

# CONCEPT NOTE FOR A GENERAL RECOMMENDATION ON THE RIGHTS OF INDIGENOUS WOMEN

## I. CONTEXT

1. There are approximately 370 million people in the world who identify themselves as belonging to Indigenous or Tribal Peoples. They are distributed in around 90 countries<sup>1</sup>, with a larger proportion in Asia<sup>2</sup>. According to the FAO, there are more than 5,000 groups that speak around 4,000 languages and who care for 80% of the planet's biodiversity. Although Indigenous Peoples represent less than 5% of the world's population, they constitute 15% of people living in poverty and roughly a third of the 900 million people living in extreme poverty in rural areas<sup>3</sup>. Of these vulnerable groups, women are often present in greater proportion.

2. Although urbanization has depopulated many rural areas, indigenous women play a fundamental role in the protection and care of the land, and the use in agricultural production. They have knowledge that is vital for the world's food security and for protection from the effects of climate change and natural disasters. Likewise, they help ensure the preservation of their communities and their identity through the maintenance and generational transmission of language, culture and art.

3. However, the colonial experience has resulted in various forms of discrimination, violence, and exclusion, both open and hidden, all of which is reflected in the systematic violation of the individual and collective rights of indigenous women. Unlike the situations faced by non-indigenous women, indigenous women face these violations not only on the basis of gender but also on other aspects of their identities.

4. At the Fourth World United Nations Conference on Women in 1995, indigenous women managed to put their demands on the international agenda and gain recognition as a group in need of specific protections. The adoption of the *Beijing Declaration of Indigenous Women* and the *Beijing Declaration and Platform for Action* paved the way to international visibility and since then, various social mobilizations on the part of indigenous women's organizations have managed to draw attention to their situation in instruments such as the *Declaration of the International Forum of Indigenous Women - Beijing + 5* (New York, 2000), *Abya Yala's Continental Declarations of Indigenous Women of the Americas*, the *Conference on Indigenous Women and Gender Relations* (Denmark, 2004), the *Declaration of the Indigenous Women's Network on Biodiversity* (Malaysia, 2004), and the document on *Political Positioning and Plan of Action of Indigenous Women of the World* (Peru, 2013)<sup>4</sup>.

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<sup>1</sup> UN Department of Economic and Social Affairs. State of the World's Indigenous People, New York, 2009.

<sup>2</sup> See FAO 8 April 2018. Site: <http://www.fao.org/indigenous-peoples/es/>; UN Department of Economic and Social Affairs. State of the World's Indigenous People, New York, 2009.

<sup>3</sup> Ibid.

<sup>4</sup> Petition to the CEDAW Committee for the creation of a General Recommendation to guarantee respect and application of individual and collective rights of indigenous and aboriginal women, presented by various organizations of Guatemalan indigenous women's organizations, with the support of organizations from Mexico, Honduras, Costa Rica, Panama, Colombia, Nepal and

5. The *UN Declaration on the Rights of Indigenous Peoples* of 2007<sup>5</sup> constitutes a milestone for the understanding and protection of indigenous rights. As such, it requires a particular interpretation that aligns it with the *Convention on the Elimination of Discrimination against Women - CEDAW*<sup>6</sup>. This Declaration establishes a universal framework that sets out the minimum standards for Indigenous Peoples' survival, dignity, well-being, and rights. The Declaration addresses both individual and collective rights, including issues of cultural identity, education, employment, and language. It also condemns discrimination against Indigenous Peoples and promotes their full and effective participation in all matters affecting them. Importantly, the Declaration guarantees their right to be different and to formulate their own priorities in economic, social, and cultural development<sup>7</sup>. Article 22 paragraphs 1) and 2) and Article 44 deserves particular attention.

6. Indigenous women participated actively during the negotiation process prior to the adoption of the Declaration that began in 1982 with the creation of the *Working Group on Indigenous Populations (WGIP)*<sup>8</sup>. Their influence was pivotal for the recognition of their rights and special needs in measures to improve economic and social conditions, as well as to overcome discrimination and violence that undermine their rights<sup>9</sup>.

7. The Economic and Social Council of the United Nations, has formalized spaces to address issues of Indigenous Peoples in general, but also specific issues that concern indigenous women. These include the *Office of the Special Rapporteur on Indigenous Peoples*, the *Expert Mechanism on the Rights of Indigenous Peoples* and the *Permanent Forum of Indigenous Peoples*. In the framework of the latter, Funds, Programs and Specialized Agencies of the United Nations have promoted measures to increase their protection and contribute to overcoming the factors that impede the full realization of their rights. Among these are *UN Women*, the *United Nations Development Program (UNDP)*, the *United Nations Children's Fund (UNICEF)*, the *Population Fund (UNFPA)*, the *Food and Agriculture Organization (FAO)*, the *International Labour Organization (ILO)*, the *Organization for Education, Science and Culture (UNESCO)*, the *International Fund for the Development of Agriculture (IFAD)*. The *Working Group on Indigenous Women (IANGWE)* was also created within the Inter-Agency Network of the United Nations on Women and Gender Equality.

8. In recent decades, indigenous women have expanded their international and regional visibility, as a result of the development and emergence of movements and networks. At the international and regional levels, the International Forum of Indigenous Women (FIMI) has played a crucial

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Canada. English version in 2017, Versión en español en 2016. (See appendices No. 1 and 2). Citations are from "Petition to the CEDAW Committee, 2016" and "Petition to the CEDAW Committee, 2017"

<sup>5</sup> UN, General Assembly. Declaration on the Rights of Indigenous Peoples, 13 September 2007. Cited as "the Declaration" or "UNDRIP."

<sup>6</sup> UN, General Assembly. Convention on the Elimination of all Forms of Discrimination Against Women, New York, 18 December 1979. Cited as "CEDAW."

<sup>7</sup> Ibid.

<sup>8</sup> Rose-Kambell, Ellen. Guía sobre los Derechos de las Mujer Indígena en virtud de la Declaración de la Eliminación de todas las Formas de Discriminación contra la Mujer [A guide to indigenous peoples' rights under the International Convention on the Elimination of All Forms of Racial Discrimination], 2<sup>a</sup>. Ed, 2012.

<sup>9</sup> UNDRIP (Arts. 21 and 22), 2007; Rose-Kambell, 2012.

role as well as the Continental Network of Indigenous Women, the Continental Summit of Indigenous Women of the Americas, the Alliance of Indigenous Women of Central America and Mexico, the Network of Indigenous Youth in Latin America, the Organization of African Indigenous Women - (AIWO), and the Network of Asian Indigenous Women. Likewise, other networks with thematic objectives have been created such as the Network of Indigenous Women on Biodiversity in Latin America and the Caribbean, the Major Group of Indigenous Peoples on the Sustainable Development Goals (SDG), and the Conference of the Association for Women's Rights and Development (AWID)<sup>10</sup>.

## II. INDIGENOUS WOMEN IN CEDAW

9. The rights of indigenous women are protected by the Universal Declaration of Human Rights and by the International Covenants and subsequent Human Rights treaties. They include "sex" and "race" as categories to be considered in the protection of the right to equality and the prohibition of discrimination. However, the CEDAW is the only binding international instrument that specifically protects the rights of all women, including indigenous women.

10. The *Committee on the Elimination of Discrimination against Women*<sup>11</sup> during the reviews of the periodic reports submitted by some States Parties has requested information on the situation of indigenous women, and, consequently, the Committee's concerns have been raised in some of its Final Observations and General Recommendations. This growing trend is directly related to the greater presence of indigenous women in the delegations of non-governmental organizations and the presentation of alternative reports on the issue.

11. Regarding the CEDAW Committee's Final Observations between 1994 and 2011 during which time 332 national reports were reviewed, only 69 made reference to indigenous women<sup>12</sup>. Even though the proportion of these has increased from 14% between 1994 and 2000, to 24% between 2001 and 2011, it does not cover all countries that have an indigenous population<sup>13</sup>. The reasons that may explain this, in addition to the lack of attention provided by the Committee, include the scarce information presented by State Parties and non-governmental organizations on the discrimination that affects indigenous women, the low level of organization of indigenous women in some regions, and the geographical distribution of Indigenous Peoples in relation to CEDAW States Parties<sup>14</sup>.

12. In accordance with the mandate of the Optional Protocol and in response to the call of several Canadian organizations, the Committee conducted an investigation into the disappearance and

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<sup>10</sup> Petition to the CEDAW Committee, 2017. Additional information provided by the International Forum on Indigenous Women, FIMI, 10 May 2018.

<sup>11</sup> Cited as "the CEDAW Committee" or "the Committee".

<sup>12</sup> Rose-Kambell, 2012; Petition to the CEDAW Committee, 2017. Between these two documents, there is some discrepancy. Rose-Kambell points out that between 1994 and 2000, the Committee has studied 95 reports and only 13 have mentioned indigenous women, while the Petition to the CEDAW Committee presented by the Indigenous Women's Organizations states that over the same period, the Committee studied 97 reports with only 11 mentioning indigenous women.

<sup>13</sup> Rose-Kambell, 2012

<sup>14</sup> Ibid.

murder of indigenous women in that country<sup>15</sup>. After an on-site visit in March 2015, the Committee determined that indigenous women in Canada suffer serious social deprivation that subjects them to poverty and increases their vulnerability to various forms of violence<sup>16</sup>. The report also concludes that when they report abuses they are further victimized by the police and therefore require specific protection, stronger than that given to women in general. Important recommendations were made to the State, including the development of a public investigation and a national action plan<sup>17</sup>.

13. In accordance to the mandate of the Optional Protocol, the Committee also processed an individual communication in 2012 about the rights of Cecilia Kell, a Canadian citizen and indigenous woman of the Rae-Edzo community in the Northwest Territories of Canada<sup>18</sup>. She was stripped of her house by her husband while being subjected to domestic violence. The Committee determined that the State should offer reparation measures and also recommended that it should hire indigenous women to provide legal assistance to other women<sup>19</sup>. More generally, the Committee indicated that Canada should review its legal assistance for indigenous women in order to guarantee access to justice<sup>20</sup>.

14. Regarding the General Recommendations issued by the Committee, recommendations No. 24 on women and health (1999), No. 25 which defines temporary special measures (2004), No. 30 on elderly women and the protection of their human rights (2013), No. 33 on women's access to justice (2015), No. 34 on the rights of rural women (2016), No. 35 on the Gender-based violence against women (2017), No. 36 on the rights of women and girls to education (2017), and No. 37 on dimensions of gender-related disaster risk reduction in the context of climate change (2018), have all highlighted the situation of indigenous women. General Recommendation No. 34 on the rights of rural women treats indigenous women's issues more broadly with respect to the right to education, to work, to health, and access to justice. Although there has been a significant evolution during the last 5 years, the specific vulnerabilities of indigenous women have not been systematically reported and the lack of dedicated recommendations has impeded adequate follow-up on the compliance of States on their rights.

15. Indigenous women's organizations recognize the progress made in the protection of their rights, but they maintain that it is still insufficient, as the Convention does not mention indigenous women in its text, and it does not establish specific obligations for the States, which represents an important obstacle to properly addressing their demands<sup>21</sup>. In addition, they assert that there is inadequate

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<sup>15</sup> Committee on the Elimination of Discrimination against Women. Report of the inquiry concerning Canada under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/OP.8/CAN/1, March 30, 2015.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Committee on the Elimination of Discrimination against Women. Communication No. 19/2008, Views adopted by the Committee at its fifty-first session, 13 February to 2 March, 2012.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Petition to the CEDAW Committee, CEDAW, 2017

protection against racism<sup>22</sup> and that the established scope of rights does not include the particular ways in which they experience discrimination<sup>23</sup>. They further criticize that the scant attention paid to these issues by the Committee has focused almost exclusively on indigenous women in Canada, the United States and Latin America, even though the regions of Africa and Asia have the largest number of indigenous population in the world<sup>24</sup>.

16. Bearing in mind the urgent need to strengthen the work of the Committee in relation to the protection of the rights of indigenous women, as well as to meet the demands raised by their organizations and, in compliance with the recommendations issued by the Permanent Forum on Indigenous Peoples<sup>25</sup> and the 2030 Agenda for Sustainable Development, it is essential to adopt a specific General Recommendation whose text interprets the rights derived from CEDAW in accordance with the UN Declaration on the Rights of Indigenous Peoples, the ILO Convention No.169<sup>26</sup>, and other international instruments. The purpose is to offer States Parties and society in general, a comprehensive vision of the scope of each of the individual and collective rights from the perspective of indigenous women with the aim to eliminate the various forms of discrimination affecting their lives.

### **III. MAIN CHALLENGES**

#### **1. Institutions that protect the rights of indigenous women**

##### **1.1 Legislative framework**

17. Political constitutions protect the right of indigenous women through provisions in favour of Indigenous Peoples. These guarantees are reinforced by the international framework in the ILO Convention 169 and CEDAW. It is also necessary to consider their effective access to regional Human Rights systems. The analysis of this legislative framework is fundamental to determine whether or not indigenous women are adequately protected at the highest legal levels.

##### **1.2 State Institutions and Public Policies**

18. There are various levels of development in countries with indigenous populations. More generally, Ministries or Institutes are created to mainstream policies in favour of Indigenous Peoples, whose authorities coordinate with other Ministries and with the national women's mechanisms, to comply with obligations derived from CEDAW. Public policies require situation analyses, timely and detailed, with adequate statistical information in order to determine if they have enough budget, if they take into consideration the specific conditions in which indigenous

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<sup>22</sup> Indigenous Women's Movement Tz'ununija. Analysis and elements for a proposed General Recommendation for guaranteeing the rights of Indigenous/Aboriginal Women for consideration by the CEDAW Committee, Guatemala, June 2013. (See Appendix No. 3). Cited as: "Indigenous Women's Movement Tz'ununija Petition, 2013".

<sup>23</sup> Rose-Kambell, 2012.

<sup>24</sup> Petition to the CEDAW Committee, 2017.

<sup>25</sup> UN, Economic and Social Council. Permanent Forum on Indigenous Issues, report on the third session. New York, 2004; UN, Permanent Forum on Indigenous Issues. General discussion on rural women, Geneva, 2013.

<sup>26</sup> ILO, Indigenous and Tribal Peoples in Independent Countries, (No. 169), Geneva, 27 June 1989. Cited as "ILO Convention No. 169".

women live, and if there are adequate consultation processes in place for their design, implementation, evaluation and assessment. Many civil society organizations with the support of indigenous women have developed important initiatives that should be taken into consideration as good practices, especially in the protection of economic, social and cultural rights, even if in many cases the scope of these practices remain limited.

### **1.3 Access to justice and equality before the law**

19. Indigenous women generally have a dual relationship with the justice system, especially when States have recognized the existence of special jurisdictions applicable to Indigenous Peoples. It is essential to analyse the areas of application of special justice (indigenous jurisdiction) and state justice (national justice system) to assess the degree of protection of the fundamental rights of indigenous women. Likewise, the actions of the indigenous jurisdiction must take international human rights standards as reference so as not to undermine the protection of the rights of indigenous women.

## **2. Rights with individual and collective dimension**

### **2.1 Right to self-determination**

20. **Self-determination** is a fundamental right of Indigenous Peoples, i.e., the right to decide on their own political status and on policies of social, economic and cultural development, with the real and effective possibility of having autonomous organizations, in accordance with their culture and worldview<sup>27</sup>. It assumes, in turn, that before the State adopts any decision that may affect them in any of those aspects, they are consulted and are guaranteed full participation, in a broad and informed manner<sup>28</sup>. In all of their platforms, women have expressed the importance of this substantial right whose protection is indispensable for the realization of other rights.

21. It is important that indigenous women, within the framework of the right to self-determination, also have the possibility of affirming their autonomy as a means to enhance the important role they play in their communities. Their empowerment should not be considered a disintegrating factor to their culture or interpreted as imposing individual rights over collective rights<sup>29</sup>. The lack of recognition and respect for the independence and autonomy of indigenous women by many indigenous men in their environment exposes them to situations of violence and discrimination, both within their communities and in society in general. It is necessary to achieve a balance between the protection of the right to self-determination of Indigenous Peoples and the protection of indigenous women, as national citizens and right holders<sup>30</sup>.

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<sup>27</sup> UNDRIP, 2007; ILO Convention No. 169, 1989.

<sup>28</sup> Ibid

<sup>29</sup> UN, Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz, 2015; Department of Economic and Social Affairs. Indigenous Women and the United Nations System, Good Practices and Lessons Learned. Compiled by the Secretariat of the Permanent Forum on Indigenous Issues for the Task Force on Indigenous Women/Inter-Agency Network on Women and Gender Equality, 2007.

<sup>30</sup> Ibid

## 2.2 Land rights

22. Infringements on **land rights** is one of the situations that most severely impacts indigenous women. The women play a very important role in their communities as food providers, administrators of natural resources, conservators of sacred places, transmitters of their traditions and producers of art, among others. All of these aspects have forged the identity of indigenous women and nurtured their profound knowledge, intimately linked to the land and natural resources. But given the way in which Indigenous Peoples understand the world and organize themselves, indigenous women are not generally trained in other forms of subsistence and do not have ownership of the lands they occupy<sup>31</sup>.

23. The loss of territory as a consequence of situations such as armed conflicts, militarization, the execution of mega development projects, extractive industries, mass tourism and, in some cases, the declaration of territories as heritage of Humanity or conservation areas<sup>32</sup> can seriously harm indigenous women and place them in a situation of great vulnerability, being forced to leave their land, and to migrate to cities, often in situations of extreme poverty and vulnerability, leaving them with multiple discriminations to contend with. They might be forced to integrate into other cultures and more individualistic economic systems that threaten their identity.

24. In such circumstances, indigenous women are forced to seek other means to survive, remaining exposed to precarious and harmful working conditions, labour or sexual exploitation or, worse, human trafficking<sup>33</sup>. Likewise, their disadvantages on the right to own property, is evident, given the obstacles they face in land titling, and thus access to credit and/or other economic resources<sup>34</sup>.

## 2.3 Rights to water and food

25. The **rights to water and food** are collective rights intimately related to the role played by indigenous women in their communities. Although their violation affects Indigenous Peoples in general, the impact and damage is greater for women because they are responsible for ensuring access to food and water in their communities.

26. Indigenous women play a fundamental role in their communities to ensure survival, supply and administration of resources. The restriction in access to land and natural resources also prevents the exercise of traditions on food and feeding practices. By losing control over natural resources, they also lose a share of the contribution they make to their communities to survive, such as their dedication to grazing, foraging and hunting<sup>35</sup>.

27. One of the main consequences of the total or partial loss of their territories due to the execution of exploration projects, the exploitation of indigenous lands by third parties, the expansion of agro-

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<sup>31</sup> Ibid.

<sup>32</sup> Ibid; UN, State of the World's Indigenous People, 2009.

<sup>33</sup> Ibid.; ILO, Indigenous women workers with case studies from Bangladesh, Nepal and the Americas, Diana Vinding and Ellen-Rose Kambel, 2012

<sup>34</sup> UN, United Nations Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the United Nations Permanent Forum on Indigenous Issues. Gender and Indigenous people, Briefing Note No. 2, (n.d.).

<sup>35</sup> UN, Report of the Special Rapporteur on the Rights of Indigenous Peoples, 2015.

industry and, in more serious cases, armed conflicts or the militarization of their lands, is the violation of Indigenous Peoples' rights to water and food. These rights are also threatened by climate change and by the degradation of the environment.

## 2.4 Cultural rights

28. The preservation of the **cultural rights** of Indigenous Peoples is a task carried out mainly by indigenous women. They are responsible for practicing, maintaining, protecting, developing, and teaching their traditions, customs and ceremonies, transmitting them to future generations along with stories, languages, knowledge and cultural expressions. They are identity builders. It is important that the State support these efforts and promote the right to cultural diversity, respect for indigenous culture and the use of their languages. This support is still very weak and lacks sufficient guarantees<sup>36</sup>.

29. The declaration of indigenous territories as tourist areas, without prior consultation, often makes women change their traditions and occupations so as to service or entertain tourists<sup>37</sup>. Additionally, the media does not generally receive any sanction when they promote racism by making use of the image of indigenous women in audio-visual or photographic exhibitions for profit or for commercial, institutional, political or tourist advertising, among others<sup>38</sup>.

30. The lack of guarantees to protect the intellectual property and cultural heritage of Indigenous Peoples is a situation that mostly affects indigenous women who serve as "guardians" of traditional cultural knowledge and expressions, many of whom are commercially exploited, without any intellectual or economic recognition<sup>39</sup>. In order to defend themselves against these practices, women often face people or institutions imbued with prejudices that ignore this knowledge and make them invisible by considering these expressions part of the "public domain", which makes their protection even more difficult<sup>40</sup>.

31. Although there are very few cases, it is important to recognize the progress that some Indigenous Peoples have been able to achieve in Panama, Peru, Australia, Canada, New Zealand and Portugal<sup>41</sup> with varying degrees of success. Likewise, the work carried out by the World Intellectual Property Organization, in particular that of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, as well as the publication of information material that includes useful practices to protect the intellectual property of Indigenous Peoples<sup>42</sup>.

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> ICC, WIPO. Marketing crafts and visual arts: role of intellectual property. Practical Guide. Geneva, 2003; Petition to the CEDAW Committee, 2017

<sup>40</sup> WIPO, Intellectual Property Handbook: Policy, Law and Use, 2004.

<sup>41</sup> Panama, Law N° 20, about the special regime of intellectual property of Indigenous Peoples collective rights, for the protection and defense of their cultural identity and traditional knowledge, 2000; Peru, Law N° 27811, which establishes the protection of the collective knowledge of Indigenous Peoples related to biological resources, 2002; Law of Commercial Brands of New Zealand, 2002; WIPO, Intellectual Property Handbook: Policy, Law and Use, 2004.

<sup>42</sup> WIPO, Protect and Promote Your Culture: Practical Guide on the Intellectual Property of Indigenous Peoples and Local Communities, Geneva, 2017.



### 3. Specific rights recognized by CEDAW

#### 3.1 Equality and non-discrimination

32. In addition to the **discrimination** they suffer for reasons of gender, both within their communities and in society in general, indigenous women, are discriminated against because of their own indigenous identity or origin. At the same time, situations such as poverty, marginalization and social exclusion, structural racism, lack of recognition of their languages and illiteracy affect them disproportionately. The interaction of these factors also encourages discrimination<sup>43</sup>.

33. To assess the severity of discrimination against indigenous women, it is necessary to understand the various layers of discrimination that increase their vulnerability and elevate the risk of being victims of human rights violations. Unlike the situation of non-indigenous women, the discrimination suffered by indigenous women also constitutes a serious collective impact transcending their communities and their people.

34. **Equality** before the law and its correlate in access to justice is also a challenge for indigenous women because they are not always heard by the indigenous justice authorities and they confront enormous barriers when they present complaints to the formal justice system.

#### 3.2 Life free of violence, prostitution and human trafficking

35. Indigenous women are also victims of multiple acts of **violence**. It has been estimated that one out of three indigenous women has suffered sexual violence<sup>44</sup>. Sexual abuse, genital mutilation, forced and early marriages, sexual slavery, assassinations, disappearances, forced recruitment, forced prostitution, human trafficking and the non-consensual use of their images as decorative and exotic objects by the media, are some of the types of violence that indigenous women face<sup>45</sup>.

36. They also experience particular forms of violence that they themselves have called ecological violence, referring to the damaging impact of land policies and practices that affects women's health, lifestyles, social status and cultural survival<sup>46</sup>. They also suffer spiritual violence as a result of attacks on their spiritual practices<sup>47</sup>.

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<sup>43</sup> UN, Report of the Special Rapporteur on the Rights of Indigenous Peoples, 2015.

<sup>44</sup> Ibid

<sup>45</sup> UN, Report of the Special Rapporteur on the Rights of Indigenous Peoples 2015; IACHR, Indigenous Women and their Situation in the Americas, 2017; United Nations Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the United Nations Permanent Forum on Indigenous Issues. Gender and Indigenous people, Briefing Note No. 1, (n.d.); UN, Economic and Social Council, Permanent Forum on Indigenous Issues. Study on the extent of violence against indigenous women and girls in terms of article 22 (2) of the United Nations Declaration on the Rights of Indigenous Peoples. New York, 12 February 2013.

<sup>46</sup> FIMI. Mairin Iwanka Rayan: Indigenous Women Stand Against Violence. A Companion Report to the Secretary General's Study on Violence Against Women, 2006.

<sup>47</sup> Ibid

37. The complexity of the forms of violence suffered by indigenous women lies not only in the seriousness of the events themselves, but also in how discrimination is perpetuated, in its reproduction, permanence and impunity; and how, unlike the violence suffered by non-indigenous women, its effects transcend the community, and as a consequence they often experience greater violence against them. This situation is exacerbated when, in addition to violence, indigenous women are exposed to situations of armed conflict, militarization of their lands and compulsory execution of mega exploration projects and extractive industries.

38. Confronting violence against indigenous women requires that all communities, in addition to States, adopt comprehensive measures to prevent, investigate and punish it. This highlights, for example, the creation of specific measures to address violence against indigenous women in some tribal systems<sup>48</sup>. Some communities have adopted the imposition of exile as a punishment for acts of violence, or have abolished some discriminatory practices<sup>49</sup>. Some States condition the recognition of indigenous justice, grounding it in the respect and guarantee of the rights of women in their communities<sup>50</sup>.

### **3.3 Political participation and representation**

39. The **political participation and representation** of indigenous women in State decision-making bodies is essential to ensure the respect and guarantee of their rights, as well as the inclusion of their realities and demands in public policies. The under-representation of this collective group is usually due, not only to the discrimination they suffer because of their gender, but also to the existence of barriers to their economic, social and cultural rights, such as the lack of economic resources, the geographical inaccessibility of State institutions<sup>51</sup>, illiteracy and the inability to communicate in their language. Although indigenous women play a transcendental role in their communities, governance systems and indigenous power structures often rest on gender stereotypes<sup>52</sup> and, therefore, exclude indigenous women and their perspective from the administration of traditional justice, the development of social norms and decision-making.

40. Although important measures have been taken in some countries to ensure the right to participation and political representation of indigenous women, such as the establishment of quotas by ethnic origin and gender<sup>53</sup>, in addition to the growth of indigenous women's organizations and with a significant increase in their participation in international forums<sup>54</sup>, greater efforts are still needed to make their participation and political representation a major practice among the countries and to adopt effective measures to combat the obstacles they face.

41. Another right of indigenous women that is systematically compromised has to do with the difficulties they face in registering the births of their children in the national registry office and to

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<sup>48</sup> UN, Report of the Special Rapporteur on the Rights of Indigenous Peoples, 2015.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> IACHR, 2017

<sup>52</sup> Ibid; UN, Report of the Special Rapporteur on the Rights of Indigenous Peoples, 2015.

<sup>53</sup> IACHR, 2017; UN, Report of the Special Rapporteur on the Rights of Indigenous Peoples, 2015.

<sup>54</sup> Ibid.

obtain adequate documentation which consequently prevents them from having access to the services provided by the State<sup>55</sup>. Geographical barriers, language barriers, and limitations on the ability to freely choose the name of their children are some of the reasons for this problem which increases their exposure to situations of statelessness or trafficking<sup>56</sup>.

### 3.4 Economic, social and cultural rights

42. To reduce gaps in inequality and poverty, as well as to achieve the effective realization of all other rights of indigenous women, it is necessary to eliminate barriers to access educational services and guarantee the exercise of the **right to education**. Situations such as geographical inaccessibility, insufficient reflection of indigenous cultures, traditions, history, languages and perspectives in educational curricula, the persistence of negative stereotypes about indigenous identity and culture, the lack of education in their language, the promotion of individualism and competitiveness above communal forms of life and cooperation, lack of secure and sustainable financing, among others, are factors that limit access to education<sup>57</sup>.

43. In addition to that mentioned above, indigenous women are hindered in their right to education by social expectations for reproducing their role as caregivers and for having primary responsibility for domestic chores, in addition to cultural practices such as early marriages that has teen pregnancy as its immediate consequence. Young women often lack the support and motivation for study from their family and community. Influenced by negative stereotypes or fears, they consider investment in the education of women unnecessary<sup>58</sup>. In the case of those who manage to go to school, they are exposed to rape and sexual abuse given the geographical barriers and the long journeys they must travel<sup>59</sup>.

44. Education for indigenous women is essential to achieve their empowerment and strengthen their role as agents of change within their community.

45. With regard to the **right to health**, indigenous women suffer the worst consequences with regard to their sexual and reproductive rights. In general, health services do not take into account the expectations, traditions and beliefs of indigenous women and their communities<sup>60</sup>. They face different forms of obstetric violence, such as the lack or denial of information about their health options and treatments, forced medical interventions, such as those that force them to give birth in the supine position, unnecessary use of medications, and forced sterilizations, among others<sup>61</sup>. Geographic and language barriers also limit access to this right<sup>62</sup>.

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<sup>55</sup> UN, Study on the Extent of Violence against Indigenous Women and Girls, 2013.

<sup>56</sup> Ibid.

<sup>57</sup> UN, Report of the Special Rapporteur on the Rights of Indigenous Peoples, 2015; UN, State of the World's Indigenous People, 2009; United Nations Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the United Nations Permanent Forum on Indigenous Issues. Gender and Indigenous People's Education, Briefing Note No. 3, (n.d.);

<sup>58</sup> Ibid.

<sup>59</sup> UN, Report of the Special Rapporteur on the Rights of Indigenous Peoples, 2015.

<sup>60</sup> IACHR, 2017.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

46. Unlike non-indigenous women, the impact on the health of indigenous women transcends the individual sphere, and affects all members of the community, with an impact on the physical, social, mental, environmental and spiritual dimensions<sup>63</sup>. It is necessary to consider this reality in order to understand the collective impact generated by limiting access to the right to health of indigenous women.

47. Indigenous women are also affected by the violation of their **right to work**, in particular due to the situation of poverty in which they live, together with forced displacement to the cities, as a result of the loss of their lands. They arrive in conditions of extreme need, face problems with adaptation and lacking awareness of possible forms of work other than the traditional ones in their community. This situation exposes them to jobs involving poor working conditions and vulnerable to exploitation. In general, indigenous women perform domestic or manual work, with a very low salary, without contracts or benefits, generally in a situation of informality that exposes them to situations of violence such as sexual exploitation and human trafficking<sup>64</sup>.

### **3.5 Marriage and family**

48. Early marriages are common practice in many indigenous communities. International law, including the Convention, considers that marriages should not be formalized before the age of 18. It is necessary to analyse the consequences of such practices in the lives of adolescent women and guarantee the right to education to reduce and eliminate adolescent pregnancy. Various agencies are concerned about early marriages, in particular because they limit the rights to education and sexual and reproductive health of indigenous girls, and because they constitute a major obstacle to overcoming gender inequality and poverty<sup>65</sup>.

49. While indigenous women recognize that this is a discriminatory practice<sup>66</sup>, they express criticism of the way in which the Convention protects the institution of marriage. They consider that it comes from a legal, Eurocentric and religious perspective that has prevailed over the understanding of the life in partnership of the indigenous women and that it fails to take into account the influences of the colonialism on its understanding and approach<sup>67</sup>.

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<sup>63</sup> ECLAC, *Indigenous Women in Latin America: Demographic and Social Dynamics in a Human Rights Framework*, 2013.

<sup>64</sup> ILO, *Indigenous People and Climate Change: From victims to change agents through decent work*, Geneva, 2017. IACHR, 2017.

<sup>65</sup> UNFPA, *Motherhood in Childhood: Facing the challenge of adolescent pregnancy*, Nueva York, 2013; CEPAL/CELADE, *La fecundidad en América Latina: transición o revolución*, [Fecundity in Latin America: transition or revolution], serie Seminarios y Conferencias, No 36 (LC/L.2097-P), Santiago de Chile, 2004, en De Popolo, Fabiana y Cobos, Ma. Isabel, *Salud sexual y reproductiva en Pueblos Indígenas de América Latina: avances y desafíos en el marco de la CIPD*, (s.f.).

<sup>66</sup> UN, Human Rights Council. Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen, Mexico, December 2003.

<sup>67</sup> Indigenous Women's Movement Tz'ununija Petition, 2013.

## **4. Situations of greater vulnerability that require urgent and priority attention**

### **4.1 Indigenous women human rights defenders**

50. Indigenous women human rights defenders have been frequently subjected to violence and their activism has been criminalized<sup>68</sup>. In several Latin American countries, it has been noted that that being a woman and promoting the defence of their rights, especially the right to land and the environment, are two factors that increase the risk of acts of retaliation<sup>69</sup>. This greater exposure to violence has seen many women leaders being threatened, intimidated and discouraged from their activism. In addition to the obstacles they face in accessing justice, it is highly probable that the violence they suffer will go unpunished.

51. This situation also has a collective impact since the work of these defenders is important to protect other women in indigenous communities. At the same time, it is a way to ensure a balance between the duty of the State to guarantee the rights of women and for respect of the right to self-determination and autonomy of Indigenous Peoples<sup>70</sup>.

### **4.2 Indigenous women in detention**

52. Even with the limitations generated by the absence of figures and data, it is known that the presence of indigenous women being held in detention is disproportionate. This situation is increasing in several countries and, according to the information available, disproportionately so when compared to the situation of indigenous men<sup>71</sup>.

53. To understand the extent of these incarcerations, the justice system must take into account that the reason why indigenous women commit crimes is generally related to previous violations of their rights and with life stories in which they have endured a constant threats of violence, a high rate of abuse by their families, serious health problems and a situation of poverty and unemployment, among other socio-economic situations<sup>72</sup>. It is necessary that trials and imprisonment in the case of indigenous women remain sensitive to the greater vulnerability they face compared to the situation of non-indigenous women<sup>73</sup>.

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<sup>68</sup> UN, Report of the Special Rapporteur on the Rights of Indigenous Peoples, 2015; IACHR, 2016.

<sup>69</sup> UN, Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya 20 December 2010. This situation is mostly found in Colombia, Mexico, Chile, Guatemala and Brazil; IACHR, Criminalization of the work of human rights defenders, Washington, 2015.

<sup>70</sup> UN, Report of the Special Rapporteur on the Rights of Indigenous Peoples, 2015.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.; UN, Human Rights Council. Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, 2003.

<sup>73</sup> Ibid.

### 4.3 Indigenous women in situations of armed conflict and post conflict

54. Research shows that 27% of contemporary armed conflicts are motivated by the control of natural resources and the land, either directly or as an underlying cause<sup>74</sup>. Many of these conflicts have taken place in the territories of indigenous communities, given the greater concentration of biodiversity, mineral and water resources that are found there<sup>75</sup>. In these cases, indigenous women are exposed to multiple acts of sexual, psychological and physical violence, through which armed groups seek to spread terror in communities in order to dominate or evict them<sup>76</sup>. These acts of violence include rape, prostitution or sexual slavery which, in many cases, also lead to ostracism or stigmatization of women victims within their communities, in particular, when they become pregnant<sup>77</sup>.

55. Armed conflicts also have a significant impact on the ecosystem and the environment which has a serious impact on indigenous women. They cause the pollution of forests, waters and ancestral and sacred lands, as well as the destruction of animal life<sup>78</sup>. In turn, the release of toxic material, including nuclear waste, and the use of mines and explosives, render the land unproductive<sup>79</sup>. Given that indigenous women care for the land and its biodiversity, and are responsible for providing food to their community and for keeping sacred rites and traditions intact, these violations not only have a collective impact but are perceived as a direct attack against them<sup>80</sup>.

56. The above-mentioned situation is worsened and reinforced by the daily structural violence and systematic exclusion that indigenous women face due to the "endemic violation of their collective, civil and political, economic, social and cultural rights"<sup>81</sup>.

### 4.4 Indigenous women and natural disasters and climate change

57. Natural disasters and climate change have a direct impact on indigenous women, insofar as they are responsible in their communities for food security, through production and agricultural work<sup>82</sup>. In the historical context of discrimination in which they have had limited access to land tenure and although they are the ones who look after it and work, they frequently do not have property titles<sup>83</sup>. The land they can usually get is of lower quality and more prone to floods, erosion

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<sup>74</sup> Escola de Cultura de Pau. Alerta 2017! Informe sobre conflictos, derechos humanos y construcción de paz. Barcelona, [Alerta 2017! Report about conflicts, human rights and peace building], 2017.

<sup>75</sup> UN, State of the World's Indigenous People, 2009.

<sup>76</sup> UN Security Council Resolution No. 1820, 2008; UN, Report of the Special Rapporteur on the Rights of Indigenous Peoples, 2015.

<sup>77</sup> UN, State of the World's Indigenous People, 2009; Rights and Democracy, Indigenous Women and Militarization, in Information Kit: Portrait of Indigenous Women of Asia, 2006

<sup>78</sup> UN, State of the World's Indigenous People, 2009.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> UN, Report of the Special Rapporteur on the Rights of Indigenous Peoples, 2015

<sup>82</sup> Permanent Forum on Indigenous Issues Seventh session (2008.) Issue paper on indigenous peoples and climate change. (E/C.19/2008/CRP.2.7). New York; CEDAW Committee, General Recommendation No. 37. Gender-related dimensions of disaster risk reduction in the context of climate change, 2018.

<sup>83</sup> CEDAW Committee, General Recommendation No. 37, 2018.

or other adverse weather events, and women directly suffer the economic impact of prices offered for their products<sup>84</sup>.

58. Indigenous women assert that any measures adopted must respond to their worldviews, such as being cared for in their native languages, and provide them with clothing appropriate to their culture<sup>85</sup>. The incorporation of an approach that fails to take into account the identity of indigenous women amounts to a threat to their rights.

59. However, indigenous women should not be considered merely victims but also as important agents of change. They have an ancestral knowledge of land and natural resources that is a fundamental and necessary contribution to the design and adoption of prevention, attention and reconstruction measures that can confront natural disasters and the effects of climate change. For this reason, it is essential to guarantee their access and participation at all levels of decision-making<sup>86</sup>.

#### **4.5 Indigenous women in situations of eviction, forced displacement, migration, refuge and asylum**

60. When indigenous women are forced, usually by economic reasons, to move from their homes due to eviction, forced displacement, migration, asylum or refuge, they face realities that affect them in a particular way and increase their vulnerability since they are more exposed to violence, discrimination, social exclusion and poverty<sup>87</sup>.

61. Indigenous women, especially indigenous girls, are exposed to greater vulnerability as a result of statelessness, or the lack of identification records or documents that prevent them from accessing protection and consular assistance<sup>88</sup>. They are also at risk when crossing borders where they suffer from harassment, extortion, rape and sexual trafficking by State agents, as is the case of indigenous women belonging to pastoral or nomadic peoples, or when entering towns whose territory is divided by national borders that they have to cross daily due to their work<sup>89</sup>.

62. In addition to the uprooting that comes with eviction, forced displacement and migration in general, indigenous women often suffer psychological traumas caused by being forced to renounce their traditional dress, clothing, language, worldview, and culture<sup>90</sup>.

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<sup>84</sup> Ibid

<sup>85</sup> Indigenous Women's Movement Tz'ununija Petition, 2013.

<sup>86</sup> CEDAW Committee, General Recommendation No. 37, 2018.

<sup>87</sup> UN, Human Rights Council. Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, 2003; FIMI, Mairin Iwanka Rayan, 2006; ILO, Indigenous people and climate change, 2017.

<sup>88</sup> CEDAW Committee, General Recommendation No. 30. on women in conflict prevention, conflict and post-conflict situations, 2013.

<sup>89</sup> FIMI, Mairin Iwanka Rayan, 2006

<sup>90</sup> Indigenous Women's Movement Tz'ununija Petition, 2013.

#### **IV. APPENDICES**

APPENDIX No. 1: Request to the CEDAW Committee for the issuance of a general recommendation to guarantee the respect and application of the individual and collective rights of indigenous / indigenous women, 2016.

APPENDIX No. 2: Petition to the CEDAW Committee for the issuance of a general recommendation to guarantee the respect and application of the individual and collective rights of indigenous / native women, 2017.

APPENDIX No. 3: Tz'ununija Indigenous Women's Movement. Analysis and elements for a proposal of "General Recommendation to guarantee the rights of indigenous / original women" to be considered by the Committee for the Elimination of Discrimination against Women, 2013.