



COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

**GENERAL RECOMMENDATION  
NO. 39 (2022) ON THE RIGHTS OF  
INDIGENOUS WOMEN AND GIRLS**

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**Convention on the Elimination  
of All Forms of Discrimination  
against Women**

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**Committee on the Elimination of Discrimination  
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## I. Introduction

1. The present general recommendation provides guidance to States parties on legislative, policy and other relevant measures to ensure the implementation of their obligations in relation to the rights of Indigenous women and girls under the Convention on the Elimination of All Forms of Discrimination against Women. There are an estimated 476.6 million Indigenous Peoples globally, of whom more than half (238.4 million) are women.<sup>1</sup> Discrimination and violence are recurrent phenomena in the lives of many Indigenous women and girls living in rural, remote and urban areas. The present general recommendation applies to Indigenous women and girls both inside and outside Indigenous territories.

2. The present general recommendation takes into account the voices of Indigenous women and girls as driving actors and leaders inside and outside their communities. It identifies and addresses different forms of intersectional discrimination faced by Indigenous women and girls and their key role as leaders, knowledge-bearers and transmitters of culture among their peoples, communities and families, as well as society as a whole. The Committee on the Elimination of Discrimination against Women has consistently identified patterns of discrimination faced by Indigenous women and girls in the exercise of their human rights,<sup>2</sup> and the factors that continue to exacerbate discrimination against them. Such discrimination is often intersectional and based on factors such as sex; gender; Indigenous origin, status or identity; race; ethnicity; disability; age; language; socioeconomic status; and HIV/AIDS status.<sup>3</sup>

3. Intersectional discrimination against Indigenous women and girls must be understood in the context of the multifaceted nature of their identity. They face discrimination and gender-based violence, frequently committed by State and non-State actors. These forms of violence and discrimination are widespread and are often treated with impunity. Indigenous women and girls often have an inextricable link and relation to their peoples, lands, territories, natural resources and culture. To ensure compliance with articles 1 and 2 and other relevant provisions of the Convention, State action, legislation and policies must reflect and respect the multifaceted identity of Indigenous women and girls. States parties should also take into consideration the intersectional discrimination experienced by Indigenous women and girls on the basis of factors such as sex; gender; Indigenous origin, status or identity; race; ethnicity; disability; age; language; socioeconomic status; and HIV/AIDS status.

4. State action to prevent and address discrimination against Indigenous women and girls throughout their lifespan must integrate a gender perspective, an intersectional perspective, an Indigenous women and girls perspective, an intercultural perspective and a multidisciplinary perspective. A gender perspective takes into consideration the discriminatory norms, harmful social practices,

<sup>1</sup> International Labour Organization (ILO), *Implementing the ILO Indigenous and Tribal Peoples Convention No. 169: Towards an Inclusive, Sustainable and Just Future* (Geneva, 2019), p. 13; and Department of Economic and Social Affairs, *State of the World's Indigenous Peoples*, vol. 5, *Rights to Lands, Territories and Resources* (United Nations publication, 2021), p. 119.

<sup>2</sup> See, for example, general recommendation No. 34 (2016) on the rights of rural women, paras. 14–15. For more discussion of the work of the Committee in the area of Indigenous women, see United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and Committee on the Elimination of Discrimination against Women, “Recomendaciones Generales y Observaciones Finales del Comité para la Eliminación de la Discriminación contra la Mujer sobre mujeres indígenas y/o afrodescendientes realizadas a Estados de América Latina” (Clayton, Panama, 2017).

<sup>3</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 2.

stereotypes and inferior treatment that have affected Indigenous women and girls historically and still affect them in the present. An intersectional perspective requires States to consider the multitude of factors that combine to increase the exposure of Indigenous women and girls to, and exacerbate the consequences of, unequal and arbitrary treatment on the basis of sex; gender; Indigenous origin, status or identity; race; ethnicity; disability; age; language; socioeconomic status; and HIV/AIDS status, among other factors. States should take into consideration the interdependence and interconnectedness of all these factors in their adoption of laws, policies, national budgets and interventions related to Indigenous women and girls. Indigenous women and girls suffer intersectional discrimination both inside and outside their territories. Intersectional discrimination against them is structural, embedded in constitutions, laws and policies, as well as government programmes, action and services.

5. An Indigenous women and girls perspective entails understanding the distinction between their experiences, realities and needs in the area of human rights protection and those of Indigenous men, based on their sex and gender differences. It also involves considering the status of Indigenous girls as developing women, which requires interventions to be appropriate to their age, development and condition. An intercultural perspective involves considering the diversity of Indigenous Peoples, including their cultures, languages, beliefs and values, and the social appreciation and value of this diversity. Lastly, a multidisciplinary perspective requires an appreciation of the multifaceted identity of Indigenous women and girls and of how law, health, education, culture, spirituality, anthropology, economy, science and work, among other aspects, have shaped and continue to shape the social experience of Indigenous women and girls and to promote discrimination against them. These perspectives and approaches are key to preventing and eradicating discrimination against Indigenous women and girls and to achieving the goal of social justice when their human rights are violated.

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

7. In implementing the present general recommendation, the Committee calls upon States parties to take into consideration the challenging context in which Indigenous women and girls exercise and defend their human rights. They are heavily affected by existential threats connected to climate change, environmental degradation, the loss of biodiversity and barriers in gaining access to food and water security.<sup>4</sup> Extractive activities carried out by business enterprises and other industrial, financial, public and private actors often have a devastating impact on the environment, air, land, waterways, oceans, territories and natural resources of Indigenous Peoples and may infringe the rights of Indigenous women and girls. Indigenous women and girls are at the forefront of the local, national and international demand and action for a clean, safe, healthy and sustainable environment. Many Indigenous women who are

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<sup>4</sup> General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, paras. 1–9.

environmental human rights defenders face killings, harassment, criminalization and the ongoing discrediting of their work. States parties have an obligation to ensure that State actors and business enterprises take measures without delay to guarantee a clean, healthy and sustainable environment and planetary system, including the prevention of foreseeable loss and damage, socioeconomic and environmental violence, and all forms of violence against Indigenous women who are environmental human rights defenders and their communities and territories. States parties also have an obligation to address the effects of colonialism, racism, assimilation policies, sexism, poverty, armed conflicts, militarization, forced displacement and the loss of territories, sexual violence as a tool of war, and other alarming human rights abuses frequently perpetrated against Indigenous women and girls and their communities.

## II. Objectives and scope

8. The Committee considers self-identification, according to international standards,<sup>5</sup> to be a guiding principle in international law in determining the status of rights holders as Indigenous women and girls.<sup>6</sup> However, the Committee recognizes that some Indigenous women and girls may prefer not to disclose their status owing to structural and systemic racism and discrimination, as well as colonial and colonization policies. The present general recommendation and the rights under the Convention are applicable to all Indigenous women and girls, inside and outside their territories; in their countries of origin, in transit and in their countries of destination; and as migrants, as refugees during their forced or involuntary displacement cycle and as stateless persons.

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

10. The Committee calls upon States parties to promptly engage in data collection efforts to fully assess the situation of Indigenous women and girls and the forms of discrimination and gender-based violence that they face. States must undertake efforts to collect data, disaggregated by a range of factors, including sex; age; Indigenous origin, status or identity; and disability status, and collaborate with Indigenous women and their organizations, as well as academic institutions and non-profit

<sup>5</sup> United Nations Declaration on the Rights of Indigenous Peoples, arts. 9 and 33.

<sup>6</sup> *Ibid.*, art. 33.1; see also ILO, Indigenous and Tribal Peoples Convention No. 169, art. 1; United Nations Permanent Forum on Indigenous Issues, “Who are Indigenous Peoples?”, fact sheet; and working paper on the concept of Indigenous Peoples (E/CN.4/Sub.2/AC.4/1996/2, paras. 69–70).

<sup>7</sup> General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, paras. 18–35.

<sup>8</sup> Convention on the Elimination of All Forms of Discrimination against Women, art. 6.

<sup>9</sup> CEDAW/C/OP.8/CAN/1, paras. 95–99 and 111–127.

organizations, in that regard. The Committee also underscores that Indigenous Peoples must have control over data collection processes in their communities and over how the data are stored, interpreted, used and shared.

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

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

### III. Legal framework

13. The rights of Indigenous women and girls derive from the articles of the Convention, as further developed in the Committee's general recommendations, and from specific international instruments for the protection of the rights of Indigenous Peoples, such as the United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization (ILO) Convention, 1989 (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries. The Committee considers the Declaration an authoritative framework for interpreting State party and core obligations under the Convention on the Elimination of All Forms of Discrimination against Women. All of the rights recognized in the Declaration are relevant to Indigenous women, both as members of their peoples and communities and as individuals, and, ultimately, in relation to the guarantees against discrimination

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<sup>10</sup> See United Nations Declaration on the Rights of Indigenous Peoples, art. 8; Convention on the Prevention and Punishment of the Crime of Genocide, art. II; and Rome Statute of the International Criminal Court, art. 6.

<sup>11</sup> See United Nations Declaration on the Rights of Indigenous Peoples, art. 8.

in the Convention itself. In addition, all core international human rights treaties contain relevant protections for the rights of Indigenous women and girls.<sup>12</sup>

14. In addressing the rights of Indigenous girls, the Committee also makes reference to the Convention on the Rights of the Child and to the Committee on the Rights of the Child general comment No. 11 (2009) on indigenous children and their rights. States parties have an obligation to protect Indigenous girls from all forms of discrimination. The creation of an enabling and safe environment for the leadership and effective participation of Indigenous girls is paramount to the full enjoyment of their rights to territories, culture and a clean, healthy and sustainable environment.<sup>13</sup> The Committee on the Elimination of Discrimination against Women recognizes, moreover, the status of Indigenous girls as developing women, which calls for a State response tailored to their best interests and needs and the adaptation of government procedures and services to the age, development, evolving capacities, and condition of Indigenous girls.

15. The Convention on the Elimination of All Forms of Discrimination against Women should also be interpreted in a manner that takes into consideration the 2030 Agenda for Sustainable Development, in which States agreed that the achievement of gender equality and the empowerment of women and girls is paramount to sustainable development and the end of poverty.<sup>14</sup> The Beijing Declaration and Platform for Action is also an important reference document in the present general recommendation. The Committee also makes reference to the resolutions adopted by the Commission on the Status of Women related to Indigenous women.<sup>15</sup>

## **IV. General obligations of States parties in relation to the rights of Indigenous women and girls under articles 1 and 2 of the Convention**

### **A. Equality and non-discrimination, with a focus on Indigenous women and girls and intersecting forms of discrimination**

16. The prohibition of discrimination in articles 1 and 2 of the Convention applies to all rights of Indigenous women and girls under the Convention, including, by extension, those set out in the Declaration, which is of fundamental importance to the interpretation of the Convention in the current context. The prohibition of discrimination is an important pillar and foundational principle of international human rights law. Indigenous women and girls have the right to be free from all forms of discrimination on the basis of their sex; gender; Indigenous origin, status or identity; race; ethnicity; disability; age; language; socioeconomic status; and HIV/AIDS status, among other factors.<sup>16</sup>

17. Discrimination against Indigenous women and girls and its effects should be understood in both their individual and collective dimensions. In its individual

<sup>12</sup> See Committee on the Elimination of Racial Discrimination, general recommendation No. 23 (1997) on the rights of indigenous peoples, paras. 3–6.

<sup>13</sup> Committee on the Rights of the Child, general comment No. 12 (2009) on the right of the child to be heard, para. 2.

<sup>14</sup> General Assembly resolution 70/1, para. 20. See also targets 2.3 and 4.5 of the Sustainable Development Goals, as well as Goal 5.

<sup>15</sup> See Commission on the Status of Women resolutions 49/7 and 56/4. See also the agreed conclusions of the Commission at its sixty-sixth session (E/2022/27, chap. I, sect. A.).

<sup>16</sup> General recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 9; and United Nations Declaration on the Rights of Indigenous Peoples, para. 2.

dimension, discrimination against Indigenous women and girls takes intersecting forms and is carried out by both State and non-State actors, including those in the private sphere, on the basis of sex; gender; Indigenous origin, status or identity; race; ethnicity; disability; age; language; socioeconomic status; and HIV/AIDS status; among other factors. Racism, discriminatory stereotypes, marginalization and gender-based violence are interrelated violations experienced by Indigenous women and girls. Discrimination and gender-based violence threaten the individual autonomy, personal liberty and security, privacy and integrity of all Indigenous women and girls and may also harm the collective and its well-being. As indicated in general recommendation No. 29 (2013) on the economic consequences of marriage, family relations and their dissolution, Indigenous women as individuals can suffer discrimination in the name of ideology, tradition, culture, religious and customary laws and practices. In addition, Indigenous women, including those with disabilities, often face the arbitrary removal and abduction of their children. They also face discriminatory and gender-biased decisions concerning the custody of their children – whether married or unmarried – or alimony following divorce. Indigenous women and girls as individuals have the right to be free from discrimination and human rights violations throughout their life cycle and to choose their own paths and life plans.

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

19. As indicated in the preamble to the Declaration, collective rights are indispensable for the existence, well-being and integral development of Indigenous Peoples, including Indigenous women and girls. The individual rights of Indigenous women and girls should never be neglected or violated in the pursuit of collective or group interests, as respect for both dimensions of their human rights is essential.<sup>17</sup>

20. Discrimination against Indigenous women and girls is perpetuated by gender stereotypes but also by forms of racism fuelled by colonialism and militarization. These underlying causes of discrimination are reflected directly and indirectly in laws and policies that impede the access of Indigenous women and girls to land use and ownership, the exercise of their rights over their territories, natural and economic resources, and their access to credit, financial services and income-generating opportunities. The underlying causes also impede the recognition and protection of and support for collective and cooperative forms of land ownership and use. Legal protections for the land rights of Indigenous women remain weak, which frequently exposes them to dispossession, displacement, confinement, expropriation and exploitation.<sup>18</sup> The lack of legal title to the territories of Indigenous Peoples increases their vulnerability to illegal incursions and to the implementation of development projects without their free, prior and informed consent by both State and non-State actors. Indigenous women and girls – in particular those who are widows, heads of households or orphans – disproportionately face barriers in gaining access to land, resulting in the loss of their livelihoods and threatening their culture, their intrinsic link to their environment, their food and water security and their health.

<sup>17</sup> Committee on the Rights of the Child, general comment No. 11 (2009) on indigenous children and their rights under the Convention, para. 30.

<sup>18</sup> [A/HRC/30/41](#), paras. 15–17.



21. Indigenous women and girls worldwide still do not enjoy equality before the law under article 15 of the Convention. In many parts of the world, Indigenous women lack the capacity to conclude contracts and administer property independent of their husband or a male guardian. They also experience challenges in owning, holding, controlling, inheriting and administering land, in particular when they are widowed and have to care for their families on their own. Inheritance laws – in both the State and Indigenous legal systems – frequently discriminate against Indigenous women. Indigenous women with disabilities commonly experience the denial of legal capacity, which leads to further human rights violations, including in the areas of access to justice, institutionalized violence and forced sterilization. Contrary to article 9 of the Convention, many laws still discriminate against Indigenous women and girls in relation to the transmission of their nationality and Indigenous status to their children when they marry non-Indigenous persons. These laws can result in transgenerational discrimination and forced assimilation, which fall within the scope and meaning of discrimination against women as defined in article 1 of the Convention.<sup>19</sup> Therefore, States must ensure that Indigenous women and girls can acquire, change, retain or renounce their nationality and/or Indigenous status, transfer it to their children and spouse and have access to information on these rights, as part of ensuring their rights to self-determination and self-identification.

22. The Committee, in its general recommendation No. 34 (2016) on the rights of rural women, underscored the importance of the rights of Indigenous women to land and collective ownership, natural resources, water, seeds, forests and fisheries under article 14 of the Convention.<sup>20</sup> These rights are also guaranteed to Indigenous women as members of their peoples and communities by the Declaration and related international legal norms. The key barriers to these rights are the incompatibility of national laws with international law; the ineffective implementation of laws at the national and local levels; discriminatory gender stereotypes and practices, in particular in rural areas; lack of political will; and the commercialization, commodification and financialization of land and natural resources. Indigenous customary laws, misogyny and existing institutions may also be barriers. Indigenous women with disabilities often face intersecting forms of discrimination on the basis of their sex; gender; disability; and Indigenous origin, status or identity, reflected in the denial of their full legal capacity, which further increases their risk exposure to exploitation, violence and abuse and undermines their rights to land, territories and resources.<sup>21</sup> Moreover, lesbian, bisexual, transgender and intersex Indigenous women and girls regularly face intersecting forms of discrimination. The Committee is concerned about the forms of inequality, discrimination and gender-based violence that affect Indigenous women and girls in the digital space, including the Internet, social media and all technology platforms.

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

**(a) Develop comprehensive policies to eliminate discrimination against Indigenous women and girls, centred around the effective participation of those living inside and outside Indigenous territories, and pursue collaboration with Indigenous Peoples more broadly. The policies should include measures to address intersectional discrimination faced by Indigenous women and girls, including persons with disabilities and those with albinism; older women; lesbian, bisexual, transgender and intersex women; women and girls in situations of poverty; women living in rural and urban areas; forcibly displaced, refugee and migrant women inside and outside their countries; and women and girls who are**

<sup>19</sup> See, for example, CEDAW/C/81/D/68/2014, para. 18.3.

<sup>20</sup> Para. 56.

<sup>21</sup> Department of Economic and Social Affairs, *State of the World's Indigenous Peoples*, vol. 5, p. 121.

widows, heads of households or orphaned owing to national and international armed conflicts. States parties should collect data, disaggregated by age and disability status, on the forms of gender-based discrimination and violence faced by Indigenous women and girls, and undertake these efforts in ways that respect the languages and cultures of Indigenous Peoples;

(b) Provide, in their periodic reports to the Committee, information on legislative, judicial, administrative, budgetary, and monitoring and evaluation measures, as well as other measures, specific to Indigenous women and girls;

(c) Repeal and amend all legislative and policy instruments, such as laws, policies, regulations, programmes, administrative procedures, institutional structures, budgetary allocations and practices, that directly or indirectly discriminate against Indigenous women and girls;

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

(e) Adopt legislation to fully ensure the rights of Indigenous women and girls to land, water and other natural resources, including their right to a clean, healthy and sustainable environment, and that their equality before the law is recognized and respected, as well as ensuring that Indigenous women in rural and urban areas have equal access to ownership, title, possession and control of land, water, forests, fisheries, aquaculture and other resources that they have owned, occupied or otherwise used or acquired, including by protecting them against discrimination and dispossession;<sup>22</sup>

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

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

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

(i) Adopt effective measures to eliminate and prevent all forced assimilation policies and other patterns of denials of cultural and other rights vested in Indigenous Peoples, including the prompt investigation, accountability, justice and reparations for past and present assimilation policies and practices that significantly compromise Indigenous cultural identity, and establish and

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<sup>22</sup> General recommendation No. 34, para. 59.

**ensure that truth, justice and reconciliation bodies are vested with adequate and sufficient resources.**

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

24. Access to justice for Indigenous women requires a multidisciplinary and holistic approach that reflects an understanding that their access is linked to other human rights challenges that they face, including racism, racial discrimination and the effects of colonialism; sex- and gender-based discrimination; discrimination on the basis of socioeconomic status; disability-based discrimination; barriers in gaining access to their lands, territories and natural resources; the lack of adequate and culturally pertinent health and education services; and disruptions and threats to their spiritual lives.<sup>23</sup> As indicated by other global human rights mechanisms, Indigenous Peoples must have access to justice that is guaranteed both by States and through their Indigenous customary and legal systems.<sup>24</sup>

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

26. In its general recommendation No. 33 (2015) on women's access to justice, the Committee recognized six essential components of access.<sup>27</sup> These interrelated components – justiciability, availability, accessibility, good quality, provision of remedies for victims, and accountability of justice systems – are also applicable in the case of Indigenous women and girls, who should be provided with access to justice and remedies with a gender perspective, an intersectional perspective, an Indigenous women and girls perspective, an intercultural perspective and a multidisciplinary perspective, as defined in paragraphs 4 and 5 of the present general recommendation.

27. According to the six essential components, States must ensure that all justice systems, both Indigenous and non-Indigenous, act in a timely fashion to offer appropriate and effective remedies for Indigenous women and girls who are victims and survivors of discrimination and gender-based violence. Doing so entails having available interpreters, translators, anthropologists, psychologists, health-care professionals, lawyers, cultural mediators with experience, and Indigenous spiritual and medicinal authorities, as well as training, incorporating a gender perspective, on the realities, cultures and views of Indigenous women and girls. Justice systems should also have in place methods to collect evidence that are appropriate and compatible with their culture and views. Justice officials should be consistently trained on the rights of Indigenous women and girls and the individual and collective dimensions of their identity, with the goal of instilling in the officials a substantial

<sup>23</sup> See [A/HRC/EMRIP/2014/3/Rev.1](#), paras. 35–42; and Inter-American Commission on Human Rights, *Indigenous Women and their Human Rights in the Americas* (OEA/Ser.L/V/II. Doc. 44/17, para. 138).

<sup>24</sup> [A/HRC/24/50](#), para. 5.

<sup>25</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 34; and general recommendation No. 33 (2015) on women's access to justice, para. 5.

<sup>26</sup> Article 34 of the Declaration provides that Indigenous Peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

<sup>27</sup> Para. 14.

degree of Indigenous cultural competence. In that regard, it is key to respect the different conceptions of justice and processes that non-Indigenous and Indigenous systems have, and to actively listen to and collaborate with Indigenous Peoples. Justice can be a process of reconciliation and healing for them, with the goal of restoring harmony to their territories and communities.<sup>28</sup> States should also proactively recruit and appoint Indigenous women justices.

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

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

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

31. Often, Indigenous justice systems are male dominated, and they discriminate against women and girls, providing limited space for them to participate, voice their concerns and hold decision-making positions.<sup>29</sup> The Committee has expressed its concern in the past about the influence of gender stereotypes on the activity of Indigenous legal systems.<sup>30</sup> In general, the Committee has recommended that both

<sup>28</sup> [A/HRC/42/37](#), para. 25.

<sup>29</sup> [A/HRC/30/41](#), para. 42.

<sup>30</sup> [CEDAW/C/MEX/CO/7-8](#), para. 34.

Indigenous and non-Indigenous justice systems adopt measures to comply with international human rights standards.<sup>31</sup>

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

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

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

(b) **Adopt measures to ensure that Indigenous women and girls with disabilities have physical access to law enforcement and judiciary buildings, information, transportation, support services, and procedures critical to their access to justice;**<sup>33</sup>

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

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

(e) **Ensure equal access to justice for all Indigenous women and girls, including through the provision of procedural accommodations and adjustments for those who need them owing to age, disability or illness, which may include sign language interpretation and other communication support, as well as longer time frames for submissions;**

(f) **Ensure that justice systems include interpreters, translators, anthropologists, psychologists and health-care professionals specialized and trained in the needs of Indigenous women and girls, giving priority to qualified Indigenous women,<sup>34</sup> and provide information on legal remedies in both the non-Indigenous and Indigenous justice systems in Indigenous languages and in accessible formats. Awareness-raising campaigns should be undertaken to make known these legal remedies and avenues, as well as the means to report cases of structural and systemic violence. Follow-up mechanisms are critical in cases of gender-based violence and discrimination against Indigenous women and girls;**

(g) **Ensure that Indigenous women and girls without sufficient means and whose legal capacity has been removed have access to free and quality legal aid, including in cases of gender-based violence against women. States parties should**

<sup>31</sup> General recommendation No. 33, para. 62.

<sup>32</sup> Committee on the Rights of the Child, general comment No. 24 (2019) on children's rights in the child justice system, paras. 40, 49 and 103.

<sup>33</sup> Committee on the Rights of Persons with Disabilities, general comment No. 2 (2014) on accessibility, para. 37.

<sup>34</sup> Inter-American Commission on Human Rights, *Indigenous Women and their Rights in the Americas*, para. 156.

financially support non-governmental organizations that provide free and specialized legal assistance to Indigenous women and girls;

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

(i) Adopt criminal justice, civil and administrative measures and policies that consider the historical conditions of poverty, racism and gender-based violence, which have affected and continue to affect Indigenous women and girls;

(j) Adopt measures to ensure that all Indigenous women and girls have access to information and education on existing laws, the legal system and how to gain access to both non-Indigenous and Indigenous justice systems. These measures can take the form of awareness-raising campaigns, community trainings, and legal and mobile clinics that offer this information;

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

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

## V. Obligations of States parties in relation to specific dimensions of the rights of Indigenous women and girls

### A. Prevention of and protection from gender-based violence against Indigenous women and girls (arts. 3, 5, 6, 10 (c), 11, 12, 14 and 16)

34. Gender-based violence against Indigenous women and girls is a form of discrimination under article 1 of the Convention and, therefore, engages all obligations under the Convention. Under article 2 of the Convention, States parties must adopt measures without delay to prevent and eliminate all forms of gender-based violence against Indigenous women and girls.<sup>35</sup> Similarly, article 22 of the Declaration requires States to pay particular attention to the full protection of the rights of Indigenous women and to ensure their right to live free from violence and discrimination. The prohibition of gender-based violence against women is a principle of customary international law and applies to Indigenous women and girls.<sup>36</sup>

35. Gender-based violence disproportionately affects Indigenous women and girls. Available statistics indicate that Indigenous women are more likely to experience rape than non-Indigenous women.<sup>37</sup> It is estimated that one in three Indigenous women is raped during her lifetime.<sup>38</sup> While there is a growing body of evidence of the magnitude, nature and consequences of gender-based violence globally, knowledge of its incidence against Indigenous women is limited and tends to vary considerably by issue and region.<sup>39</sup> The Committee highlights the need for States to engage in data collection efforts, in collaboration with Indigenous organizations and communities,

<sup>35</sup> General recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, para. 21.

<sup>36</sup> *Ibid.*, para. 2.

<sup>37</sup> [A/HRC/30/41](#), para. 47.

<sup>38</sup> *Ibid.*

<sup>39</sup> UN-Women and others, *Breaking the Silence on Violence against Indigenous Girls, Adolescents and Young Women* (New York, 2013), p. 4. See also Inter-Agency Support Group on Indigenous Peoples' Issues, "Elimination and responses to violence, exploitation and abuse of indigenous girls, adolescents and young women", thematic paper towards the preparation on of the World Conference on Indigenous Peoples, pp. 1–2 and 4–10.

to understand the scope of the problem of gender-based violence against Indigenous women and girls. It also highlights the need for discrimination, stereotypes and social legitimization of gender-based violence against them to be addressed by States.

36. The Committee is alarmed at the many forms of gender-based violence committed against Indigenous women and girls,<sup>40</sup> which occurs in all spaces and spheres of human interaction, including the family,<sup>41</sup> community, public spaces, the workplace, educational settings and the digital space.<sup>42</sup> Violence can be psychological, physical, sexual, economic, political or a form of torture. Spiritual violence is frequently perpetrated against Indigenous women and girls, harming the collective identity of their communities and their connection to their spiritual life, culture, territories, environment and natural resources. Violence against Indigenous women and girls with disabilities and older Indigenous women often occurs in institutions, in particular those that are closed and segregated. Indigenous women and girls are frequently victims of rape, harassment, disappearances, killings and femicide.

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

38. Gender-based violence against Indigenous women and girls is drastically underreported, and perpetrators regularly enjoy impunity, owing to Indigenous women's and girls' extremely limited access to justice, as well as biased or flawed criminal justice systems.<sup>43</sup> Racism, marginalization, poverty, and alcohol and substance abuse increase the risk of gender-based violence against them.<sup>44</sup> They suffer gender-based violence perpetrated or tolerated by both State and non-State actors. State actors include members of governments, armed forces, law enforcement authorities and public institutions, including in the health and education sectors and in prisons.<sup>45</sup> Non-State actors include private individuals, businesses, private companies, paramilitary and rebel groups, illegal actors, and religious institutions.<sup>46</sup>

39. States parties have a due diligence obligation to prevent, investigate and punish perpetrators and to provide reparations to Indigenous women and girls who are victims of gender-based violence. This obligation is applicable to both non-Indigenous and Indigenous justice systems.<sup>47</sup> Due diligence should be implemented with gender, intersectional, Indigenous women, intercultural and

<sup>40</sup> A/HRC/50/26, paras. 7–10 and 24–34.

<sup>41</sup> A/HRC/30/41, paras. 113–117.

<sup>42</sup> General recommendation No. 35, para. 20.

<sup>43</sup> CEDAW/C/OP.8/CAN/1, paras. 132–172.

<sup>44</sup> Inter-American Commission on Human Rights, *Indigenous Women and their Rights in the Americas*, paras. 85 and 86.

<sup>45</sup> UN-Women and others, *Breaking the Silence*, pp. 13–16, 19 and 20.

<sup>46</sup> *Ibid.*

<sup>47</sup> Inter-American Commission on Human Rights, *Indigenous Women*, para. 230. See also general recommendation No. 33, para. 64.

multidisciplinary perspectives, as defined in paragraphs 4 and 5, and bearing in mind the gendered causes and impacts of the violence experienced by Indigenous women.

40. Gender-based violence against Indigenous women and girls undermines the collective spiritual, cultural and social fabric of Indigenous Peoples and their communities and causes collective and sometimes intergenerational harm. Sexual violence against Indigenous women and girls has been used by a plurality of actors during armed conflicts and times of unrest as a weapon of war and as a strategy to control and harm Indigenous communities.

41. States should have an effective legal framework and adequate support services in place to address such gender-based violence. Such frameworks must include measures to prevent, investigate, punish perpetrators, and provide assistance and reparations to Indigenous women and girls who are victims, as well as services to address and mitigate the harmful effects of gender-based violence. This general obligation extends to all areas of State action, including legislative, executive and judicial branches, at the regional, national and local levels, as well as privatized services. It requires the formulation of legal norms, including at the constitutional level, and the design of public policies, programmes, institutional frameworks and monitoring mechanisms aimed at eliminating all forms of gender-based violence against Indigenous women and girls, whether committed by State or non-State actors.<sup>48</sup>

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

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

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

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

(d) **Repeal all laws that prevent or deter Indigenous women and girls from reporting gender-based violence, such as guardianship laws that deprive women of legal capacity or restrict the ability of women with disabilities to testify in court; the practice of so-called “protective custody”; restrictive immigration laws that discourage women, including migrant and non-migrant domestic workers, from reporting such violence; and laws allowing for dual arrests in cases of domestic violence or for the prosecution of women when the perpetrator is acquitted;<sup>49</sup>**

(e) **Ensure that support services, including medical treatment, psychosocial counselling and professional training, and reintegration services and shelters are available, accessible and culturally appropriate for Indigenous women and girls who are victims of gender-based violence. All services should be**

<sup>48</sup> General recommendation No. 35, para. 24 (b).

<sup>49</sup> *Ibid.*, para. 29 (c) (iii).



designed with intercultural and multidisciplinary perspectives, as defined in paragraph 5, and be vested with sufficient financial resources;

(f) Provide resources for Indigenous women and girl survivors of gender-based violence to have access to the legal system to report cases of such violence. Resources can include transportation, legal aid and representation, and access to information in Indigenous languages;

(g) States should act with due diligence to prevent all forms of violence, inhumane treatment and torture against Indigenous women and girls who are deprived of liberty. States must ensure that when these acts do occur, they are appropriately investigated and sanctioned. States should also adopt measures to ensure that Indigenous women and girls who are deprived of liberty know where and how to report these acts. States should further prioritize policies and programmes to promote the social reintegration of Indigenous women and girls who have been deprived of liberty, with respect for their culture, views and languages;

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

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

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

43. Indigenous women and girls tend to be excluded from decision-making in local, national and international processes, as well as in their own communities and Indigenous systems.<sup>50</sup> Under article 7 of the Convention, they have the right to effective participation at all levels in political, public and community life. This right includes participation in decision-making within their communities, as well as with ancestral and other authorities; consent and consultation processes over economic activities carried out by State and private actors in Indigenous territories; public service and decision-making positions at the local, national regional and international levels; and their work as human rights defenders.<sup>51</sup>

44. Indigenous women and girls face multiple and intersecting barriers to effective, meaningful and real participation. Such barriers include political violence; lack of or unequal educational opportunities; illiteracy; racism; sexism; discrimination based on class and economic status; language constraints; the need to travel long distances to gain access to any form of participation; the denial of access to health-care services, including sexual and reproductive health care and rights; and the lack of access to, economic support for and information on legal, political, institutional, community and civil society processes to vote, run for political office, organize campaigns and secure funding. The barriers to participation can be particularly high in armed conflict contexts, including in transitional justice processes, in which Indigenous women and

<sup>50</sup> [A/HRC/30/41](#), paras. 38 and 39.

<sup>51</sup> See United Nations High Commissioner for Human Rights, guidelines for States on the effective implementation of the right to participate in public affairs, pp. 10–19.

girls and their organizations are often excluded from peace negotiations or attacked and threatened when they do try to participate. States parties should act promptly to ensure that all Indigenous women and girls have access to computers, the Internet and other forms of technology to facilitate their full inclusion in the digital world.

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

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

(a) **In accordance with the general recommendations No. 23 (1997) on women in political and public life and No. 25 (2004) on temporary special measures, and articles 18, 19, 32.1 and 44 of the Declaration, promote the meaningful, real and informed participation of Indigenous women and girls in political and public life and at all levels, including in decision-making positions, which may include temporary special measures, such as quotas, targets, incentives and efforts to ensure parity in representation;<sup>52</sup>**

(b) **Establish accountability mechanisms to prevent political parties and trade unions from discriminating against Indigenous women and girls, and ensure that they have effective access to gender-responsive judicial remedies to report such violations when they occur. It is also critical to train public servants on the right of Indigenous women and girls to effectively participate in public life;**

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

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

(e) **Create, promote and ensure the access of Indigenous women to political office through campaign financing; skills training; incentives; awareness-raising activities for political parties to nominate them as candidates; and adequate health-care and childcare facilities, as well as support services for**

<sup>52</sup> General recommendation No. 34, para. 54.

caring for older persons, adopt the necessary legislative measures and reforms to ensure the right of political participation of Indigenous women and girls, and create incentives and monitoring mechanisms, as well as penalties for failure by political parties to implement temporary special measures to increase the political participation of Indigenous women and girls;

(f) Ensure that economic activities, including those related to logging, development, investment, tourism, extraction, mining, climate mitigation and adaptation programmes, and conservation projects are only implemented in Indigenous territories and protected areas with the effective participation of Indigenous women, including full respect for their right to free, prior and informed consent and the adequate consultation processes. It is key that these economic activities do not adversely impact human rights, including those of Indigenous women and girls;<sup>53</sup>

(g) In line with general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations and Security Council resolution 1325 (2000) and subsequent resolutions, ensure and create spaces for Indigenous women and girls to participate as decision makers and actors in peacebuilding efforts and transitional justice processes;

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

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

47. Indigenous women and girls face multiple barriers to enrolment, retention, and completion at all levels of education and in non-traditional fields.<sup>54</sup> Some of the most important educational barriers for them include: the lack of education facilities designed, established or controlled by Indigenous Peoples; poverty; discriminatory gender stereotypes and marginalization;<sup>55</sup> limited cultural relevance of educational curricula; instruction solely in the dominant language; and the scarcity of sexuality education. Indigenous women and girls frequently must travel long distances to schools and are at risk of gender-based violence en route and upon arrival. While at school, they may experience sexual violence, corporal punishment or bullying. Gender-based violence and discrimination in education is particularly acute when forced assimilation policies are implemented in schools. Indigenous girls with disabilities face particular barriers to access and retention, including lack of physical accessibility; school officials' refusal to enrol them; and reliance on segregated schools for children with disabilities. Forced and/or child marriages, sexual violence and adolescent pregnancies, the disproportionate burden of family responsibilities, child work, natural disasters and armed conflicts can also hamper Indigenous girls' access to school.

<sup>53</sup> Ibid.

<sup>54</sup> General recommendation No. 36 (2017) on the right of girls and women to education, para. 41; and general recommendation No. 34, para. 42.

<sup>55</sup> Ibid.

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

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

(i) **Guaranteeing their equal access to quality education at all levels of education, including by supporting Indigenous Peoples to realize the rights guaranteed in articles 14 and 15 of the Declaration;**

(ii) **Addressing discriminatory stereotypes related to Indigenous origin, history, culture and the experiences of Indigenous women and girls;**

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

(iv) **Creating interdisciplinary support systems for Indigenous women and girls to reduce their unequal share of unpaid care work and combat child marriage and to assist victims in reporting acts of gender-based violence and labour exploitation. Social support systems should be operationally effective, accessible and culturally responsive;**

(b) **Ensure quality education that is inclusive, accessible and affordable for all Indigenous women and girls, including those with disabilities. States should remove barriers and provide adequate resources and facilities to ensure that Indigenous women and girls with disabilities have access to an education. States should guarantee the availability of age-appropriate sexual education based on scientific research;<sup>56</sup>**

(c) **Promote the adoption of curricula that reflect Indigenous education, languages, cultures, history, knowledge systems and epistemologies.<sup>57</sup> These efforts should extend to all schools, including those in the mainstream. The adoption of curricula should be done with the participation of Indigenous women and girls.**

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

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

<sup>56</sup> General recommendation No. 34, para. 43.

<sup>57</sup> Ibid.

50. **The Committee recommends that States parties:**
- (a) **Ensure equal, safe, just and favourable conditions of work and income security for Indigenous women and girls, including by:**
    - (i) **Expanding and promoting vocational and professional training opportunities for them;**
    - (ii) **Expanding opportunities for Indigenous women to run businesses and become entrepreneurs. States should support Indigenous-women-led businesses and help Indigenous communities to generate wealth by improving access to capital and business opportunities;**
    - (iii) **Facilitating their transition from the informal to the formal economy, if desired;**
    - (iv) **Protecting the occupational health and safety of Indigenous women in all forms of work;**
    - (v) **Expanding the coverage of social protection and provide adequate childcare services for Indigenous women, including those who are self-employed;<sup>58</sup>**
    - (vi) **Guaranteeing that Indigenous Peoples and women can continue to pursue and benefit from their occupations, without discrimination, and also guaranteeing the collective rights to the land on which these occupations take place;**
    - (vii) **Fully incorporating the right to just and favourable conditions of work and the principle of equal pay for work of equal value into legal and policy frameworks, paying special attention to Indigenous women and girls who are working legally.<sup>59</sup> States parties should promote entrepreneurship by ensuring that Indigenous women have equal access to loans and other forms of financial credit, without collateral, to enable them to create their own businesses and advance their economic autonomy;**
  - (b) **Take steps to prevent discrimination, racism, stereotypes, gender-based violence and sexual harassment against Indigenous women in the workplace and to establish and enforce effective reporting and accountability mechanisms, including through regular labour inspections;**
  - (c) **Ensure that Indigenous women and girls have access to vocational and professional skills training, including in science, technology, engineering and mathematics, as well as ICT and other fields from which Indigenous Peoples have historically been excluded.**

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

51. Indigenous women and girls have limited access to adequate health-care services, including sexual and reproductive health services and information, and face racial and gender-based discrimination in health systems. Their right to free, prior and informed consent is often not respected in the health sector. Health professionals are often race- and gender-biased, insensitive to the realities, culture and views of Indigenous women and do not speak Indigenous languages, and they rarely offer services respecting the dignity, privacy, informed consent and reproductive autonomy of Indigenous women. Indigenous women frequently experience difficulties in

<sup>58</sup> Ibid., paras. 40–41.

<sup>59</sup> Ibid., para. 50.

securing access to sexual and reproductive health information and education, including about family planning methods, contraception and access to safe and legal abortion. They are often victims of gender-based violence in the health system, including obstetrics violence; coercive practices, such as involuntary sterilizations or forced contraception; and barriers to their ability to decide on the number and spacing of their children. Indigenous midwives and birth attendants are often criminalized, and technical knowledge is undervalued by non-Indigenous health systems. Pandemics have a disproportionate impact on Indigenous women and girls, and States parties must ensure access to culturally acceptable health-care services, testing and vaccination during such emergencies.

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

**(a) Ensure that quality health services and facilities are available, accessible, affordable, culturally appropriate and acceptable for Indigenous women and girls, including those with disabilities, older women, and lesbian, bisexual, transgender and intersex women and girls, and ensure that free, prior and informed consent, confidentiality and privacy are respected in the provision of health services;**

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

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

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

**(e) Provide gender-responsive and culturally responsive training, with gender and intercultural perspectives, as defined in paragraphs 4 and 5, to health professionals, including community health workers and birth attendants, who treat Indigenous women and girls, and encourage Indigenous women to enter the medical profession;**

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

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

53. Culture is an essential component of the lives of Indigenous women and girls. It is intrinsically linked to their lands, territories, histories and community dynamics. There are many sources of culture for Indigenous women and girls, including languages, dress and the way they prepare food, practice Indigenous medicine, respect sacred places, practice religion and their traditions, and transmit the history and heritage of their communities and peoples. Indigenous women have a right not only to enjoy their culture but also to challenge aspects of their culture that they consider discriminatory, such as outdated laws, policies and practices contrary to international human rights law and gender equality. According to article 12 of the Convention on the Rights of the Child, Indigenous Girls also have the right to express their views and to participate in cultural matters affecting them, either directly or through a representative, in accordance with their age and maturity.<sup>60</sup> States should also ensure

<sup>60</sup> Committee on the Rights of the Child, general comment No. 11, para. 38.

that Indigenous women and girls can participate fully in sports and recreational activities, free from all forms of discrimination.

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

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

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

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

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

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

(e) **Study the relationship between technology and culture, as digital tools can be important in transmitting and preserving Indigenous languages and culture. Where digital tools are used to support the transmission and preservation of Indigenous cultures, they should be made accessible to and be culturally appropriate for Indigenous women and girls;**

(f) **Recognize and protect Indigenous women's intellectual property; cultural heritage; scientific and medical knowledge; forms of literary, artistic, musical and dance expressions; and natural resources. In adopting measures, States parties must take into account the preferences of Indigenous women and girls. Measures can include the recognition, registration and protection of the individual or collective authorship of Indigenous women and girls under national intellectual property rights regimes and should prevent the unauthorized use of their intellectual property, cultural heritage, scientific and medical knowledge, forms of literary, artistic, musical and dance expressions; and natural resources by third parties. States should also respect the principle of free, prior and informed consent of Indigenous women authors and artists and the oral or other customary forms of transmission of their traditional knowledge, cultural heritage and scientific, literary or artistic expressions;<sup>61</sup>**

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

<sup>61</sup> Committee on Economic, Social and Cultural Rights, general comment No. 17 (2005) on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author, para. 32.

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

56. Land and territories are an integral part of the identity, views, livelihood, culture and spirit of Indigenous women and girls. Their lives, well-being, culture and survival are intrinsically linked to the use and enjoyment of their lands, territories and natural resources. The limited recognition of ownership of their ancestral territories; the absence of titles to their lands and legal protection of their traditions and heritage; and the lack of recognition of Indigenous Peoples' land and native title rights at the treaty, constitutional and legislative levels in many countries<sup>62</sup> undermine and fuel disrespect for their rights by State and private actors, specifically the rights to collective ownership, possession use and enjoyment of land and resources. Lack of recognition of Indigenous land rights can lead to poverty; food and water insecurity; and barriers to access to natural resources needed for survival, and can create unsafe conditions, which give rise to gender-based violence against Indigenous women and girls. States are required under international law to delimit, demarcate, title and ensure security of title to Indigenous Peoples' territories to prevent discrimination against Indigenous women and girls.

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

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

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

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

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

(e) **Adopt a comprehensive strategy to address discriminatory stereotypes, attitudes and practices that undermine Indigenous women's rights to land, territories and natural resources.**<sup>63</sup>

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

58. Indigenous women and girls have a key role in their communities in securing food, water and forms of livelihood and survival. The dispossession of their territories, forced displacement and lack of recognition of Indigenous land rights limits their opportunities to achieve food and water security and to manage these needed natural resources. The implementation of extractive and other economic activities and development projects can cause food and water contamination, disruption and degradation and can obstruct key forms of ancestral farming. Climate change and

<sup>62</sup> A/HRC/45/38, paras. 5–9.

<sup>63</sup> General recommendation No. 34, para. 57.



other forms of environmental degradation also threaten food security and contaminate and disrupt water supplies. States should adopt urgent measures to ensure that Indigenous women and girls have adequate access to sufficient food, nutrition and water. Of particular concern is the increasing commercialization of seeds, which are an essential part of the ancestral knowledge and cultural heritage of Indigenous Peoples. This commercialization of seeds often occurs without benefit-sharing with Indigenous women. The proliferation of transgenic or genetically modified crops is of concern to Indigenous Peoples and often occurs without the participation of Indigenous women or girls.

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

(a) **Ensure adequate access of Indigenous women and girls to sufficient food, water and seeds, and acknowledge their contribution to food production, sovereignty and sustainable development;**

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

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

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

60. The right to a clean, healthy and sustainable environment encompasses a safe and stable climate; safe and adequate food and water; healthy ecosystems and biodiversity; a non-toxic environment; participation; access to information; and access to justice in environmental matters.<sup>64</sup> Indigenous women and girls refer to “Mother Earth”, a concept that reflects the vital link that they have with a healthy environment and their lands, territories and natural resources. Human-caused pollution, contamination, deforestation, burning of fossil fuels and loss of biodiversity threaten that link. The failure of States to take adequate action to prevent, adapt to and remediate these serious instances of environmental harm constitutes a form of discrimination and violence against Indigenous women and girls that needs to be promptly addressed. Moreover, States should take steps to recognize the contribution of Indigenous women through their technical knowledge of biodiversity conservation and restoration, including them in decision-making, negotiations and discussions concerning climate action and mitigation and adaptation measures. States should also act promptly to support the work of Indigenous women and girls who are environmental human rights defenders and ensure their protection and security.

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

(a) **Ensure that laws and policies related to the environment, climate change and disaster risk reduction reflect the specific impacts of climate change**

<sup>64</sup> See Human Rights Council resolution [48/13](#).

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and other forms of environmental degradation and harm, including the triple planetary crisis;<sup>65</sup>

(b) Ensure that Indigenous women and girls have equal opportunities to meaningfully and effectively participate in decision-making related to the environment, disaster-risk reduction and climate change;<sup>66</sup>

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

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

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<sup>65</sup> General recommendation No. 37, para. 26.

<sup>66</sup> *Ibid.*, para. 36.

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