ¶5, U.N. Doc. CEDAW/C/GC/37 (Feb. 7, 2018). [hereinafter CEDAW Comm., GR No.37].

[35] CEDAW Comm. GR No.35: GBV Against Women, *supra* note 16, ¶14.

[36] Inter-Am. Comm'n on H.R., *supra* note 26, ¶ 99.

[37] First Peoples Worldwide, *Violence from Extractive Industry 'Man Camps' Endangers Indigenous Women and Children*, University of Colorado Boulder (Jan. 29, 2020), <https://www.colorado.edu/program/fpw/2020/01/29/violence-extractive-industry-man-camps-endangers-indigenous-women-and-children>.

[38] United Nations Interagency Framework Team for Preventive Action, *Extractive Industries and Conflict: Toolkit and Guidance for Preventing and Managing Land and Natural Resources Conflict*, Page 16 (2012); Kathleen Finn, et al., *Responsible Resource Development and Prevention of Sex Trafficking: Safeguarding Native Women and Children on the Fort Berthold Reservation*, 40 Harv. J.L. & Gender 1, 5-7 (2017).

[39] Robin Levinson-King, *Canada reveals names of 2,800 victims of residential schools*, BBC News (Oct. 1, 2019), <https://www.bbc.com/news/world-us-canada-49884387>.

[40] United Nations Department of Economic and Social Affairs (UNDESA), Permanent forum on Indigenous Issues, *Report on the fifteenth session*, ¶57 U.N. Doc. E/2016/43 (2016).

[41] CEDAW Comm. GR No.35: GBV Against Women, *supra* note 16, ¶21.

[42] International Covenant on Civil and Political Rights art. 4(1), *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; *see also* U.N. Human Rights Council Office of the High Commissioner ("OHCHR"), *Core Human Rights in the Two Covenants* (2013), <https://nhri.ohchr.org/EN/IHRS/TreatyBodies/Page%20Documents/Core%20Human%20Rights.pdf>.

[43] Universal Declaration of Human Rights art. 1, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].

[44] American Declaration of the Rights and Duties of Man art. 2, *adopted* May 2, 1948, OEA/Ser.L./V.II.23, doc. 21, rev.6 [hereinafter American Declaration].

[45] U.N., *Human Rights Law*, <https://www.un.org/en/sections/universal-declaration/human-rights-law/index.html>.

[46] Inter-American Democratic Charter, *adopted* Sept. 11, 2001 ("BEARING IN MIND that the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights contain the values and principles of liberty, equality, and social justice that are intrinsic to democracy.").

[47] ICCPR, *supra* note 42, art. 2 ("Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognizes in the present Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.").

[48] International Covenant on Economic, Social, and Cultural Rights art. 2 (2), *adopted* Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR] ("The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.").

[49] ICCPR, *supra* note 42, art. 26.

[50] American Convention on Human Rights art. 14, *adopted* Nov. 22, 1969, O.A.S.T.S. No. 36 [hereinafter Pact of San Jose] ("States Parties...undertake to respect the rights and freedoms recognized herein and to ensure...the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."); art. 24 ("All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.").

[51] African Charter on Human and Peoples' Rights art. 2, *adopted* June 27, 1981, 1520 U.N.T.S. 217, 21 I.L.M. 58 (1982) [hereinafter Banjul Charter] ("Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status."); art. 3 ("Every individual shall be equal before the law. (2) Every individual shall be entitled to equal protections of the law.").

[52] *Id.* at art. 28 ("Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.").

[53] *Id.* at art. 18 (“The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions.”).

[54] European Convention for the Protection of Human Rights and Fundamental Freedoms art. 14, *opened for signature* Nov. 4, 1950, E.T.S. No. 5 [hereinafter European Convention] (“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”).

[55] Protocol No. 12 to the European Convention, art. 1, *opened for signature* Nov. 4, 2000. (“(1) The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. (2) No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.”).

[56] Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) art. 2, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13 (also calling on states to adopt constitutional measures, legislation, and competent tribunals to address discrimination.”). *See also* Protocol No. 12 to the ECHR, art. 5 (requiring states to “take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”).

[57] CEDAW Comm., General Recommendation No. 25: on article 4, paragraph 1, of the CEDAW, on temporary special measures, U.N. Doc. CEDAW/C/GC/25, ¶ 8-12 (Jul. 26, 2004).

[58] Maputo Protocol, *supra* note 18, art. 2 (calling for constitutional and legislative protections, a gender perspective in policy decisions, and corrective action to address discrimination, as well as modifying “the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.”).

[59] *Id.* at art. 4.

[60] OAS, *About the Belém do Pará Convention*, <https://www.oas.org/en/mesecvi/convention.asp>.

[61] Council of Europe, *Gender Equality and Women’s Rights*, (2016) <https://rm.coe.int/168058feef>; Istanbul Convention, *supra* note 16, art. 1.

[62] CEDAW, *supra* note 56, art. 2.; *see also* Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women art. 7, *adopted* June 9, 1994, 33 I.L.M. 1534 [Convention of Belém do Pará]; *see also* Istanbul Convention, *supra* note 16, art. 4.; *see also* Maputo Protocol, *supra* note 18, art. 2.

[63] International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”) art. 1(1), 660 U.N.T.S. 195, 212.

[64] Comm. on the Elimination of Racial Discrimination (“CERD”), General Recommendation No. 23: Rights of Indigenous peoples ¶ 1, U.N. Doc. CERD/C/GEN/Rev.6/Add. 212 (2003).

[65] Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance, *adopted* June 5, 2013 [hereinafter Convention Against Racism].

[66] Inter-American Convention Against All Forms of Discrimination and Intolerance, *adopted* June 5, 2013 [hereinafter Convention on Discrimination and Intolerance].

[67] International Labour Organization, Indigenous and Tribal Peoples Convention 169, art. 3 (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169 [hereinafter ILO 169].

[68] United Nations Declaration on the Rights of Indigenous Peoples, art. 1,2, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007 [hereinafter UNDRIP].

[69] ADRIP, *supra* note 26, art. 12.

[70] *Id.* at art. 7.

[71] U.N. Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the U.N. Permanent Forum on Indigenous Issues, Briefing Note No. 6: Gender and Indigenous Peoples’ Human Rights, 1, 3 (Feb. 2010), https://www.un.org/esa/socdev/unpfii/documents/BriefingNote6_GREY.pdf.

[72] CEDAW Comm. GR No.35: GBV Against Women., *supra* note 16, ¶19.

[73] *Id.* at ¶12.

[74] CEDAW Comm., Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, U.N. Doc. CEDAW/C/OP.8/CAN/1, ¶ 200, 204 (Mar. 30, 2015).

[75] OHCHR, *Integrating a Gender Perceptive into Human Rights Investigations: Guidance and Practice*, 46 (2018).

[76] CEDAW Comm., *supra* note 16, ¶15.

[77] WHO Health Cluster, *Gender-based violence in health emergencies*, <https://www.who.int/health-cluster/about/work/other-collaborations/gender-based-violence/en/> (last accessed Jun. 12, 2021).

[78] ICESCR, *supra* note 48, art. 12. The UDHR set out the rudimentary right to health, in Article 25 stating “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security.” UDHR, *supra* note 43, art. 25). See also ADRIP, *supra* note 26, art. 7.

[79] European Social Charter (Revised) part 1(11), *opened for signature* May 3, 1996, E.T.S. No. 163 (“Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.”).

[80] Banjul Charter, *supra* note 51, art. 16 (“Every individual shall have the right to enjoy the best attainable state of physical and mental health.”).

[81] Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights art. 10(1), Nov. 17, 1988 [hereinafter Protocol of San Salvador] (“Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.”).

[82] Maputo Protocol, *supra* note 18, art. 14. International human rights law further provides the right to reproductive health. CEDAW protects women’s right to reproductive health in its preamble, stating, “the role of women in procreation should not be a basis for discrimination.” CEDAW, *supra* note 56, preamble. In General Recommendation 24, the CEDAW Committee “affirm[ed] that access to healthcare, including reproductive health, is a basic right,” and recommended that States “ensure the removal of all barriers to women’s access to health services, education and information, including in the area of sexual and reproductive health.” CEDAW Comm., General Recommendation No. 24: Article 12 on the Convention (Women and Health), ¶1, U.N. Doc. A/54/38/Rev.1, chap.1 (1999). CESCR’s General Comment 22 specifically focuses “on the right to sexual and reproductive health,” establishing that “reproductive health is an integral part of the right to health.” Comm. on Eco., Soc., and Cultural Rts. (“CESCR”), General Comment No. 22: on the right to sexual and reproductive health, ¶ 1, 15, U.N. Doc. CESCR/C/12/GC/22 (May 2, 2016). The General Comment notes that “health facilities, goods, information and services related to sexual and reproductive healthcare should be accessible to individuals and groups without discrimination and free from barriers.” *Id.* at ¶ 15.

[83] Sunita Kishor & Kiersten Johnson, Measure DHS, Profiling Domestic Violence—A Multi-Country Study (2004).

[84] WHO Health Cluster, *supra* note 77.

[85] UNICEF, UN Women, UNFPA, ILO, OSRSG/VAC, *Breaking the Silence on Violence against Indigenous Girls, Adolescents, and Young Women*, (May 2013) https://www.unfpa.org/sites/default/files/resource-pdf/VAIWG_FINAL.pdf at vii.

[86] The World Bank, The Global Women’s Institute, Inter-American Development Bank, International Center for Research on Women, *Brief on Violence Against Older Women*, (May 2016) https://www.un.org/esa/socdev/documents/ageing/vawg_brief_on_older_women.pdf, at 8.

[87] CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art.12), ¶ 43, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000).

[88] Protocol of San Salvador, *supra* note 81, art. 2(f), 10.

[89] UNDRIP, *supra* note 68, art. 24(2).

[90] *Id.*

[91] *Id.* at art. 21.

[92] UNDRIP, *supra* note 68, art. 24.

[93] ADRIP, *supra* note 26, art 18(2).

[94] CESCR, *supra* note 87, ¶ 12.

[95] *Id.* at ¶ 12(a).

[96] *Id.* at ¶ 27.

[97] *Id.* at ¶ 12(b).

[98] Floriza Gennari et al., The World Bank, *Violence Against Women & Girls, Health Sector Brief* (Apr. 2015).

[99] CEDAW, *supra* note 54, art. 14(2)(b).

[100] Inter-Am. Comm'n H.R., *Legal Standards on Gender Equality and Women's Rights* ¶ 260, <https://www.oas.org/en/iachr/reports/pdfs/legalstandards.pdf>.

[101] *Fernández Ortega et al. v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, ¶260 (Inter-Am. Ct. H.R. Aug. 30, 2010.)

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[258] Protocol of San Salvador, *supra* note 81, art. 12(1).

[259] *Id.* at art. 12(2).

[260] Afr. Comm’ m. On Hum. And Peoples’ Rts. (“The Commission”), 374 Resolution on the Right to Food and Food Insecurity in Africa ¶ 1(a), ACHPR/Res.374(LX)2017 (May 22, 2017).

[261] *Id.*

[262] *Id.* at ¶ 1(e).

[263] FIAN, *The Right to Food and Nutrition: Beyond Food Security, Towards Food Sovereignty*, (Jul. 2016), https://www.fian.org/fileadmin/media/Publications/30th_Anniversary/Right_to_Food_and_Nutrition_Beyond_Food_Security__towards_Food_Sovereignty.pdf.

[264] CEDAW Comm., *supra* note 219, ¶ 62(b).

[265] UNDRIP, *supra* note 68, art. 20.; ADRIP, *supra* note 26, art. XXIX(1).

[266] ILO, *supra* note 67, art. 14(1).

[267] CEDAW Comm., *supra* note 219, ¶ 5.

- [268] CESCR, *supra* note 252, ¶ 5.; Hum. Rts. Council, *supra* note 3, ¶ 22.; *see also* Food and Agriculture Organization of the United Nations, *Human Rights Implications of Indigenous Peoples' Food Systems and Policy Recommendations*, 259, <http://www.fao.org/3/i3144e/i3144e15.pdf> (explaining that “Indigenous Peoples’ right to food is inseparable from their right to land, territories and resources, culture and self-determination.”).
- [269] United Nations Economic and Social Council (“ECOSOC”), *Indigenous’ Peoples’ Right to Food Crucially Dependent on Control of Resources*, HR/5092 (May 12, 2012).
- [270] Hum. Rts. Council, *supra* note 3, ¶ 23.
- [271] CEDAW Comm., *supra* note 219, ¶ 5.
- [272] OHCHR, *The Right to Food: Fact Sheet No. 54*, 22 (Apr. 13, 2010), <https://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>.
- [273] Hum. Rts. Council, *supra* note 3, ¶ 23.
- [274] CEDAW Comm., GR No.37, *supra* note 34, ¶ 1.
- [275] *Id.*
- [276] CEDAW Comm., *supra* note 219, ¶ 63.
- [277] Hum. Rts. Council, *supra* note 3, ¶ 22.
- [278] UNDROP, *supra* note 251, art. 7, 9.
- [279] Lidija Knuth, *The Right to Adequate Food and Indigenous Peoples*, Food and Agriculture Organization of the United Nations 48, (2009) <http://www.fao.org/3/a-ap552e.pdf>.
- [280] The Secretariat of the Permanent Forum on Indigenous Issues, *Gender and Indigenous Peoples 1* (2010), <https://www.un.org/esa/socdev/unpfii/documents/Briefing%20Notes%20Gender%20and%20Indigenous%20Women.pdf>.
- [281] CESCR, *supra* note 252, ¶ 7.
- [282] Hum. Rts. Council, *Report of the Special Rapporteur on the Right to Food*, ¶ 17 U.N. Doc. A/HRC/7/5 (Jan. 10, 2008).
- [283] Lidija Knuth, *supra* note 279, at 9.
- [284] *Id.*
- [285] *Id.*; *see also* Bethany Elliot et al., ‘*We are not being Heard*’: *Aboriginal Perspectives on Traditional Food Access and Food Security*, 6 J. Env’tl & Pub. Health (2012), (explaining how Indigenous inability to produce their own food can also affected their ability to access culturally appropriate food because “Aboriginal food security has focused on traditional foods within communities living on reserves”).
- [286] Video Interview with Victoria Sweet, White Earth Band of Ojibwe, NoVo Foundation (May 4, 2021).
- [287] United Nations General Assembly Resolution (G.A. Res.), 64/292, *The Human Right To Water and Sanitation*, A/Res/64/292, (28 July 2010).
- [288] Hum. Rts. Council Res, 15/9, *Human Rights and Access to Safe Drinking Water and Sanitation*, GE.A/HRC/15/31/Add.1.0-16633 (2010).
- [289] UDHR, *supra* note 43, art. 26; ICESCR, *supra* note 48, art. 11(1).
- [290] ICESCR, *supra* note 48, art. 12(1); *See also* UNDRIP, *supra* note 68, arts. 21(1), 24(2)(explaining that Indigenous peoples have the right to the improvement of their economic and social conditions, including in the areas of housing, sanitation, and health; explaining that indigenous individuals have the right to the enjoyment of the highest attainable standard of physical and mental health).
- [291] UDHR, *supra* note 43, art. 3; ICCPR, *supra* note 42, art. 6.
- [292] CESCR, General Comment No. 15: *The Right to Water*, ¶ 1, 3, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003).
- [293] *Id.* at 1.
- [294] Hum. Rts. Council, *supra* note 288, ¶ 3.

- [295] CESCR, *supra* note 82, ¶ 4, 11.
- [296] *Id.* at ¶ 12(a), 43(c).
- [297] CESCR, *supra* note 292, ¶ 12(a).
- [298] *Id.* at ¶ 12(b).
- [299] *Id.* at ¶ 12(c)(i)-(ii).
- [300] Inter-Am. Comm'n H.R., 2015 *Annual Report, Chapter IV.A Access To Water In The Americas: An Introduction to the Human Right To Water In The Inter-American System*, ¶ 26 (2015), <http://www.oas.org/en/iachr/docs/annual/2015/doc-en/InformeAnual2015-cap4A-agua-EN.pdf>.
- [301] International Justice Resource Center, *African Commission Adopts Guidelines on the Human Right to Water*, 8 (Jul. 2020), <https://ijrcenter.org/2020/07/08/african-commission-adopts-guidelines-on-the-human-right-to-water/>; Afr. Comm'm. on Hum. And People's Rts., *Guidelines on the Right to Water in Africa*, 16, 30 (Jul. 2019).
- [302] European Convention, *supra* note 54, art. 8 (stating that everyone has the right to respect for his private and family life).
- [303] Eur. Ct. H.R, *Factsheet – Environment and the European Convention on Human Rights*, (Mar. 2020) https://www.echr.coe.int/Documents/FS_Environment_ENG.pdf; see *Dzemyuk v. Ukraine*, 42488/02 Eur. Ct. H.R. (2014).
- [304] OHCHR, *The Right to Water, Fact Sheet No. 35*, 19 (Aug. 2010), <https://www.ohchr.org/documents/publications/factsheet35en.pdf>.
- [305] United Nations, U.N. Water, Task Force on *Gender and Water, Gender, Water, and Sanitation: A Policy Brief*, 10, 26 (2006).
- [306] See Marni Sommer et al., *Violence, gender and WASH: Spurring action on a complex, under-documented and sensitive topic*, 27 *Env't & Urbanization*, section 2(a) (2014).
- [307] IUCN, *supra* note 200, at 46.
- [308] U.N. Water *supra* note 305.
- [309] Hum. Rts. Council, *supra* note 6, ¶ 11.
- [310] CESCR, *supra* note 252, ¶ 6.
- [311] Julie Nania & Julia Guarino, *Restoring Sacred Waters: A Guide to Protecting Tribal Non-Consumptive Water Uses in the Colorado River Basin* (Getches-Wilkinson Ctr. for Natural Res., Energy, and the Env't, Univ. of Colo. Law Sch. 2014); Video Interview with Ethan Schuth, Water Resources Manager, Choctaw Nation of Oklahoma (September 26, 2020).
- [312] Video Interview with Dr. Pamela Palmater, Mi'kmaw citizen and member of Eel River Bar First Nation, Chair in Indigenous Governance, Ryerson University (Mar. 18, 2021).
- [313] Global Witness, *Defending Tomorrow: The Climate Crisis and Threats Against Land and Environmental Defenders* 6 (2020).
- [314] *Id.*
- [315] *Id.*
- [316] Hum. Rts. Council Res. 40/11, *Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development* ¶ 3, U.N. Doc. A/HRC/RES/40/11 (2019).
- [317] See generally OHCHR, *Special rapporteur on the situation of human rights defenders*, <https://www.ohchr.org/en/Issues/SRHRDefenders/Pages/SRHRDefendersIndex.aspx> (last accessed Jun. 15, 2021).
- [318] UDHR, *supra* note 43, art. 20(1) (stating that everyone has the right to freedom of peaceful assembly and association); ICCPR, *supra* note 42, arts. 2, 22 (stating that the right to peaceful assembly shall be recognized); (stating that everyone shall have the right to freedom of association with others).
- [319] Hum. Rts. Council Res. 24/5, *The Rights to freedom of peaceful assembly and of association*, ¶ 2, U.N. Doc. A/HRC/RES/24/5 (2013).

[320] G.A. Res. 53/144, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*. art. 1.5,12.1, U.N. Doc. A/RES/53/144 (Mar. 8, 1999).

[321] Banjul Charter, *supra* note 51, art. 10, 11 (stating that every individual shall have the rights to free association and free assembly with others); European Convention, *supra* note 52, art. 11.1 (stating that everyone has the right to freedom of peaceful assembly and association with others); *see also* American Declaration, *supra* note 44, art. 21, 22 (stating every person has the right to assemble and associate with others); Pact of San Jose, *supra* note 50, art. 15, 16 (stating that the right of peaceful assembly is recognized, and that everyone has the right to associate freely).

[322] ADRIP, *supra* note 26, art. 20(1).

[323] Inter-Am. Comm'n H.R., *Human Rights Defenders in the Americas, Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas*, OEA/SER.L/V/II, doc. AG/Res. 1671 (XXIX-0/99) (1999).

[324] *See IACHR Condemns Murders of Human Rights Defenders Linked to Environmental and Land Rights and to Rural Laborers in Brazil*, OAS (Jul. 27, 2018), http://www.oas.org/en/iachr/media_center/PReleases/2018/168.asp.

[325] Afr. Comm'n on Hum. and Peoples' Rts., *Resolution on the Protection of Human Rights Defenders in Africa*, ACHPR/Res. 69 (XXXV)03, (June 4, 2004) <https://www.achpr.org/sessions/resolutions?id=74>.

[326] Afr. Comm'n on Hum. And Peoples' Rts., *Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa -Interession Activity Report: 60th Ordinary Session of the African Commission on Human and Peoples' Rights*. (8-22 May, 2017).

[327] Afr. Comm'n on Hum. And Peoples' Rts., *Resolution on the Need to Adopt Legal Measures for the Protection of Women Human Rights Defenders in Africa*, ACHPR/Res. 409 (LXIII) (2018). Available at: <https://www.achpr.org/sessions/resolutions?id=430>.

[328] Council of Europe, *Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders, adopted* (Feb. 6, 2008).

[329] Global Witness, *supra* note 313, at 7.

[330] Hum. Rts. Council, *Report of the Special Rapporteur on the rights of indigenous peoples*, ¶ 27, U.N. Doc. A/HRC/39/17 (2018).

[331] *Id.* at 4.

[332] IUCN, *supra* note 200, at 103-113, 235.

[333] Earth Justice, *The Dakota Access Pipeline*, <https://earthjustice.org/cases/2016/the-dakota-access-pipeline> (last visited Mar. 6, 2021); Mary Kathryn Nagle & Gloria Steinem, *Sexual assault on the pipeline*, *The Boston Globe* (Sept. 26, 2016) <https://www.bostonglobe.com/opinion/2016/09/29/sexual-assault-pipeline/3jQscLWRcmD12cfefQTNsL/story.html>.

[334] Global Witness, *supra* note 313, at 7, 8.

[335] Hum. Rts. Council, *Report of the Special Rapporteur on the situation of human rights defenders: Situation on women human rights defenders*, ¶ 6, U.N. Doc. A/HRC/40/60 (2019).

[336] Association for Women's Rights in Development, *Woman Human Rights Defenders Confronting Extractive Industries: An Overview of Critical Risks and Human Rights Obligations* (2017), at 5.

[337] Hum. Rts. Council, *Report of the Special Rapporteur on the situation of Human Rights Defenders*, ¶ 47, U.N. Doc. A/HRC/13/22 (2009).

[338] IUCN, *supra* note 200, at 169.

[339] Association for Women's Rights in Development, *supra* note 336, at 5.

[340] Hum. Rts. Council, *supra* note 335, ¶ 64.

[341] Video Interview with Caroline LaPorte, *supra* note 15.

[342] Note that Indigenous intellectual and political systems often object to traditional interpretations of sovereignty in international law and practice as the political and social demarcation of territory over which governments exert exclusive jurisdiction and control. For example, Kahnawake Mohawk scholar, Taiaiake Alfred argues that “sovereignty is an exclusionary concept rooted in an adversarial and coercive notion of power.” Many Indigenous scholars, leaders and knowledge keepers adopt different ontologies of nature, and understand sovereignty in relational terms, as an extension and expressions of their relationships to land and territory. One example of this is found in the work of Mishig Nishnaabeg scholar, Leanne Betasamosake Simpson, who defines Indigenous sovereignty as, “at its core about relationships—relationships with each other and with plant and animal nations, with our lands and waters and with the spiritual world.” See Chris Hiller & Elizabeth Carlson, *These are Indigenous Lands: Foregrounding Settler Colonialism and Indigenous Sovereignty as Primary Contexts for Canadian Environmental Social Work*, 35 *Can. Soc. Work Rev.* 45 (2018); Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* 59 (2nd ed. 2009); Leanne Betasamosake Simpson, *The Place Where We All Live and Work Together: A Gendered Analysis of ‘Sovereignty’*, in Stephanie Nohelani Teves et al., *Native Studies Keywords* 18 (2018).

[343] Rep. of the Expert Mechanism on the Rights of Indigenous Peoples on its Fifth Session, ¶ 60, U.N. Doc. A/HRC/21/52 (Aug. 17, 2012).

[344] See UNDESA, *State of the World’s Indigenous People*, U.N. Doc. ST/ESA/328, 6 (2009).

[345] UNPFII, *Indigenous peoples Indigenous voices, Fact Sheet*, 1 (May 12, 2006) https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf.

[346] UNDRIP, *supra* note 68, art. 33(1).

[347] ADRIP, *supra* note 26, art. 1(2); ILO, *supra* note 67, art. 1, ¶ 2 (“Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.”); See also Special Rapporteur of the Subcommission on Prevention of Discrimination and Protection of Minorities, José R. Martínez Cobo, *Study of the Problem of Discrimination Against Indigenous Populations*, ¶ 31, U.N. Doc. E/CN.4/Sub.2/1986/7 (June 20, 1982) [hereinafter “Martinez-Cobo study”] (“On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group)”).

[348] UNPFII, *supra* note 345, at 1.

[349] Martinez-Cobo Study, *supra* note 347, ¶ 379.

[350] See also, UNDESA, *supra* note 344, at 6.

[351] UNDESA, *Indigenous Peoples at the U.N.*, <https://www.un.org/development/desa/indigenouspeoples/about-us.html> (last visited Dec. 29, 2020).

[352] ILO, *supra* note 67, art. 1, ¶ 1(a).

[353] *Id.* at ¶ 1(b). (“Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”).

[354] Michaela Pelican, *Complexities of Indigeneity and Autochthony: An African Example*, 36.1 *Am. Ethnologist* 52 (2009).

[355] Benedict Kingsbury, “*Indigenous Peoples*” in *International Law: A Constructivist Approach to the Asian Controversy*, 92.3 *American J. of Int’l L.* 414, 416 (1998).

[356] Peter Geschiere & Francis Nyamnjoh, *Capitalism and Autochthony: The Seesaw of Mobility and Belonging*, 12 *Pub. Culture*, 423 (2000); Isabelle Côté & Matthew I. Mitchell, *Deciphering ‘Sons of the Soil’ Conflicts: A Critical Survey of the Literature*, 16 *Ethnopolitics* 333, 351 (2017); During an exchange between CERD and the Rwandan delegation in 2016, the Rwandan government (delegate) asserted that there were no ‘Indigenous people or alien people in Rwanda. All persons had the same identity and the same culture.’ OHCHR, *Committee on the Elimination of Racial Discrimination examines report of Rwanda*, (Apr. 29, 2016) <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=19908&LangID>.

[357] Kirsty Gover, *Settler-State Political Theory, ‘Canzus’ and the UN Declaration on the Rights of Indigenous Peoples*, 26.2 *European J. of Int’l L.* 345, 353 (2015).

[358] Afr. Comm’n. on Hum. and Peoples’ Rts., *Advisory Opinion on the African Commission on Human and Peoples’ Rights on the United Nations Declaration on the Rights of Indigenous Peoples*, ¶ 10-12, (2007) https://www.achpr.org/public/Document/file/Any/un_advisory_opinion_idp_eng.pdf.

[359] *Afr. Comm'n. on Hum. and Peoples' Rts. v. Republic of Kenya*, No. 006/2012, decision, Afr. Ct. Hum. Peoples' Rts. ¶ 103, (May 26, 2017), https://www.escri-net.org/sites/default/files/caselaw/ogiek_case_full_judgment.pdf.

[360] *Id.* at ¶ 104.

[361] *Id.*

[362] *Id.* at ¶ 108.

[363] *Id.* at ¶ 107.

[364] *Afr. Comm'n. on Hum. and Peoples' Rts. v. Republic of Kenya*, *supra* note 355, at ¶ 109. Notably, the Kenyan government has utilized the COVID-19 pandemic as a pretext to outrightly defy this judgment. Beginning in July 2020, the national forest service launched a violent, land grabbing campaign to remove Ogiek communities from their lands in the Mau Forest. Evictions are taking place without the FPIC of the Ogiek Peoples, with an estimated of 300 families affected. See Lang, *supra* note 183; Minority Rights Group International, *Kenya Flouts African Court Judgment, Continues to Evict Ogiek in the Midst of the COVID-19 Pandemic* (Jul. 17, 2020), <https://minorityrights.org/2020/07/17/ogiek-evictions/>; Community Land Action Now, *Kenyan communities report illegal evictions during COVID-19* (Jul. 23, 2020), https://www.forestpeoples.org/sites/default/files/documents/2020.07.23%20CLAN%20Press%20Statement_FINAL_.pdf.

[365] *Id.* at ¶ 110.

[366] *Id.* at ¶ 111.

[367] *Saramaka People v. Suriname*, ¶ 79 (Inter-Am. Ct. H.R. Nov. 28, 2007).

[368] *Id.*

[369] *Id.*

[370] *Id.* at ¶ 86.

[371] ICCPR, *supra* note 42, art. 1; ICESCR, *supra* note 48, art. 1.

[372] ICCPR, *supra* note 42, art. 1.

[373] ADRIP, *supra* note 26, art. 3; UNDRIP, *supra* note 66, art. 3.

[374] UNDRIP, *supra* note 68, arts. 4-5.

[375] Hum. Rts. Council, *supra* note 3, ¶11.

[376] *Id.* at ¶12.

[377] Hum. Rts. Council, *Free, prior and informed consent: a human rights-based approach*, ¶ 11, 14, U.N. Doc. A/HRC/39/62 (2018).

[378] *Id.* at ¶ 14.

[379] UNDRIP, *supra* note 68, art. 32(2); ADRIP, *supra* note 26, art. 29(4).

[380] UNDRIP, *supra* note 68, art. 19; ADRIP, *supra* note 26, art. 23(2).

[381] UNDRIP, *supra* note 68, art. 28.

[382] *Id.* at art. 10.

[383] *Id.* at art. 29(2).

[384] *Id.* at art. 30(2); ADRIP, *supra* note 26, art. 30(5).

[385] *Saramaka People v. Suriname*, *supra* note 360, ¶ 194. (holding a violation of the Saramaka's right to land after Suriname granted logging and mining concessions to private companies within the traditional Saramaka people's territory without consultation or their consent).

[386] *Id.*

[387] ILO, *supra* note 67, art. 15(2), ¶ 1(a).

[388] *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, ¶ 180 (Inter-Am. Ct. H.R. Jun. 27, 2012) (holding that Indigenous groups must be consulted before governments approve investment projects affecting their traditional lands).

[389] G.A. Res. 41/128, *Declaration on the Right to Development*, Art. 1, ¶ 2, UN Doc. A/RES/41/128 (4 December 1986).

[390] G.A. Res. 69/2, *World Conference on Indigenous Peoples*, ¶ 21, UN Doc. A/RES/69/2 (Sept. 25, 2014).

[391] ICCPR, *supra* note 42, art. 1 (2); ICESCR, *supra* note 48, art. 1 (2), (“All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.”); Hum. Rts. Comm., *General Comment No. 12, Article 1 (The Right to Self-Determination of Peoples)*, ¶ 4, UN Doc. HRI/GEN/1/Rev.9 (Vol. I) (May 27, 2008).

[392] Hum. Rts. Council, *supra* note 3, ¶ 18.

[393] *Id.* at ¶ 13. (explaining that in the struggle for self-determination, women’s rights may be put aside because they are associated with Western values that favor individual over communal rights).

[394] *Id.* at ¶ 59.

[395] *Id.* at ¶ 60.

[396] Video Interview with Victoria Sweet, *supra* note 286.

[397] Lara Dominguez & Colin Luoma, *Decolonising Conservation Policy: How Colonial Land and Conservation Ideologies Persist and Perpetuate Indigenous Injustices at the Expense of the Environment*, MDPI (Feb. 25, 2020), <https://www.mdpi.com/2073-445X/9/3/65/pdf>.

[398] *Maya Indigenous Communities of the Toledo District v. Belize*, Case 12.053, Inter-Am. Comm’n H.R., Report No. 40/04, OEA/Ser.L.V.II.148, doc. 51 rev. ¶ 114 (2004).

[399] CESCR, General Comment No. 21: Right of Everyone to Take Part in Cultural Life, ¶ 36, U.N. Doc. E/C.12/GC/21 (Dec. 21, 2009).

[400] Hum. Rts. Council, *supra* note 3, ¶ 5.

[401] *Id.* at ¶ 16.

[402] *Id.*

[403] UDHR, *supra* note 43, art. 17: (1)(2); American Declaration, *supra* note 44, article (1)&(2); European Convention, *supra* note 54, art. 1; *see also*, ICERD, *supra* note 63, art. 5(d) (“Everyone has the right to non-discrimination and equality before the law in the enjoyment of the rights to (v) own property alone as well as in association with others”).

[404] American Declaration, *supra* note 44, art. 23.

[405] Jerome Lewis, *Ekila: Blood, Bodies, and Egalitarian Societies*, 14.2 J. of the Royal Anthropological Inst. 295 (2008); *See also Tribal Land and Indigenous Sovereignty*, Indigenous Environmental Network, <https://www.ienearth.org/what-is-indigenous-sovereignty-and-tribal-sovereignty/> (last visited Apr. 21, 2021) (stating that Indigenous sovereignty “consists of spiritual ways, culture, language, social and legal systems, political structures and inherent relationships with lands [and] waters.”).

[406] Hope Studios, *Melody Andrews- Decolonizing the Colonizer*, Vimeo (Jul. 2, 2015), <https://vimeo.com/132494877>.

[407] UNDRIP, *supra* note 68, art. 26.; ADRIP, *supra* note 26, art. 25 ((2) “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.”); ILO, *supra* note 67, art. 14(1), ¶ 1(a) (“The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.”).

[408] UNDRIP, *supra* note 68, art. 25 (“Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.”); ADRIP, *supra* note 26, art. 25 ((1) “Indigenous peoples have the right to maintain and strengthen their distinctive spiritual, cultural, and material relationship with their lands, territories, and resources and to uphold their responsibilities to pre- serve them for themselves and for future generations.”).

[409] *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, ¶ 153(b) (Inter-Am. Ct. H.R. Jan. 31, 2001) (holding Nicaragua violated the property rights of the Mayagna when the State granted a private corporation permission to log on the Tribe's communal lands).

[410] IACHR, *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*, OEA/Ser.L/V/II., doc. 56/09 ¶ 78 (2009).

[411] UNDRIP, *supra* note 68, art. 29.

[412] UNDRIP, *supra* note 68, art. 28; *See generally* Hum. Rts. Council, *supra* note 377, ¶ 11.

[413] Hum. Rts. Council, *supra* note 377, at ¶ 11.

[414] *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs* ¶ 135 (Inter-Am. Ct. H.R. Jun.17, 2005).

[415] Banjul Charter, *supra* note 51, art. 21(1).

[416] *Id.* at art. 21(5).

[417] *See* Hum. Rts. Council, *supra* note 3, ¶7.

[418] *Id.*

[419] Hum. Rts. Council, *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie*, U.N. Doc. A/HRC/17/31, principle 13 (2011) [hereinafter UNGPs].

[420] To "cause" human rights abuses in this context is to create adverse impacts through the company's own operations. *UN Guiding Principles on Business and Human Rights*, Shift Project, <https://www.shiftproject.org/un-guiding-principles/> (last visited Apr. 16, 2018).

[421] To "contribute" to human rights abuses in this context is to engage in purchasing practice or other business dealings that incentivize supply chain partners or subsidiaries to commit human rights abuses. Shift Project, *supra* note 416.

[422] To be "linked" to human rights abuses in this context is to be inadvertently implicated in harms, despite efforts to avoid such outcomes, in its business dealings. Shift Project, *supra* note 416.

[423] *See generally* UNGPs, *supra* note 419.

[424] OHCHR, *Frequently Asked Questions About the Guiding Principles on Business and Human Rights*, 15 (2014), http://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf.

[425] *See* UNGPs, *supra* note 419, principles 17-21.

[426] UNDRIP, *supra* note 68, arts. 10, 19, 28, & 29; ILO, *supra* note 67, art. 16; *See also* Carla F. Fredericks, *Operationalizing Free, Prior, and Informed Consent*, 80 *Alb. L. Rev.* 429, 430 (2017) (reviewing these guarantees).

[427] First adopted in 1976, the OECD Declaration and Decisions on International Investment and Multinational Enterprises is a policy commitment by adhering governments to provide an open and transparent environment for international investment and to encourage the positive contribution multinational enterprises can make to economic and social progress. The most recent review of the Declaration, in May 2011, concerned the Guidelines for Multinational Enterprises. OECD, *OECD Declaration and Decisions on International Investment and Multinational Enterprises: Basic Texts* (2012), <http://www.oecd.org/daf/inv/investment-policy/ConsolidatedDeclarationTexts.pdf>.

[428] CDESCR, *supra* note 399, ¶ 15(b).

[429] *Afr. Comm'n. on Hum. and Peoples' Rts. v. Republic of Kenya*, *supra* note 359, at ¶ 109.

[430] *Id.*

[431] Fred Pearce, Oxfam, *Common Ground: Securing Land Rights and Safeguarding the Earth* 41(2016), <https://www.oxfam.de/system/files/20160302-common-ground-land-rights.pdf>.

[432] UNPFII, *Together We Achieve*, 1 <https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2.html>.

[433] CEDAW, *supra* note 56, art. 15(2).

[434] *Id.*

[435] Maputo Protocol, *supra* note 18, art. 19(c).

[436] UNDROP, *supra* note 251, ¶ 3.

[437] *Id.* at art. 4; *See also*, CEDAW Comm., *supra* note 219, ¶ 57 (stating Indigenous rural women must have equal access with Indigenous men to ownership and control of land and other resources).

[438] CEDAW Comm., *supra* note 219, ¶ 59.

[439] Hum. Rts. Council, *supra* note 3, ¶ 16.

[440] *Id.*

[441] Afr. Comm'm. on Hum. and Peoples' Rights, *Resolution on Women's Right to Land and Productive Resources*, ¶ 17 (Nov. 5, 2013).

[442] Hum. Rts. Comm., *supra* note 152, ¶ 19.

[443] CEDAW, *supra* note 56, art. 16(1)(h) (states must ensure "[t]he same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration."); Maputo Protocol, *supra* note 18, art. 6(j) ("during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.").

[444] CEDAW Comm., General Recommendation No. 21: Equality in Marriage and Family Relations, ¶ 7, U.N. Doc. CEDAW A/49/38.

[445] *Id.* at ¶ 28.

[446] Hum. Rts. Comm., *supra* note 152, ¶ 26.

[447] Maputo Protocol, *supra* note 18, art. 7(d).

[448] Afr. Comm'm. on Hum. And Peoples' Rts., *General Comment on Article 7(d) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, ¶ 40, (Mar. 4, 2020).

[449] *Id.* at ¶ 42.

[450] CEDAW Comm., *supra* note 444, ¶ 32.

[451] *Id.* at ¶ 28.

[452] CEDAW Comm., General Recommendation No. 29: *General recommendation on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (Economic consequences of marriage, family relations and their dissolution)*, ¶ 6, U.N. Doc. CEDAW/C/GC/29.

[453] *Id.* at ¶ 49.

[454] Hum. Rts. Council, *Report of the Special Rapporteur on extreme poverty and human rights: Climate Change and Poverty*, ¶ 21, U.N. Doc. A/HRC/41/39.(2019).

[455] CEDAW Comm., *supra* note 452, ¶ 49.

[456] Hum. Rts. Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, ¶49, U.N. Doc. A/HRC/19/53 (2019).

[457] CEDAW Comm., *supra* note 452, ¶ 50; *See also* Hum. Rts. Comm., *supra* note 152, art 3 ¶ 19.

[458] CEDAW, E.S. and S.C. v. Tanz., ¶ 3.2, CEDAW/C/60/D/48/2013 (March 2015).

[459] *Id.* at ¶ 7.9.

[460] Maputo Protocol, *supra* note 18, art. 21.

[461] *Id.* at art. 21(1).

[462] UNPFII, *Backgrounder, Indigenous Languages*, 1 (2019)
<https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/04/Indigenous-Languages.pdf>.

- [463] Hum. Rts. Comm., General Comment No. 23: the rights of minorities, ¶ 7, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (Aug. 4, 1994).
- [464] UDHR, *supra* note 43, art. 27; *See also* CEDAW, *supra* note 56, art. 13 (asserting women’s right to take part in “all aspects of cultural life”).
- [465] ICCPR, *supra* note 42, art. 27.
- [466] Hum. Rts. Comm., *Concluding observations of the Human Rights Committee: Angela Poma Poma v. Peru*, ¶ 7.2, U.N. Doc. CCPR/C/95/D/1457/2006.
- [467] ICESCR, *supra* note 48, art. 15 (recognizing the right of everyone to “take part in cultural life . . . enjoy the benefits of scientific progress and its applications . . . [and] benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”).
- [468] CDESCR, *supra* note 399, ¶ 11.
- [469] *Id.* at ¶ 13.
- [470] *Id.* at ¶ 49(d).
- [471] American Declaration, *supra* note 44, art. 13.
- [472] Banjul Charter, *supra* note 51, art. 17(2).
- [473] Afr. Comm’ on Hum. and Peoples’ Rts., *Communication 276/03: Centre for Minority Rights Development & Minority Rights Group International (MRG) on behalf of the Endorois Community v. The Republic of Kenya*, ¶ 241, (Nov. 25, 2009) (Holding Kenya in violation of Article 17 for displacing the Endorois from their ancestral lands).
- [474] *Id.* (Interpreting article 17 of the Banjul Charter on the right to take part in cultural life.).
- [475] *Id.*
- [476] CDESCR, *supra* note 399, ¶ 15.
- [477] *Id.* at ¶ 15(a).
- [478] *Id.* at ¶ 15(b).
- [479] *Id.* at ¶ 15(c).
- [480] OHCHR, *Women’s cultural rights: empowering and transformative*, (Nov. 8, 2012) <https://www.ohchr.org/EN/NewsEvents/Pages/WomenCulturalRights.aspx>.
- [481] Hum. Rts. Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, ¶ 64, U.N. Doc. A/HRC/4/34 (2007).
- [482] CEDAW, *supra* note 56, art. 5(a) (“To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”); *See also Id.* at art. 2(f) (states parties undertake “To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”).
- [483] Maputo Protocol, *supra* note 18, art. 2(2) (“States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.”).
- [484] *Id.* at art. 17.
- [485] Hum. Rts. Council, *supra* note 481, ¶ 17.
- [486] Nicole Girard, *Minority and Indigenous Women’s right to culture: identity, gender and opportunities for empowerment*, 39 (2016), <https://minorityrights.org/wp-content/uploads/2016/07/Minority-and-indigenous-womens-right-to-culture.pdf>.
- [487] Hum. Rts. Council, *supra* note 481, ¶ 19.

[488] ADRIP, *supra* note 26, art. 28; *See also* UNDROP, *supra* note 251, art. 26 (“Peasants and other people working in rural areas have the right to enjoy their own culture and to pursue freely their cultural development, without interference or any form of discrimination. They also have the right to maintain, express, control, protect and develop their traditional and local knowledge, such as ways of life, methods of production or technology, or customs and tradition. No one may invoke cultural rights to infringe upon the human rights guaranteed by international law or to limit their scope.”); ILO, *supra* note 67, art. 13 ¶ 1(a) (describing the right to culture as it relates to Indigenous peoples “Governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.”).

[489] UNDRIP, *supra* note 68, art. 8.

[490] *Id.* at art. 11. *See also Id.* at 11(2) (“States shall provide redress through effective mechanisms, which may include restitution ...”).

[491] *Id.* at art. 8.

[492] *Id.* at art. 12.

[493] *Id.*

[494] UNPFII, *Indigenous People Indigenous Voices: Climate change and indigenous peoples*, 1 (2008) https://www.un.org/en/events/indigenousday/pdf/Backgrounder_ClimateChange_FINAL.pdf; Hum. Rts. Comm. *supra* note 459, ¶ 1.

[495] UNPFII, *supra* note 494, at ¶ 7.

[496] UNPFII, *Traditional Knowledge*, 1 (2019) <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/04/Traditional-Knowledge-backgrounder-FINAL.pdf>.

[497] UNPFII, *Indigenous People’s Traditional Knowledge Must Be Preserved, Valued Globally, Speakers Stress as Permanent Forum Opens Annual Session*, HR/5431 (Apr. 22, 2019).

[498] UNDRIP, *supra* note 68, Preamble.

[499] Hum. Rts. Council, *supra* note 239, ¶ 16.

[500] Amber L. Mueller ET AL., *supra* note 185.

[501] UNDESA, *supra* note 185.

[502] *Id.*

[503] *Culture, Department of Economic and Social Affairs*, UN.org <https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/culture.html> (last visited Oct. 20, 2020).

[504] OHCHR, Rep. of the Office of the United Nations High Comm’r for Human Rts., *Analytical study on gender-responsive climate action for the full and effective enjoyment of the rights of women*, ¶ 22, U.N. Doc. A/HRC/41/26 (May 01, 2019).

[505] *Id.*

[506] Video Interview with Kate Finn, *supra* note 14.

[507] G.A. Res. 69/2, *supra* note 390.

[508] UDHR, *supra* note 43, art. 8 (asserting that “[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating fundamental and human rights granted him by the constitution or by law.”); ICCPR, *supra* note 42, art. 2(3(a)) (holding states must “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”).

[509] ICCPR, *supra* note 42, art. 2(a).

[510] ICERD, *supra* note 63, art. 6 (“States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”).

[511] Pact of San Jose, *supra* note 50, art. 25.

- [512] Inter-Am. Ct. H.R., *supra* note 414, par. 61
- [513] Rio Declaration, *supra* note 212, principle 13.
- [514] *Id.*
- [515] CEDAW Comm., GR No.37, *supra* note 34, ¶ 26.
- [516] *Id.* at ¶ 26(c).
- [517] CEDAW, *supra* note 56, art. 2; *See also* CEDAW Comm., General Recommendation No. 33: on women’s access to justice, ¶14(c), U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015).
- [518] CEDAW Comm., *supra* note 517, ¶ 209.
- [519] Convention of Belém do Pará, *supra* note 62, art. 4.
- [520] Istanbul Convention, *supra* note 16, art. 29(1).
- [521] *Id.* at art. 29(2).
- [522] CEDAW Comm., *supra* note 517, ¶ 13.
- [523] CEDAW Comm., *supra* note 219, ¶ 25(c).
- [524] Maputo Protocol, *supra* note 18, art. 8.
- [525] CEDAW Comm., *supra* note 16, ¶ 24.
- [526] CEDAW Comm., *supra* note 517, ¶ 209.
- [527] Jaskiran Dhillon, *Indigenous Girls and the Violence of Settler Colonial Policing*, 4 Univ. of Toronto (2015).
- [528] CEDAW Comm., *supra* note 517, ¶ 207.
- [529] Maputo Protocol, *supra* note 18, art. 4.
- [530] Hum. Rts. Council, *supra* note 3, ¶ 43.
- [531] UNDRIP, *supra* note 68, art. 40; *See also* UNDRIP art. 11(2) (“States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.”); UNDRIP art. 28(1) (“Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.”).
- [532] ILO, *supra* note 67, art. 9(2), ¶ 1(a).
- [533] ADRIP, *supra* note 26, art. 33.
- [534] Hum. Rts. Council, *Report of the Special Rapporteur on Indigenous Rights*, ¶64, U.N. Doc. A/HRC/42/37 (Aug. 2, 2019).
- [535] Hum. Rts. Council, *Study by the Expert Mechanism on the Rights of Indigenous Peoples*, ¶37-40, U.N. Doc. A/HRC/27/65 (Aug. 7, 2014); IACHR, *Booklet: Indigenous Women* (2017), <https://www.oas.org/en/iachr/indigenous/docs/pdf/Brochure-MujeresIndigenas-en.pdf>.
- [536] Hum. Rts. Council, *supra* note 3, ¶44; IACHR, *supra* note 528.
- [537] Hum. Rts. Council, *supra* note 535, ¶ 34.
- [538] *Id.* at ¶ 7.
- [539] Finn. Gajda et. al., *Responsible Resource Development and Prevention of Sex Trafficking: Safeguarding Native Women and Children on the Fort Berthold Reservation*, Univ. of Colorado L. School American Indian Law Clinic (Feb. 2016).
- [540] *Id.*; *see also* Mary Kathryn Nagel & Molly Smith, *supra* note 6.

[541] CEDAW Comm., *supra* note 517, ¶ 8 (“Discrimination against women, based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence, which affects women in particular, has an adverse impact on the ability of women to gain access to justice on an equal basis with men.”).

[542] *Id.*

[543] *Id.* at ¶ 9.

[544] *Id.* at ¶ 10.

[545] Roxanne Daniel, *Since you Asked: What Data Exists about Native American People in the Criminal Justice System?*, Prison Policy Initiative (Apr. 22, 2020), <https://www.prisonpolicy.org/blog/2020/04/22/native/>; *See also*, Kriti Sharma, *The Nightmare Lives of Indigenous Prisoners in Australia*, Human Rights Watch (Aug. 9, 2018), <https://www.hrw.org/news/2018/08/09/nightmare-lives-indigenous-prisoners-australia> (highlighting how aboriginals only constitute 2% of the population, but account for more than 29% of the criminal population); *See also*, Leyland Cecco, *‘National Travesty’: Report Shows One Third of Canada’s Prisoners are Indigenous*, The Guardian (Jan. 22, 2020), <https://www.theguardian.com/world/2020/jan/22/one-third-canada-prisoners-indigenous-report> (explaining how Indigenous only make up 5% of the Canadian population but account for more than 30% of the prison population).

[546] OHCHR, *Access to Justice for Indigenous Peoples* (July 25, 2013), <https://www.ohchr.org/EN/NewsEvents/Pages/JusticeForIndigenousPeoples.aspx>.

[547] *Id.*

[548] UNDRIP, *supra* note 68, art. 4.

[549] UNDRIP, *supra* note 68, art. 5.

[550] ADRIP, *supra* note 26, art. 22.

[551] Hum. Rts. Council, *supra* note 535, ¶13-14.

[552] OHCHR, *Human Rights and Traditional Justice Systems in Africa*, 1, 2 17 (2016), https://www.ohchr.org/Documents/Publications/HR_PUB_16_2_HR_and_Traditional_Justice_Systems_in_Africa.pdf. However, to address violations, it is critical for customary justice structures to respect human rights. *See* Tamar Ezer, *Forging a Path for Women’s Rights in Customary Law*, 27 *Hastings Women’s Law Journal* 65 (2016).

[553] Courtney Marsh, *Honoring the Global Indigenous Roots of Restorative Justice: Potential Restorative Justice Approaches for Child Welfare*, Center for the Study of Social Policy (Nov. 1, 2019), <https://cssp.org/2019/11/honoring-the-global-indigenous-roots-of-restorative-justice/>.

[554] Femke Wijdekop, *Restorative Justice: A Suitable Response to Environmental Crime?*, Harmony with Nature UN, <http://files.harmonywithnatureun.org/uploads/upload745.pdf> (last visited May 10, 2021).

[555] *Id.*

[556] Hum. Rts. Council, *supra* note 535, ¶ 7.

[557] Just Alternatives, *Restorative Justice 101 for Victims*, <https://justalternatives.org/victimsurvivor-resources-2/restorative-justice-101-for-victims/> (last visited Oct. 5, 2020).

[558] Chief Probation Officers of California, *Restorative Justice*, <https://www.cpoc.org/position-paper/restorative-justice> (last visited Oct. 5, 2020).

[559] Justice Education Society, *Aboriginal Restorative Justice Remedies*, <https://www.justiceeducation.ca/about-us/research/aboriginal-sentencing/restorative-justice> (last visited Oct. 5, 2020).

[560] OHCHR, *supra* note 552, at ¶18.

[561] Tribal Justice, *Navajo Nation Peacemaking Program*, <http://www.tribaljustice.org/places/traditional-practices/navajo-nation-peacemaking-program/> (last visited May 10, 2021).

[562] *Id.*

[563] Justice Education Society, *supra* note 559.

[564] Ada Pecos Melton, *Indigenous Justice Systems and Tribal Society*, AIDAINC, http://www.aidainc.net/publications/ij_systems.htm (last visited Feb. 28, 2021).

[565] Hum. Rts. Council, *supra* note 3, ¶ 44.

[566] *Id.*

[567] *Id.*

[568] CEDAW Comm., *supra* note 517, ¶ 5. For an example of innovative work with customary justice structures to protect women's rights, please see a project by the Kenya Legal and Ethical Issues Network on HIV and AIDS ("KELIN") with HIV affected widows, enabling them to return to their land. Tamar Ezer, *supra* note 552, at 76, 77.

[569] Video Interview with Dr. Pamela Palmater, *supra* note 312.

[570] Video Interview with Victoria Sweet, *supra* note 286.

[571] UDHR, *supra* note 43, art. 21(1).

[572] ICCPR, *supra* note 42, art. 25(a).

[573] Pact of San Jose, *supra* note 50, art. 23.

[574] Banjul Charter, *supra* note 51, art. 13. *See also* ADRIP, *supra* note 26, art. 20 ("Every person having legal capacity is entitled to participate in the government of his country, directly or through his representative, and to take part in popular elections which shall be by secret ballot and shall be honest, periodic and free.").

[575] UNDRIP, *supra* note 68, art. 5. *See also Id.* at art. 18 ("Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.").

[576] ADRIP, *supra* note 26, art. 23(1).

[577] *Id.* at art. 23(2).

[578] CEDAW, *supra* note 56, art. 7.

[579] CEDAW Comm., General Recommendation No. 23: Political and public life ¶ 26, U.N. Doc. CEDAW/A/52/38 (1997).

[580] Maputo Protocol, *supra* note 18, art. 9.

[581] CEDAW Comm., *supra* note 579, ¶ 47(a).

[582] *Id.* at ¶ 43.

[583] *Id.* at ¶ 17. *See also Id.* at ¶ 27 ("When women are not broadly represented in the senior levels of government or are inadequately or not consulted at all, government policy will not be comprehensive and effective.").

[584] CEDAW Comm., *supra* note 219, ¶ 6.

[585] CEDAW, *supra* note 56, art. 14(2).

[586] CEDAW Comm., *supra* note 219, ¶ 6.

[587] CEDAW Comm., GR No.37, *supra* note 34, ¶ 36.

[588] *Id.* at ¶ 7.

[589] *Id.* at ¶ 36.

[590] *Id.*

[591] *Id.* at ¶ 26.

[592] UDHR, *supra* note 43, art. 19.

[593] ICCPR, *supra* note 42, art. 19.

[594] ADRIP, *supra* note 26, art. 4 ("Every person has the right to freedom of investigation, of opinion and of the expression and dissemination of ideas by any medium whatsoever.").

[595] Pact of San Jose, *supra* note 50, art. 13 (“Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.”).

[596] Banjul Charter, *supra* note 51, art. 9(2) (“Every individual shall have the right to express and disseminate his opinions within the law.”).

[597] European Convention, *supra* note 54, art. 10(1) (“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...”).

[598] Hum. Rts. Council, *supra* note 3, ¶47(d); ADRIP, *supra* note 26, art. 7(2).

[599] “Violence against land and violence against women are inextricable.” Video Interview with Kate Finn, *supra* note 14.

[600] Leanne Betasamosake Simpson, *As We Have Always Done: Indigenous freedom through radical resistance* 45, (2017).

[601] IUCN, *supra* note 200, at 46.

[602] Video Interview with Dr. Pamela Palmater, *supra* note 312.

[603] UNDRIP, *supra* note 68, art. 32(2); OHCHR, *End of Mission Statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to the United States of America* (Mar. 3, 2017), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21274>

[604] Video Interview with Kate Finn, *supra* note 14; Video Interview with Chris Foley, Cherokee Nation, Attorney, Indian Law Resource Center (June 29, 2020). *See also* ADRIP, *supra* note 26 art. 29(1) (“Indigenous peoples have the right to maintain and determine their own priorities with respect to their political, economic, social, and cultural development in conformity with their own world view.”).

[605] CEDAW Comm., GR No.37, *supra* note 34, ¶ 36.

[606] *Id.*

[607] *Id.* at ¶ 26. *See also* UNDRIP, *supra* note 68, Preamble (“Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment.”).

[608] As U.N. bodies, have recognized, violence against individuals based on their sexual orientation and/or gender identity as a form of GBV, since they are “driven by a desire to punish those defying gender norms.” Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. Hum. Rts. Council, *supra* note 19, ¶ 20.

[609] In some North American Indigenous communities, “two-spirit” people occupy an essential social and spiritual role. Indian Health Services; *supra* note 21.

[610] The Inter-American Commission on Human Rights has identified that “spiritual violence takes place when acts of violence and discrimination against Indigenous women not only harm those women individually, but also negatively impact the collective identity of the communities to which they belong.” Inter-Am. Comm’n on H.R., *Indigenous Women and their Human Rights in the Americas*, OEA/Ser.L/V/II/. Doc. 44/17 ¶80 (2017); ADRIP *supra* note 26, art. 18(2) (further recognizing the spiritual dimension of collective and individual rights to health.).

[611] UNPFII, *Indigenous Women and Environmental Violence: A Rights-Based Approach Addressing Impacts of Environmental Contamination on Indigenous Women, Girls and Future Generations*, (2012), https://www.un.org/esa/socdev/unpfii/documents/EGM12_carmen_waghiyi.pdf.

[612] Video Interview with Kate Finn, *supra* note 14.

[613] *See* CEDAW Comm., *supra* note 122, ¶ 34 (a), (c); Video Interview with Kate Finn, *supra* note 14; In Canada, for instance, the Indigenous women are doubly victimized by the criminal justice process as nearly half of their cases remain unsolved. Final Report, *supra* note 5, at 561.

[614] Jaskiran Dhillon, *Indigenous Girls and the Violence of Settler Colonial Policing*, 4 Univ. of Toronto (2015), <https://jps.library.utoronto.ca/index.php/des/article/view/22826>; Video Interview with Dr. Pamela Palmater, *supra* note 308.

[615] CPPCG, *supra* note 170, art. 2; Final Report, *supra* note 5, at 54, 267.

- [616] Video Interview with Caroline LaPorte, *supra* note 15; Video Interview with Chris Foley, *supra* note 604; Video Interview with Kate Finn, *supra* note 14.
- [617] Video Interview with Aimée Craft, *supra* note 203; Lori Jump, *Domestic Violence: Updates and Perspectives from the Native Community*, StrongHearts Native Helpline (Oct. 29, 2020), https://www.youtube.com/watch?v=vUh_roj8bcE.
- [618] ADRIP, *supra* note 26, art. 19(1) (“Indigenous peoples have the right to live in harmony with nature and to a healthy, safe, and sustainable environment, essential conditions for the full enjoyment of the right to life, to their spirituality, worldview, and collective well-being.”).
- [619] John H. Knox & Ramin Pejan, Introduction to The Human Right to a Healthy Environment, 18 (2018).
- [620] Glen Sean Coulthard, Red Skin, White Masks: Rejecting the Colonial Politics of Recognition, (2014); ILO, *Covid-19 and the world of work: A focus on indigenous and tribal peoples*, 4 (2020).
- [621] CESCR, *supra* note 252, ¶ 7; Hum. Rts. Council, *supra* note 282, ¶ 17; Bethany Elliot et al., *supra* note 285, at 6.
- [622] Julie Nania & Julia Guarino, *supra* note 307. Video Interview with Ethan Schuth, *supra* note 307. CESCR acknowledges that water is “essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life).” CESCR, *supra* note 292, ¶ 6.
- [623] UN.org, *supra* note 503; OHCHR, *supra* note 504, ¶ 22.
- [624] *Id.*
- [625] Hum. Rts. Council, *supra* note 3, ¶ 22.
- [626] U.N. Water *supra* note 305; Marni Sommer et al., *supra* note 306.
- [627] *Id.*
- [628] Women’s Earth Alliance & Native Youth Sexual Health Network, Violence on the Land, Violence on Our Bodies, 17, 20 (2016), <http://landbodydefense.org/uploads/files/VLVBReportToolkit2016.pdf>. The framework of Environmental Reproductive Justice, first coined by Mohawk scholar Katsi Cook captures the disparate environmental and reproductive harms borne by Indigenous women and girls. Elizabeth Hoover et al, *Indigenous Peoples of North America: Environmental Exposures and Reproductive Justice* 120(2) *Envtl. Health Persp.*, (2012); Jessica L. Liddell & Sarah G. Kingston, “*Something Was Attacking Them and Their Reproductive Organs*”: *Environmental Reproductive Justice in an Indigenous Tribe in the United States Gulf Coast*, 18(2) *Int’l J. Environ. Pub. Health*, 665 (2021).
- [629] Hum. Rts. Council, *supra* note 337, ¶ 114; Video Interview with Kate Finn, *supra* note 14.
- [630] Hum. Rts. Council, *supra* note 330, ¶ 91(g).
- [631] Hum. Rts. Council, *supra* note 335, ¶ 108(b).
- [632] Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, FAO, ¶ 17 (Nov. 2004), <http://www.fao.org/3/a-y7937e.pdf>.
- [633] UNDRIP, *supra* note 68, art. 5 (“Indigenous peoples have the rights to maintain and strengthen their distinct political, legal economic, social, and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.”).
- [634] CEDAW Comm., *supra* note 517, ¶14(c).
- [635] *Id.* at ¶ 13; CEDAW Comm., *supra* note 219, ¶ 25(c); Maputo Protocol, *supra* note 18, art. 8.
- [636] OHCHR, *Economic and Social Council, Promotion and Protection of Human Rights: Study on the Right to Truth*, ¶ 15, 37, U.N. Doc. E/CN.4/2006/91, (Feb. 8, 2006).
- [637] United Nations Secretary-General, *Message on the International Day for the Right to Truth of Victims of Gross Human Rights Violations* (Mar. 24, 2011), <https://www.un.org/sg/en/content/sg/statement/2011-03-24/secretary-generals-message-international-day-right-truth-victims>. The Inter-American Court on Human Rights likewise emphasized the right to know the truth is “a collective right that ensures society access to information that is essential for the workings of democratic systems.” *Ellacuria v. El Salvador*, Case 10.488, Inter-Am. Ct. H.R., Report No. 136/99, OEA/Ser.L/V/II.106 doc. 3 rev. ¶ 224 (1999).
- [638] Video Interview with Caroline LaPorte, *supra* note 15; Video Interview with Kate Finn, *supra* note 14.