Written submission presented by:

FIMI - International Indigenous Women's Forum
AIWO - African Indigenous Women's Organizations
ECMIA - Continental Network of Indigenous Women of the Americas
AMICAM - Alliance of Indigenous Women from Central America and México
AIWN - Asian Indigenous Women's Network
NATSIWA - National Aboriginal and Torres Strait Islander Women's Alliance
MADRE

For:

Committee on the Elimination of Discrimination Against Women

Regarding:

Elaboration of CEDAW General Recommendation No. 39 on the Rights of Indigenous Women and Girls

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The Right to Self-determination of Indigenous Women and Girls[2]

I. The Problem

a. General Overview

- One of the primary concerns of Indigenous women and girls is recognition of the collective right of Indigenous Peoples to self-determination, including their rights to their territories and natural resources, which are "inextricably linked to [their] survival, development, identity and self-determination."[3]
- The denial of Indigenous women's right to self-determination, through the denial of their spiritual and physical connection with their lands, territories, and resources, also has implications for Indigenous women's right to culture by affecting "tangible and intangible manifestations of their ways of life, world views, achievements and creativity."[4] "The right of [I]ndigenous [P]eoples to self-determination implies their right to maintain, control, protect and develop their own cultural heritage."[5]
- The prevalence of poverty in Indigenous communities can be traced to denigration of the right to self-determination as it relates to development pathways and control over natural resources.[6]
    - Poverty among Indigenous women and their communities is both related to and mutually reinforced by the exclusion of Indigenous women's perspective and agency from dominant development paradigms.[7]
- Many Indigenous women and girls live in communities where customary justice mechanisms are used to resolve disputes.[8] While this is more accessible, informal justice often overlaps with statutory and religious laws, contributing to discriminatory stereotypes and practices.[9]

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[2] This narrative received contributions from Alejandra de la Camara, Denisse Córdova Montes, Tamar Ezer, Gabriela Valentín Díaz, Mary Miller, Abril Montero Dokser, Ellen Bangoa, Alicia Limtiaco, Aminatu Gambo, Igdalia Rojas, Natalia Caruso, and Tapio Keihäs.

[3] Ellen-Rose Kambel, *A Guide to Indigenous Women's Rights under the International Convention on the Elimination of All Forms of Discrimination Against Women*, Forest Peoples Programme, 8 https://asianindigenouswomen.org/index.php/indigenous-womens-human-rights/cedaw/19-a-guide-to-indigenous-womens-rights-under-the-international-convention-on-the-elimination-of-all-forms-of-discrimination-against-women-second-edition/file (June 8, 2012); Memorandum from Rebecca Pendleton on Notes from CEDAW Expert Meeting on Indigenous Women Rights (MADRE, FIMI, CWGL, WHRI) (Mar. 15, 2019) (on file with author) ("Right to self ID is linked to self-determination, the right to self ID is important, it is an individual and collective right. Important to keep in mind.")

[4] Hum. Rts. Council, *Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage*, Annex ¶4, U.N. Doc. A/HRC/EMRIP/2015/2 (2015).

[5] Hum. Rts. Council, *Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage*, Annex ¶4, U.N. Doc. A/HRC/EMRIP/2015/2 (2015).

[6] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶18, U.N. Doc. A/HRC/30/41 (2015).

[7] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶14, U.N. Doc. A/HRC/30/41 (2015).

[8] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 8, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016)

[9] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 8, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016)

- The enjoyment of individual rights becomes illusory without the recognition of the collective identity and the rights corresponding to it.[10]
- Denial of the right to self-determination is a potential root cause of domestic violence as it leads to loss of identity and self-esteem, as well as breakdowns of community kinships,[11] with profound impact on Indigenous women and girls in urban settings.[12]
    - Existing Indigenous self-governance arrangements have often failed to protect women from economic and social dispossession and from multilayered violence experienced in their own communities and beyond.[13] Current justice systems and existing structures do not adequately address violence against Indigenous women.[14]
    - Further, denial of self-determination and land rights in the context of development projects often forces migration from rural communities to larger urban centers, leaving Indigenous women and girls highly susceptible to violations of their right to be free from trafficking and other forms of violence.[15]
- Indigenous communities' response to denigration of their right to self-determination has often subjugated the rights of Indigenous women.[16]
    - For Indigenous women, the systematic violation of their collective rights as Indigenous Peoples is the single greatest risk factor for gender-based violence including violence perpetrated within their communities.[17]
        - Indigenous women's anti-violence strategies are rooted in defending the collective rights of Indigenous Peoples and communities.[18]
    - In the struggle for self-determination, Indigenous women's rights are put aside because they're associated with Western values that favor individuals over

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[10] Maria Noel Leoni Zardo, *Gender Equality and Indigenous Peoples' Right to Self-Determination and Culture*, 28 AM. U. INT'L L. REV. 1053, 1066 (2013).

[11] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶16, U.N. Doc. A/HRC/30/41 (2015).

[12] *See* Benoit, A. C., Cotnam, J., O'Brien-Teengs, D. , Greene, S., Beaver, K., Zoccole, A., Loutfy, M. (2019). Racism Experiences of Urban Indigenous Women in Ontario, Canada: "We All Have That Story That Will Break Your Heart". The International Indigenous Policy Journal, 10(2). Retrieved from: https://ir.lib.uwo.ca/iipj/vol10/iss2/1

[13] Human Rights Quarterly, *Self-Determination and Indigenous Women's Rights at the Intersection of International Human Rights*, The Johns Hopkins University Press, 232 (Feb. 2012) https://www.jstor.org/stable/41345477

[14] Human Rights Quarterly, *Self-Determination and Indigenous Women's Rights at the Intersection of International Human Rights*, The Johns Hopkins University Press, 232 (Feb. 2012) https://www.jstor.org/stable/41345477

[15] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶60, U.N. Doc. A/HRC/30/41 (2015).

[16] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶13, U.N. Doc. A/HRC/30/41 (2015).

[17] Ellen-Rose Kambel, *A Guide to Indigenous Women's Rights under the International Convention on the Elimination of All Forms of Discrimination Against Women*, Forest Peoples Programme, 8 https://asianindigenouswomen.org/index.php/indigenous-womens-human-rights/cedaw/19-a-guide-to-indigenous-womens-rights-under-the-international-convention-on-the-elimination-of-all-forms-of-discrimination-against-women-second-edition/file (June 8, 2012)

[18] Ellen-Rose Kambel, *A Guide to Indigenous Women's Rights under the International Convention on the Elimination of All Forms of Discrimination Against Women*, Forest Peoples Programme, 8 https://asianindigenouswomen.org/index.php/indigenous-womens-human-rights/cedaw/19-a-guide-to-indigenous-womens-rights-under-the-international-convention-on-the-elimination-of-all-forms-of-discrimination-against-women-second-edition/file (June 8, 2012)

communal rights.[19] Women experience layered violations of their rights because of their Indigenous identities, and further subjugation of their individual rights as sub-collectives within the community.[20]
    - Stripping Indigenous women of their right to self-determination denies them agency, reinforcing power structures that result in the violations of other rights that have a prominent impact on the prevalence of violence and abuse of Indigenous women.[21]
    - The right to self-determination also includes the right to Indigenous health systems; for example, the violation of Indigenous Peoples' right to self-determination leads to the criminalization of Indigenous midwives and to obstetric violence against Indigenous women in the State system.[22]
- For Indigenous women, the key issue is to pursue a human rights framework that not only simultaneously advances individual and collective rights, but also explicitly addresses gender-specific human rights violations of Indigenous women in a way that does not disregard the continued practices and effects of colonialism.[23]
- Militarization is also the States' response against Indigenous Peoples' exercise of their right to self-determination.[24] Militarization results in countless and persistent violations of individual and collective rights, including gender-specific violence and aggression.

b. The Impact of the Climate Crisis and Environmental Violence

- Deregulation has resulted in "systematic violations of [I]ndigenous land rights and self-determination"[25] and environmental violence.
    - These are symptoms of the concept of Neoliberalism where foreign direct investments in Indigenous territories are used to "exploit mineral resources and establish mega-infrastructure projects without the free, informed and prior consent of the citizens."[26]
    - Increased pursuit of natural resources has led governments to allow the extractive industries to encroach on tribal lands without the consent of the Indigenous Peoples

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[19] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶13, U.N. Doc. A/HRC/30/41 (2015).

[20] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶13, U.N. Doc. A/HRC/30/41 (2015).

[21] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶14, U.N. Doc. A/HRC/30/41 (2015).

[22] Memorandum from Rebecca Pendleton on Notes from CEDAW Expert Meeting on Indigenous Women Rights (MADRE, FIMI, CWGL, WHRI) (Mar. 15, 2019) (on file with author) ("There needs to be more positive cultural rights. States need to understand traditional birthing with midwives and indigenous traditional medicines, because as of today there is a lot discrimination around these practices.").

[23] Human Rights Quarterly, *Self-Determination and Indigenous Women's Rights at the Intersection of International Human Rights*, The Johns Hopkins University Press, 232 (Feb. 2012) https://www.jstor.org/stable/41345477

[24] *See* Asian Pacific Forum on Women, Law, and Development, http://apwld.org/tag/militarisation/.

[25] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶60, U.N. Doc. A/HRC/30/41 (2015).

[26] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶60, U.N. Doc. A/HRC/30/41 (2015).

who possess the land for various uses, violating Indigenous Peoples' right to free, prior, and informed consent.[27]
    - Although Indigenous women have unique knowledge and priorities, traditional decision-making structures do not adequately allow for women's involvement, often resulting in outcomes that place additional burdens on them.[28]
    - Indigenous power structures and self-governance agreements tend to be patriarchal and exclude the involvement and perspectives of Indigenous women.[29]
- The realization of the rights to self-determination and development are being seriously challenged by the climate crisis.[30]
    - The climate crisis and rising-sea levels challenge the ability of Indigenous Peoples in small island states to "continue to live on their traditional territory, and . . . to enjoy and exercise their right to self-determination."[31]
    - Small Island Developing States and Least Developed Countries have identified "warming of 1.5 degrees Celsius as a serious threat" to their continued existence.[32]
- The climate crisis further exacerbates development issues as it diverts funds away from societal development programs towards mitigating effects of the climate crisis.[33]
    - Although Indigenous women hold important knowledge for adaptation and mitigation in the context of the climate crisis, "they remain underrepresented in environmental policymaking at multiple levels" and they face "environmental violence caused by large development projects, extractive industries, agribusiness and military contamination on IP's territories," which have "alarming consequences on I[ndigenous women]'s health, including reproductive health, and spiritual well-being."[34]

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[27] *Free Prior and Informed Consent: An indigenous peoples' right and a good practice for local communities*, FOOD AND AGRICULTURE ORG. OF THE UNITED NATIONS, at 6 (2016) http://www.fao.org/3/a-i6190e.pdf; Memorandum from Rebecca Pendleton on Notes from CEDAW Expert Meeting on Indigenous Women Rights (MADRE, FIMI, CWGL, WHRI) (Mar. 15, 2019) (on file with author) ("I have to think about land issues, about keeping my children from getting taken away by the government.")

[28] Conservation International, *Guidelines for Applying Free, Prior and Informed Consent, https://www.conservation.org/docs/default-source/publication-pdfs/ci_fpic-guidelines-english.pdf?sfvrsn=16b53100_2* (Dec. 2013)

[29] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶14, U.N. Doc. A/HRC/30/41 (2015).

[30] *Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R "OHCHR," at 14, (last visited Oct. 10, 2020) https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf.

[31] *Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R "OHCHR," at 14, (last visited Oct. 10, 2020) https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf.

[32] *Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R "OHCHR," at 14, (last visited Oct. 10, 2020) https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf.

[33] *Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R "OHCHR," at 14, (last visited Oct. 10, 2020) https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf.

[34] *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020)

II. Current Protections in International Law

a. Current Protections in CEDAW

- Article 2 of CEDAW undertakes to eliminate discrimination against women through law and legislation and establish "legal protection" of the rights of women.[35]
- Article 7 of CEDAW discusses elimination of discrimination against women in political and public life.[36]
    - Women have the right to participate in the formulation of government policy, in non-governmental organizations and associations concerned with public and political.[37]
- Article 8 of CEDAW ensures the right of women to "represent their Governments at the international level."[38]
- Article 14 of CEDAW proposes that States Parties should "ensure, on a basis of equality of men and women, that they participate in and benefit from rural development."[39]
    - This includes the right of women to "participate in the elaboration and implementation of development planning at all levels," and to "have equal treatment in land and agrarian reform as well as in land resettlement schemes."[40]

b. Current Protections in Other International Treaties

- Article 1 of the U.N. Charter states that one of its principles is: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples."[41]
- ICCPR and ICESCR's common article 1 holds "[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. "[42]
- ICCPR and ICESCR's common article 1, paragraph 2 states, "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."[43]

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[35] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 2, *adopted* Dec. 18, 1979, 1249 U.N.T.S.13

[36] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 7, *adopted* Dec. 18, 1979, 1249 U.N.T.S.13

[37] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 7, *adopted* Dec. 18, 1979, 1249 U.N.T.S.13

[38] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 8, *adopted* Dec. 18, 1979, 1249 U.N.T.S.13

[39] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 14, *adopted* Dec. 18, 1979, 1249 U.N.T.S.13

[40] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 14, *adopted* Dec. 18, 1979, 1249 U.N.T.S.13

[41] U.N. Charter art. 1, ¶ 2.

[42]International Covenant on Civil and Political Rights ("ICCPR") art. 1 ¶1, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171.; International Convention on Economic Social and Cultural Rights, Art. 1 (1966).

[43] International Covenant on Civil and Political Rights ("ICCPR") art. 1 ¶2.

- ILO Convention No. 169 article 6, 1(a) holds governments shall "consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly."[44]
- Further, ILO Convention No. 169 article 15(2) indicates that "governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any program for the exploration or exploitation of such resources on their lands."[45]

c. Current Protections in Non-Binding International Human Rights Instruments

- Article 3 of both UNDRIP and ADRIP states, "Indigenous Peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."[46]
- UNDRIP article 4 states, "Indigenous [P]eoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions."[47]
- Article 19 of UNDRIP calls on states to "consult and cooperate in good faith with the [I]ndigenous [P]eoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."[48]

d. Current Normative Content

- Self-determination has been recognized as a precondition for the fulfilment of other rights.[49]
- Violations of the right to self-determination include:
    - gross and sustained assaults on the cultural integrity of Indigenous Peoples;
    - denigration and non-recognition of customary laws and governance systems;
    - criminalization of Indigenous Peoples' cultural practices, including those related to health;
    - failure to develop frameworks that allow Indigenous Peoples appropriate levels of self-governance; and

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[44] Int'l Labour Organization [ILO] Indigenous & Tribal Peoples Convention, art. 15(2), ¶ 1(a) (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.

[45] Int'l Labour Organization [ILO] Indigenous & Tribal Peoples Convention, art. 15(2), ¶ 1(a) (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.

[46] United Nations Declaration on the Rights of Indigenous Peoples, art. 3, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Oct. 2, 2007;

[47] United Nations Declaration on the Rights of Indigenous Peoples, art. 19, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Oct. 2, 2007.

[48] United Nations Declaration on the Rights of Indigenous Peoples, art. 3, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Oct. 2, 2007.

[49] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶11, U.N. Doc. A/HRC/30/41 (2015).

    - practices that strip Indigenous Peoples of autonomy over land and natural resources.[50]
- The right to self-determination implicates the right to development as it includes the inalienable right to full sovereignty over their natural wealth and resources.[51]
    - Indigenous Peoples have the right to determine and develop priorities and strategies for exercising their right to development.[52]
    - ICCPR and ICESCR's Article 1, paragraph 2 affirms the economic component of the right to self-determination, ensuring that the Indigenous Peoples have the right to profit from their own lands.[53]
- UNDRIP's article 46 responds to concerns raised by states with regards to territorial integrity, stating the declaration should not be "construed as authorizing or encouraging any action which would dismember or impair totally or in part, the territorial integrity or political unity of sovereign and independent States."[54]
- The principle of "free, prior, and informed consent" derives from the right to self-determination and applies to all decisions that have an impact on Indigenous Peoples' lives.[55]
    - No decision relating to the rights and interests of Indigenous Peoples can be taken without their informed consent.[56] Some of the actions which require prior consultation include:
        - Development projects, exploitation of natural resources, and land acquisition and concession;
        - The management of land and resources;
        - In developing legislation, programs, public policies or mechanisms for land and resource management, social protection schemes, education, and health, among others; and
        - When solving and preventing land conflicts.[57]
    - Consultation should take place at the first stages of a development plan, giving the community enough time to discuss the proposal internally.[58]

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[50] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶12, U.N. Doc. A/HRC/30/41 (2015).

[51] UN General Assembly, Resolution 41/128, *Declaration on the Right to Development*, UN Doc. A/RES/41/128, 4 December 1986, Art. 1 (para 2).

[52] G.A. Res. 69/2, World Conference on Indigenous Peoples, ¶ 21 (Sept. 25, 2014).

[53] Human Rights Committee, *General Comment No. 12, Article 1 (The Right to Self-Determination of Peoples)*, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008, para. 4.

[54] United Nations Declaration on the Rights of Indigenous Peoples, art. 46, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Oct. 2, 2007.

[55] *Free, Prior and Informed Consent of Indigenous Peoples*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R "OHCHR," (last visited Oct. 9, 2020) https://www.ohchr.org/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf.

[56] Comm. on the Elimination of Racial Discrimination("CERD"), General Recommendation No. 23: On the Rights of Indigenous Peoples, ¶ 4, U.N. Doc. A/52/18, annex V at 122 (1997) ("The Committee calls in particular upon States parties to (d) Ensure that members of Indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.").

[57] U.N. Hum. Rts. Off. of the High Comm'r, *Land and Human Rights Standards and Applications*, at 49, U.N. Doc HR/PUB/15/5/Add.1 (2015).

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

- The use of "all peoples" instead of "everyone" or "all persons," as most other human rights state, indicates that the right to self-determination is inherently a collective right.[59]
- The right to self-determination confers a body of rights to the group in a way that simultaneously promotes each person's individual rights.[60]
- This has also been characterized as both an "internal" and "external" right.[61] The internal right is that of the individual to pursue their economic, social, and cultural development without outside interference.[62] The "external" right implies peoples, as a collective, have a right to determine their status and place in the international community.[63]

III. State Actions Needed in New CEDAW General Recommendation on Indigenous Women and Girls

- States must remove obstacles to the full realization of the right to self-determination in all fields of life—not just in relation to land and territory—of Indigenous Peoples living under colonial and foreign occupation.[64]
    - States should "support and vote for Indigenous Women's exercise of their inalienable right to self-determination and decolonization."[65]
- States must properly implement the right to free, prior, and informed consent in the context of Indigenous women. Currently, States are obliged to respect the self-determination of Indigenous Peoples by engaging in consultations and obtaining their consent for any action that affects the group, their lands, or their resources. While international law is well-defined on the subject and provides extensive protections, these have not been implemented properly in many states.
    - States must recognize gender inequality as a major development constraint and acknowledge the specific role of Indigenous women as agents of change and sustainable development not only to ensure Indigenous women's free, prior and informed consent in all interventions that affect all aspects of their lives and livelihoods but also to promote the enhancement of their capabilities and of their agency.[66] Further, States must require the process include Indigenous women's perspectives to protect their interests as well, including institutionalizing the allocation of space and resources specifically for Indigenous women. As such, States must engage in added process to build capacities of Indigenous women to enable effective participation in free, prior, and informed consent.

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[59] Maria Noel Leoni Zardo, *Gender Equality and Indigenous Peoples' Right to Self-Determination and Culture*, 28 AM. U. INT'L L. REV. 1053, 1065 (2013).

[60] Maria Noel Leoni Zardo, *Gender Equality and Indigenous Peoples' Right to Self-Determination and Culture*, 28 AM. U. INT'L L. REV. 1053, 1067 (2013).

[61] Hum. Rts. Comm. ("HRC"), General Comment No. 12: Article 1 (Right to Self-determination) The Right to Self-determination of Peoples, ¶ 4, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Mar. 13, 1984).

[62] Hum. Rts. Comm. ("HRC"), General Comment No. 12: Article 1 (Right to Self-determination) The Right to Self-determination of Peoples, ¶ 4, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Mar. 13, 1984).

[63] Hum. Rts. Comm. ("HRC"), General Comment No. 12: Article 1 (Right to Self-determination) The Right to Self-determination of Peoples, ¶ 4, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Mar. 13, 1984).

[64] *Toolkit for Effective Advocacy, From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions,* Indigenous Women's organizations.

[65] *Toolkit for Effective Advocacy, From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions,* Indigenous Women's organizations.

[66] United Nations Department of Economic and Social Affairs, *International Workshop on Methodologies Regarding Free Prior and Informed Concent and Indigenous Peoples*, PFII.2005.WS.2/10 (Jan. 2005).

    - States must "focus investment on addressing the consequences of the climate crisis on Indigenous lands, ensuring that participation of Indigenous Women and that their ancestral knowledge of ecological protection is respected."[67] Indigenous women's skills, technology, spiritual and other practices must be afforded the same protection and respect.
    - "Free, prior, and informed consent" must be acquired through a good-faith effort through Indigenous groups' own representative institutions.[68] This process must ensure Indigenous groups are equally situated in order for consent to meet these standards. To do so, States must consider affording Indigenous groups free legal representation.
    - Free, prior, and informed consent also means the right to withhold consent, not just to give consent.
- States must respect for autonomy, self-governance of Indigenous peoples, and Indigenous women's self-autonomy by sharing power with Indigenous nations.[69]
- "States must respect the right to self-determination of [Indigenous Peoples] and ensure that they have the necessary resources to provide for themselves."[70]
- States must develop mechanisms that allow Indigenous women and girls to pursue other means of recourse against violence if they are unable to obtain support and access to justice within their communities.[71]
- States must ensure that Indigenous Peoples have the right to access, to develop and benefit from their territories and resources.
- States parties must pay special attention to customary systems which often govern land management, particularly in rural areas, and ensure that they don't discriminate against Indigenous women.[72]
    - States parties must raise awareness about Indigenous women's right to land and other natural resources among religious, traditional and customary leaders; law makers; law enforcement authorities; the media; and other relevant actors.[73]
- States must take urgent action in order to mitigate and adapt to the climate crisis and promote the realization of the right to development for everyone.[74]
    - States must effectively address the impacts of threats posed to Indigenous women by the climate crisis in the planning and implementation of all policies concerning

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[67] *Toolkit for Effective Advocacy, From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions,* Indigenous Women's organizations.

[68] United Nations Declaration on the Rights of Indigenous Peoples, art. 3, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Oct. 2, 2007.

[69] Rep. of the Expert Mechanism on the Rights of Indigenous Peoples on its Fifth Session, ¶ 48, U.N. Doc. A/HRC/21/52 (Aug. 17, 2012).

[70] *Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R "OHCHR," at 14, (last visited Oct. 10, 2020) https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf.

[71] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶14, U.N. Doc. A/HRC/30/41 (2015).

[72] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 58, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016)

[73] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 58, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016)

[74] *Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R "OHCHR," at 14, (last visited Oct. 10, 2020) https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf.

the climate crisis and must ensure full participation of Indigenous women in "designing, planning and implementing" such policies.[75]
    - States must ensure that Indigenous women are commensurately and appropriately indemnified or compensated for impacts of climate crisis including the negative impacts of climate responses by the government and other entities, i.e. agribusiness and industrial plantations, intruding into, or, directly or indirectly affecting Indigenous peoples' lives and territories.
    - States must focus investment on addressing the consequences of the climate crisis, "ensuring the participation of Indigenous Women,"[76] and ensuring Indigenous women benefit from disaster preparedness programs and preemptive actions while recognizing their knowledge, roles and skills in climate change mitigation and adaptation.
- States must adopt Indigenous communities' proven practices that balance protection of Indigenous women and respect for self-determination and autonomy of Indigenous Peoples.[77]
    - To do so, States must increase attention to the needs of Indigenous women and reconceptualize rights issues to include the nexus between individual and collective rights, as well as the intersectionality between different forms of discrimination and inequality.[78]
- States must muster their political will to seriously address and implement CEDAW Concluding Comments related to Indigenous Women.

IV. Comparison with State Actions in CEDAW General Recommendation 34

- CEDAW General Recommendation 34 acknowledges that by ignoring the importance of rural women's, which includes Indigenous women, empowerment, self-determination, and position in decision-making and governance, States jeopardize their own progress.[79]
- General Recommendation 34 does not address the tension between collective and individual Indigenous rights.[80]
    - Moreover, gender-specific human rights violations of Indigenous women need to be acknowledged in a way that does not disregard the continued practices and effects of colonialism.[81]

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[75] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 12, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016)

[76] *Toolkit for Effective Advocacy, From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions*, Indigenous Women's organizations.

[77] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶75, U.N. Doc. A/HRC/30/41 (2015); Memorandum from Rebecca Pendleton on Notes from CEDAW Expert Meeting on Indigenous Women Rights (MADRE, FIMI, CWGL, WHRI) (Mar. 15, 2019) (on file with author) ("There are challenges, there are struggles for autonomy. We cannot credit the states. The credit goes to communities for any changes that have been made.")

[78] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶75, U.N. Doc. A/HRC/30/41 (2015).

[79] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 6, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016)

[80] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[81] Human Rights Quarterly, *Self-Determination and Indigenous Women's Rights at the Intersection of International Human Rights*, The Johns Hopkins University Press, 232 (Feb. 2012) https://www.jstor.org/stable/41345477

- General Recommendation 34 does not provide possible State actions to ensure Indigenous women's explicit right to self-determination.[82]
- There is no mention of Indigenous girls in relation to self-determination in General Recommendation 34.[83]

The Right to Equality and Non-discrimination of Indigenous Women and Girls[84]

I. The Problem

a. General Overview

- Historically, the right to equality and non-discrimination has not been guaranteed to Indigenous women and girls, resulting in widespread violations of the full range of Indigenous women's and girls' rights.[85]
- Indigenous women and girls are exposed to discrimination on the basis of sex, Indigenous origin or identity, religion, political or other opinion, and language, among others. However, "[f]or [I]ndigenous women, compounded discrimination on the basis of gender, economic status, and ethnicity manifests itself in human rights violations rooted in: development aggression; armed conflict and the militarization of [I]ndigenous territories; displacement, migration, and urbanization; the denial of basic services, including intercultural education, sanitation, and health care; fundamentalisms and 'harmful traditional practices'; and gender-based violence."[86]
- Gender-based violence (GBV) itself is a violation of the right to equality. As the CEDAW Committee sets out, fundamentally, GBV "constitutes discrimination," requiring states "to pursue, by all appropriate means, and without delay a policy of eliminating discrimination against women, including gender-based violence."[87]
- The intersecting forms of discrimination experienced by women and girls aggravates other violations of their rights, like in the case of GBV.[88]

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[82] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[83] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[84] This narrative received contributions from Gabriela Valentín Díaz, Denisse Córdova Montes, Tamar Ezer, Mary Miller, Abril Montero Dokser, Alicia Limtiaco, Adija Adamu, Ellen Bangoa, Igdalia Rojas, Natalia Caruso, and Tapio Keihäs.
[85] U.N. Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the U.N. Permanent F. on Indigenous Issues, Briefing Note No. 6: Gender and Indigenous Peoples' Human Rights 1, 4 (Feb. 2010), https://www.un.org/esa/socdev/unpfii/documents/BriefingNote6_GREY.pdf [hereinafter Gender and Indigenous Peoples' Human Rights].
[86] U.N. Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the U.N. Permanent F. on Indigenous Issues, Briefing Note No. 6: Gender and Indigenous Peoples' Human Rights 1, 3 (Feb. 2010), https://www.un.org/esa/socdev/unpfii/documents/BriefingNote6_GREY.pdf
[87] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 35: Gender-Based Violence Against Women, updating GR 19, ¶21, U.N. Doc. CEDAW/C/GC/35 (2017).
[88] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 35: gender-based violence against women, updating general recommendation No. 19, ¶ 12, U.N. Doc. CEDAW/C/GC/35 (July 14, 2017).

- Acts of GBV also infringe on a core set of rights in addition to the rights to equality and non-discrimination,[89] this includes the right to security of person[90], the right to privacy[91], the right to freedom from torture and cruel, inhuman and degrading treatment (CIDT)[92] , the right to health,[93] and the right to life.[94]
- Indigenous women's and girls' access to equality and non-discrimination is continuously eroded because discriminatory actions, like GBV, encourage other forms of patriarchal subordination of women and girls. [95]
- The right to equality and non-discrimination of Indigenous women and girls is violated because of societal attitudes, stereotyped roles, and racism.[96]
- "Even where de jure equality exists, all societies assign different roles, which are regarded as inferior, to women."[97]
- Discriminatory or otherwise inadequate legal frameworks—such as statutory legal frameworks—can make justice inaccessible for Indigenous women.[98] Furthermore, the confluence of customary and statutory law erodes customary law practices. This converging creates greater barriers for Indigenous women's and girls' equal access to justice.[99]
- This is due in part to post-colonial policies that reflect colonial and racist attitudes.[100]
- Discrimination and racism were used as justifications for the intrusion of colonialist powers.[101]

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[89] CEDAW, Art. 2, ("States Parties condemn discrimination against women in all its forms"); ICESCR, Art. 2(2) ("The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present covenant will be exercised without discrimination of any kind"); ICCPR, Arts. 3, 26, ("The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant," "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law").

[90] ICCPR, Art. 9(1). ("Everyone has the right to liberty and security of person.").

[91] ICCPR, Art. 17 ("No one shall be subjected to arbitrary or unlawful interference with his privacy...").

[92] CAT, Art. 2(1), ("Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction"), Art. 16(1) ("Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel inhuman or degrading treatment or punishment which do not amount to torture as defined by article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.") ICCPR, Art. 7 ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment").

[93] CEDAW, Art. 12 ("State Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care services…"); ICESCR, Art. 12(1) ("The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health").

[94] ICCPR, Art. 6 ("Every human has the inherent right to life.").

[95] *Id.*

[96] *Breaking the Silence on Violence against Indigenous Girls, Adolescents and Young Women*, UNICEF 1, 20 (2013), https://www.unfpa.org/sites/default/files/resource-pdf/VAIWG_FINAL.pdf [hereinafter *Breaking the Silence on Violence against Indigenous Girls*].

[97] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 21: Equality in Marriage and Family Relations, ¶ 12, U.N. Doc. CEDAW/C/#/Rev.#/Add.# (1994).

[98] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 8, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[99] *See generally* Raja Devasish Roy, *Traditional Customary Laws and Indigenous Peoples in Asia*, MINORITY RTS. GROUP INT'L 1, 11 ("Finally, there are those situations where the practice of customary law is weak or eroded, or in the process of severe erosion. These situations often coincide with a constitutional and legal system that provides little or no constitutional recognition to indigenous peoples or their rights.").

[100] Press Release, *"Doctrines of Dispossession" - Racism against Indigenous peoples*, WORLD CONFERENCE AGAINST RACISM (May 2001), https://www.un.org/WCAR/e-kit/indigenous.htm.

[101] Press Release, *"Doctrines of Dispossession" - Racism against Indigenous peoples*, WORLD CONFERENCE AGAINST RACISM (May 2001), https://www.un.org/WCAR/e-kit/indigenous.htm; *Systematization, Inputs for agreed*

- Specifically, discrimination on the basis of sex, race, language, and religion were strong motivators for the subordination of Indigenous cultures during the colonial era.[102]
- The effects of such discrimination are reflected in policies and discriminatory attitudes that persist today because "[t]he economic and social systems perpetrated by colonialism, modern development and contemporary economic globalization have progressively deepened fundamental imbalances in human relationships with nature and within society."[103]
- This includes the social exclusion and inequality of Indigenous women and girls.[104]
- Indigenous girls specifically face the prospect of child, early, and forced marriages and unions, as well as female genital mutilation which can further exclude them from equal access to social and economic policies.[105]

b. The Impact of the Climate Crisis and Environmental Violence

- Indigenous Peoples, especially Indigenous women and girls, are disproportionately impacted by the climate crisis and environmental violence driven by the neoliberal model of development.[106]
- This is due not only to unequal political power, but the continuous violations of the ecosystems in which Indigenous Peoples have lived for centuries.[107]
- The environment and nature—or the territory—are fundamentally connected to Indigenous Peoples and their lives.[108]
- Specifically, Indigenous women and girls are protectors of the environment. They share a spiritual connection with the environment and are the keepers of traditional knowledge. Indigenous women and girls are primarily responsible for the intergenerational transmission of cultural practices related to the environment and food.[109]

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language towards the General Recommendation on Indigenous Women and Girls, FIMI (Oct. 12, 2020) ("Women compared to the non-Indigenous population. It is described as a multidimensional problem that affects IW, representing a critical barrier to equality and to the full enjoyment of human rights. It is the consequence of persistent discriminatory policies and of an economic growth development model based on capitalism, as well as on new forms of colonialism.").

[102] Press Release, *"Doctrines of Dispossession" - Racism against Indigenous peoples*, WORLD CONFERENCE AGAINST RACISM (May 2001), https://www.un.org/WCAR/e-kit/indigenous.htm.

[103] U.N. Permanent Forum on Indigenous Issues (UNPFII), Rep. on State of the World's Indigenous Peoples, ST/ESA/328, at 44 (2009).

[104] U.N. Permanent Forum on Indigenous Issues (UNPFII), Rep. on State of the World's Indigenous Peoples, ST/ESA/328, at 44 (2009).

[105] *Breaking the Silence on Violence against Indigenous Girls, Adolescents and Young Women*, UNICEF 1, 20 (2013), https://www.unfpa.org/sites/default/files/resource-pdf/VAIWG_FINAL.pdf; *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("Indigenous Women highlighted during the regional meetings that early and forceful marriages and unions; and teenage pregnancies is increasing everyday as the national policies are not implemented to prevent these situations.").

[106] *Indigenous Peoples and Climate Change*, ILO 1, 3 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.

[107] *Indigenous Peoples and Climate Change*, ILO 1, 7 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.

[108] *The effects of climate change on indigenous peoples*, UN.ORG https://www.un.org/development/desa/indigenouspeoples/climate-change.html (last visited Oct. 7, 2020).

[109] Press Release, U.N. Econ. and Soc. Council, Lands, Natural Resources Represent Life for Indigenous Peoples, Not Mere Commodities, Speakers Stress as Permanent Forum begins Session (Apr. 16, 2018) (on file on

- Without a healthy environment, Indigenous Peoples are unable to exercise all their rights, such as cultural rights, equally.[110]
- For example, the right to preserve and practice spiritual traditions, including through the conservation of sacred and medicinal plants for traditional medicines, is significantly hampered by the threat of the climate crisis.
- Additionally, the exposure to the climate crisis imposed on Indigenous Peoples often causes forced migration.[111]
- Forced migration presents a variety of additional challenges for Indigenous women and girls. This includes increased rates of sex trafficking of Indigenous women and girls. Furthermore, as Indigenous women are driven from their territories, Indigenous lifestyles and cultures disappear as well.[112]
- Violations of their collective rights to lands and territories and the forced migration that results further subjects Indigenous women and girls to discrimination on the basis of their various intersecting identities, including increased workloads[113]—at home and in the community—for Indigenous women and girls.[114]
- This is even more true for women, who are more exposed to discrimination.[115]
- The effects of the climate crisis are acutely felt by Indigenous women and girls. Because of Indigenous women's connection to the land and environment, as the keepers of cultures Indigenous women are affected at a disproportionate rate.[116]

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https://www.un.org/press/en/2018/hr5387.doc.htm); *Culture, Department of Economic and Social Affairs*, UN.ORG (last visited Oct. 29, 2020).

[110] *See The effects of climate change on indigenous peoples*, UN.ORG https://www.un.org/development/desa/indigenouspeoples/climate-change.html (last visited Oct. 7, 2020).

[111] *Indigenous Peoples and Climate Change*, ILO 1, 14 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.

[112] Press Release U.N. Dep't of Econ. And Soc. Aff., UN urges protection of indigenous people's rights during migration (Aug. 8, 2018) (on file with https://www.un.org/development/desa/en/news/social/protection-of-indigenous-peoples.html).

[113] See Elizabeth Mcleod et al., Raising the voices of Pacific Island women to inform climate adaptation policies, Marine Policy 93 (2018) 178-185 ("Research in Mali demonstrates how women's workload increased as livelihoods shifted from water to forest-based systems. Climate-induced droughts in Ethiopia and South Asia have led to women and children having to walk farther to get firewood and water, losing time that could be spent on education, income generation, or putting them at risk of violence. In Vanuatu in 2011, following two tropical cyclones, a 300% increase in new domestic violence cases was reported, and research in Samoa showed that people displaced by disaster were at higher risks of gender-based violence than people who stayed in their communities.").

[114] *Indigenous Peoples and Climate Change*, ILO 1, 14 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf; *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("Poverty is structurally linked to I[ndigenous] W[omen]'s limited engagement in the labor market and it has to be analyzed in conjunction with the violation of their collective rights to their lands and territories and to the process of forced migration (especially from rural to urban areas) that has been taking place for decades.".

[115] *Indigenous Peoples and Climate Change*, ILO 1, 16-17 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.

[116] Press Release, U.N. Econ. and Soc. Council, Lands, Natural Resources Represent Life for Indigenous Peoples, Not Mere Commodities, Speakers Stress as Permanent Forum begins Session (Apr. 16, 2018) (on file on https://www.un.org/press/en/2018/hr5387.doc.htm); *Culture, Department of Economic and Social Affairs*, UN.ORG (last visited Oct. 29, 2020); *Indigenous Peoples and Climate Change*, ILO 1, 3 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.

II. Current Protections in International Law

a. Current Protections in CEDAW

- The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) "condemn[s] discrimination against women in all its forms," and demands States "take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women," in Articles 2 and 5 respectively.[117]
- CEDAW's Article 14 mentions that States must eliminate discrimination against women in rural areas to ensure a "basis of equality of men and women."[118]

b. Current Protections in Other International Treaties

- The right to equality and non-discrimination is featured in the very first article of the Universal Declaration of Human Rights (UDHR).[119]
- The UDHR states "[a]ll human beings are born free and equal in dignity and rights."[120]
- Article 26 of the International Covenant on Civil and Political Rights (ICCPR) expands upon the definition of this right, reading "[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. . . the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[121]
- Article 3 of the ICCPR provides for women's right to equal enjoyment of the human rights guaranteed.[122]
- Article 3 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) provides states must "ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights."[123]
- Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) includes the prohibition and elimination of "racial discrimination in all its forms ad to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law."[124]

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[117] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 2 and 5, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.

[118] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 14, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.

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

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

[121] International Covenant on Civil and Political Rights ("ICCPR") art. 26, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171.

[122] International Covenant on Civil and Political Rights ("ICCPR") art. 3, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171.

[123] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 3, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3.

[124] Convention on the Elimination of All Forms of Racial Discrimination ("CERD") art. 5, *adopted* Dec. 21, 1965, 660 U.N.T.S. 195.

- The only international instrument recognizing the right for children is the Convention on the Rights of the Child. In article 2, it states "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."[125]
- International Labor Organization- Indigenous and Tribal Peoples Convention No. 169 (ILO 169) article 3.[126]

c. Current Protections in Non-Binding International Human Rights Instruments

- The right to equality and non-discrimination is also recognized in context specific to Indigenous Peoples in the Universal Declaration on the Rights of Indigenous Peoples (UNDRIP) articles 1 and 2, and the American Declaration on the Rights of Indigenous Peoples (ADRIP) articles 7 and 12.[127]
- Articles 1 and 2 of UNDRIP guarantee the enjoyment of all collective and individual human rights and that "individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their [I]ndigenous origin or identity."[128]
- Article 4 of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) provides States "shall take all appropriate measures to eliminate all forms of discrimination against peasant women and other women working in rural areas and to promote their empowerment in order to ensure, on the basis of equality between men and women, that they fully and equally enjoy all human rights and fundamental freedoms and that they are able to freely pursue, participate in and benefit from rural economic, social, political and cultural development."[129]
- ADRIP "[g]uarantees against racism, racial discrimination, xenophobia, and related intolerance." Further stating "Indigenous [P]eoples have the right not to be the object of racism, racial discrimination, xenophobia, or related intolerance."[130]
- Interestingly, ADRIP and ILO 169 are the only instruments that recognize the right to equality and discrimination for Indigenous women, specifically guaranteeing the right to women in articles 7 and 3 respectively.[131]

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[125] Convention on the Rights of the Child ("CRC") art. 2, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3.
[126] Int'l Labour Organization [ILO], *Indigenous and Tribal Peoples Convention*, art. 3 (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.
[127] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 1-2, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007; American Declaration on the Rights of Indigenous Peoples art. 7 and 12, AG/RES. 288 (XLVI- O/16), *adopted* June 15, 2016.
[128] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 1-2, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[129] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP") art. 4, G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).
[130] American Declaration on the Rights of Indigenous Peoples art. 12, AG/RES. 288 (XLVI- O/16), *adopted* June 15, 2016.
[131] American Declaration on the Rights of Indigenous Peoples art. 7, AG/RES. 288 (XLVI- O/16), *adopted* June 15, 2016.; Int'l Labour Organization [ILO], *Indigenous and Tribal Peoples Convention*, art. 3 (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.

d. Current Normative Content

- Equality and non-discrimination serve as a foundation for the access and exercise of other human rights.[132]
- This right is meant to guarantee equality in the law, equal protection of the law, and prohibit discrimination on any grounds.[133]
- Equality and non-discrimination goes beyond just formal equality and requires substantive equality and enforcement.[134]
- Equality and non-discrimination is an individual right that applies to all other rights, including but not limited to, equality in the access and execution of justice and equal participation in public life.[135]
- Although this is an individual right, the principles of equality and non-discrimination, according to UNDRIP, demand that Indigenous Peoples have the right to the full enjoyment of their collective rights.[136]

III. State Actions Needed in New CEDAW General Recommendation on Indigenous Women and Girls

- State parties must respect, protect, and fulfill—which includes the States' obligations to promote and facilitate—Indigenous women's and girls' right to equality and non-discrimination and ensure that Indigenous women and girls are equal before the law and are afforded equal protection by the law.[137]
- Equality before the law necessitates access to justice, [138] which requires States' assessments of how plural justice systems—including religious, customary, and Indigenous laws and practices—can work in tandem to reinforce protections for Indigenous women's rights.[139] "Matters concerning Indigenous individuals or their rights or interests in the jurisdiction of each State shall be conducted in such a way as to afford Indigenous individuals the right to full representation with dignity and equality before the law. Consequently, they are entitled,

[132] Hum. Rts. Comm. ("HRC"), General Comment No. 18: Non-discrimination, ¶ 2, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (Nov. 10, 1989).
[133] Hum. Rts. Comm. ("HRC"), General Comment No. 18: Non-discrimination, ¶ 1, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (Nov. 10, 1989).
[134] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 21: Equality in Marriage and Family Relations, ¶ 12, U.N. Doc. CEDAW/C/GC/21 (1994).
[135] Hum. Rts. Comm. ("HRC"), General Comment No. 18: Non-discrimination, ¶ 3, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (Nov. 10, 1989).
[136] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 1, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[137] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 31, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016); Hum. Rts. Comm. ("HRC"), General Comment No. 18: Non-discrimination, ¶ 2, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (Nov. 10, 1989).
[138] Memorandum from Rebecca Pendleton on Notes from CEDAW Expert Meeting on Indigenous Women Rights (MADRE, FIMI, CWGL, WHRI) (Mar. 15, 2019) (on file with author) ("States need to create mechanisms for indigenous women to access land and territory and protection and access to justice for V[iolence] A[gainst] W[omen].").
[139] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 33: on women's access to justice, ¶ 5, 63, U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015).

without discrimination, to equal protection and benefit of the law, including the use of linguistic and cultural interpreters."[140]

- States must address biased attitudes and stereotyping in law enforcement, rooted in discrimination, to encourage Indigenous women to come forward with complaints.[141]
- To adequately protect the right to equality and non-discrimination, States must account for the intersectional identities of Indigenous women and girls and evaluate and address exclusionist attitudes that prevail as a result of centuries of colonial oppression of Indigenous women and girls.[142]
- States must safeguard the right to equality and non-discrimination by accounting for the interactions between the multiple identities of Indigenous women and girls and laws and policies. This intersectional approach "recognizes that people's experience of human rights is mediated by multiple identities, including race, class, ethnicity, religion, sexual orientation, gender, age, disability, citizenship, national identity, geopolitical context, and health."[143]
- States must adopt a more explicit gender and cultural perspective in their laws and policies and practice.[144]
- Staters must adopt a gender perspective that promotes Indigenous gender equality and Indigenous cultural identity as the basis for the full enjoyment of human rights.[145]
- States must continue to address the harmful legacy of colonialism, by ensuring that the right to equality and non-discrimination includes action that rebukes the goals of colonialism and guarantees Indigenous women and girls equal and full access to their collective and individual rights.[146]

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[140] American Declaration on the Rights of Indigenous Peoples, art. 22,AG/RES. 288 (XLVI-O/16), adopted June 15, 2016.

[141] Committee on the Elimination of Discrimination AgainstWomen, Report of the Inquiry Concerning Canada, U.N. Doc. CEDAW/C/OP.8/CAN/1, ¶207 (Mar. 30, 2015).

[142] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 14, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016); U.N. Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the U.N. Permanent F. on Indigenous Issues, Briefing Note No. 6: Gender and Indigenous Peoples' Human Rights 1, 3 (Feb. 2010), https://www.un.org/esa/socdev/unpfii/documents/BriefingNote6_GREY.pdf; *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("Some indigenous communities prefer to prioritize male children's education while girls are kept home to carry out housework.").

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

[144] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 10-11, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016); U.N. Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the U.N. Permanent F. on Indigenous Issues, Briefing Note No. 6: Gender and Indigenous Peoples' Human Rights 1, 2 (Feb. 2010), https://www.un.org/esa/socdev/unpfii/documents/BriefingNote6_GREY.pdf; *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("It has introduced the concept of ecological violence by Indigenous Women to illuminate the ways that the health, livelihoods, social status, and cultural survival of Indigenous Women are threatened by policies and practices that harm the Earth, its climate stability, and its many ecosystems.").

[145] U.N. Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the U.N. Permanent F. on Indigenous Issues, Briefing Note No. 6: Gender and Indigenous Peoples' Human Rights 1, 2 (Feb. 2010), https://www.un.org/esa/socdev/unpfii/documents/BriefingNote6_GREY.pdf

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

- States must protect Indigenous women's and girls' right to be free from discrimination by explicitly recognizing and realizing the collective rights of Indigenous Peoples.[147] This is especially true for the collective dimension of the right to self-determination, which implicates a plethora of fundamental social, economic, cultural, and political rights.[148]
- All State actions must ensure Indigenous women and girls have access to leadership roles in their communities and access to all other human rights from which Indigenous women and girls have been historically marginalized, including but not limited to, the right to education, right to health, and the right to be free from violence.[149]
- States must ensure equal access to age, gender, and culturally appropriate services, regardless of social class and in their own language.[150]
- "The provision of such services should be part of a broader multi-sectoral strategy that seeks to improve the holistic development of [I]ndigenous girls and women through access to birth registration, quality education, health (including sexual and reproductive health), social welfare services and complaints . . . ."[151]
- States must seek to address the lack of information on violations against Indigenous girls and take steps to include specific protections for the right to equality and non-discrimination for Indigenous girls.[152]

IV. Comparison with State Actions in CEDAW General Recommendation 34

- CEDAW General Recommendation 34 recognizes that rural women, which includes Indigenous women, experience systemic exclusion at a far more disproportionate rate than rural men.[153]

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

[148] U.N. Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the U.N. Permanent F. on Indigenous Issues, Briefing Note No. 6: Gender and Indigenous Peoples' Human Rights 1, 1-2 (Feb. 2010), https://www.un.org/esa/socdev/unpfii/documents/BriefingNote6_GREY.pdf; *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("Indigenous peoples are experiencing historical injustices, often without redress or reconciliation, as a major reason for the continued marginalization as well as the lack of recognition of their identity and their existence challenged their ability to live in dignity and peace.").

[149] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 6, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016); U.N. Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the U.N. Permanent F. on Indigenous Issues, Briefing Note No. 6: Gender and Indigenous Peoples' Human Rights 1, 2 (Feb. 2010), https://www.un.org/esa/socdev/unpfii/documents/BriefingNote6_GREY.pdf

[150] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 14, 39(a), 43(a), U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016); *Breaking the Silence on Violence against Indigenous Girls, Adolescents and Young Women*, UNICEF 1, 54 (2013), https://www.unfpa.org/sites/default/files/resource-pdf/VAIWG_FINAL.pdf.

[151] *Breaking the Silence on Violence against Indigenous Girls, Adolescents and Young Women*, UNICEF 1, 20 (2013), https://www.unfpa.org/sites/default/files/resource-pdf/VAIWG_FINAL.pdf.

[152] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 93-94, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016); *Breaking the Silence on Violence against Indigenous Girls, Adolescents and Young Women*, UNICEF 1, 20 (2013), https://www.unfpa.org/sites/default/files/resource-pdf/VAIWG_FINAL.pdf.

[153] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 5, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016);

- It also acknowledges that Indigenous women are often excluded from leadership and decision-making roles in their communities.[154]
- As such, General Recommendation 34 places an obligation on State parties to ensure that legal frameworks are non-discriminatory and guarantee access to justice to Indigenous women and to eliminate all forms of discrimination against disadvantage and marginalized groups of rural women.[155]
- General Recommendation 34 also proclaims States should adopt laws, policies and regulations that advance Indigenous women's exercise and enjoyment of their human rights on a basis of equality.[156]
- The recommendation further states that Indigenous women should be ensured equality before the law.[157]
- While General Recommendation 34 makes mention of some rights in terms of the protection of Indigenous girls, these are often discussed in terms of economic, social and cultural rights like the elimination of violence against women and girls, the prevention of forced and/or child marriage, and the rights to education and healthcare.[158]
- CEDAW General Recommendation 34 rarely discusses Indigenous girls' rights to equality and non-discrimination.[159]

The Right to Political Participation of Indigenous Women and Girls[160]

I. The Problem

a. General Overview

- Although Indigenous women's right to participate in public and political decision-making processes is guaranteed in a number of human rights instruments, Indigenous women and girls are often excluded from both Indigenous decision-making structures and local and national political processes in States, which nonetheless determine the pattern of their daily lives and the future of their societies.[161] Particularly in times of crisis, this exclusion has

[154] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 6, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016);
[155] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 9, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016);
[156] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 19, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016);
[157] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 30, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016);
[158] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[159] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[160] This narrative received contributions from Mara Habib, Denisse Córdova Montes, Tamar Ezer, Gabriela Valentín Díaz, Mary Miller, Abril Montero Dokser, Adija Adamu, Alicia Limtiaco, Ellen Bangoa, Igdalia Rojas, Natalia Caruso, and Ximena Armendariz Nicho.
[161] Hum. Rts. Council, *Report of the Special Rapporteur on the rights of Indigenous peoples*, ¶ 38, U.N. Doc. A/HRC/30/41 (2015); Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 23: Political and Public Life, ¶ 9, U.N. Doc. (1997).

silenced Indigenous women's voices and rendered their contribution and experiences invisible.[162]
    - There are very few Indigenous women in national and local political processes and in some countries, there are none at all.[163]
    - Indigenous power structures and self-governance agreements tend to be patriarchal and exclude the involvement and perspectives of women.[164]
- Female Indigenous human rights defenders have faced particular challenges when exercising their right to participation.[165] Female human rights defenders play a vital role in protecting women in Indigenous communities and can be valuable allies to States in the context of balancing their duty to protect all women and the need to respect the right to self-determination and autonomy of Indigenous communities.[166] However, the activities of these female human rights defenders from Indigenous communities have been criminalized and they have been subjected to severe forms of violence.[167]
- Traditional cultural values and religious beliefs, an absence of social services, men's failure to equally share caring and household tasks, violence against women, including early and forced marriages, unions, and pregnancies, women's economic dependence on men, gender stereotyping that offers a narrow vision of "women's political concerns" and the low level of representation of women in the professions from which politicians are recruited, have all played a significant part in the systematic exclusion of Indigenous women from public life.[168]

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[162] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 23: Political and Public Life, ¶ 9, U.N. Doc. (1997); *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("Although there has been progress regarding the political participation of Indigenous Women at the national and international levels thanks to the strengthening of IW's organizations and their advocacy capacity, IW are less represented and included in meaningful political decision-making at the national and local levels due to a lack of recognition of IP in national constitutions and law, discrimination and marginalization, lower levels of education, domestic and care-related responsibilities and political violence.")
General Recommendation No. 23: Political and Public Life, ¶ 9, U.N. Doc. (1997).

[163] Hum. Rts. Council, *Report of the Special Rapporteur on the rights of Indigenous peoples*, ¶ 38, U.N. Doc. A/HRC/30/41 (2015); *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls,* FIMI (Oct. 12, 2020) ("Absence of recognition of IP in constitutional reforms makes it much more difficult to include Indigenous Women's issues as part of the general discourse of women's empowerment.")

[164] Hum. Rts. Council, *Report of the Special Rapporteur on the rights of Indigenous peoples*, ¶ 38, U.N. Doc. A/HRC/30/41 (2015).

[165] Hum. Rts. Council, *Report of the Special Rapporteur on the rights of Indigenous peoples*, ¶ 38, U.N. Doc. A/HRC/30/41 (2015).

[166] Hum. Rts. Council, *Report of the Special Rapporteur on the rights of Indigenous peoples*, ¶ 38, U.N. Doc. A/HRC/30/41 (2015).

[167] Hum. Rts. Council, *Report of the Special Rapporteur on the rights of Indigenous peoples*, ¶ 38, U.N. Doc. A/HRC/30/41 (2015) ("For example, in Oaxaca, Mexico, female human rights defenders have been killed recently."); *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("Political violence has been documented as a barrier to Indigenous Women's participation at all levels in many countries.")

[168] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 23: Political and Public Life, ¶ 10-12, U.N. Doc. (1997); *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("The main obstacles to IW's participation in decision-making include economic factors, double discrimination, stereotypes, racism, a lack of experience in public affairs, the rigidity of political parties, exclusion from political participation at the community level linked to lack of land ownership and the low priority that the spiritual dimension accords to the public apparatus generally.")

b. The Impact of the Climate Crisis and Environmental Violence

- In the context of the climate crisis and environmental violence, the Beijing Declaration & Platform for Action recognizes that "The continuing environmental degradation that affects all human lives has often a more direct impact on women. Women's health and their livelihood are threatened by pollution and toxic wastes, large-scale deforestation, desertification, drought and depletion of the soil and of coastal and marine resources, with a rising incidence of environmentally related health problems and even death reported among women and girls. Those most affected are rural and [I]ndigenous women, whose livelihood and daily subsistence depends directly on sustainable ecosystems."[169]
- Even though Indigenous women are particularly affected by the climate crisis and can play crucial roles in strengthening existing processes related to addressing the climate crisis and environmental violence,[170] Indigenous women are not provided with proper and consistent arrangements for their participation. As a result, Indigenous women must often turn to local organizations, as well as national and international networks for the protection of their human rights impacted by the climate crisis.[171]
- Due to colonization and on-going imperial influences, both women's rights and Indigenous rights movements have been problematic spaces for Indigenous women's participation.[172]
- In COP 21: "According to Ms. Mpofu, the inadequate representation of poor and marginalized people in decision-making processes had contributed to these violations and facilitated the subordination of State responsibilities to protect human rights to powerful corporate interests. Companies had engaged in unsustainable and indefensible practices, including land grabbing, excessive exploitation of mineral resources, over-reliance on fossil fuels and destruction of nature and livelihoods. Persons, groups and peoples in vulnerable situations, including [I]ndigenous [P]eoples, peasants and women, had suffered the greatest impacts of these actions and many had been displaced from their lands."[173] Additionally, "Forests were being taken away from [I]ndigenous [P]eoples who relied on them for their livelihoods, shelter, balanced diets and way of life. People were losing their right to self-determination. Participation was critical to address these problems and [I]ndigenous [P]eoples must have a voice and vote in climate-related decisions. In the context of [I]ndigenous [P]eoples, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) further clarifies that States should obtain the free, prior and informed consent of [I]ndigenous [P]eoples before taking any actions that affect their rights including actions related to the climate crisis mitigation and adaptation measures."[174]

[169] UN Women: Women and Water- Published to promote the goals of the Beijing declaration & platform for action (2005) (Para. 34).
[170] Tahnee Lisa Prior, Leena Heinämäki, *The Rights and Role of Indigenous Women in the Climate Change*, Artcitc Review on Law and Politics, Vol. 8, 2017, pp. 193-221
[171] Tahnee Lisa Prior, Leena Heinämäki, *The Rights and Role of Indigenous Women in the Climate Change*, Artcitc Review on Law and Politics, Vol. 8, 2017, pp. 193-221
[172] Tahnee Lisa Prior, Leena Heinämäki, *The Rights and Role of Indigenous Women in the Climate Change*, Artcitc Review on Law and Politics, Vol. 8, 2017, pp. 193-221
[173] 21st Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCC) (2015) (p.21).
[174] 21st Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCC) (2015) (p.22).

II. Current Protections in International Law

a. Current Protections in CEDAW

- Article 7 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) states that women's right to equal participation in political and public life encompasses the right to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; to participate in the formulation and implementation of government policy; to hold public office and to perform public functions at all levels of government; and to participate in non-governmental organizations and associations concerned with the public and political life of the country.[175]
- Article 8 of CEDAW refers to the obligations of States to take all appropriate measures to provide equal opportunities to women to represent their governments at the international level and to participate in the work of international organizations.[176]
- In the rural context in particular, Article 14 of CEDAW stresses the importance of women's participation in law and policies to benefit from development, calling on states to ensure women's rights "[t]o participate in the elaboration and implementation of development planning at all levels" and "[t]o participate in all community activities."[177]
- In CEDAW General Recommendation No. 37, the Committee urges States to prioritize the voices of "the most marginalized groups of women," including Indigenous women.[178] It links participation to empowerment, recognizing the need for both effective processes and the allocation of the resources necessary to ensure that diverse groups of women have opportunities to participate in every stage of policy development."[179] This includes not just the formulation of policy, but also "implementation and monitoring at each level of government, at the local, national, regional and international levels."[180]
- One of the many interpretations by human rights bodies, Special Rapporteur on the Rights of Indigenous Peoples (2015) says: "Indigenous women have the right to participate in public and political decision-making processes. That right stems broadly from the right to self-determination, as well as from the provisions of CEDAW."[181]
- Article 2 of CEDAW undertakes to eliminate discrimination against women through law and legislation and establish "legal protection" of the rights of women, which includes the right to political participation.[182]

[175] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 7, adopted Dec. 18, 1979, 1249 U.N.T.S. 13.
[176] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 8, adopted Dec. 18, 1979, 1249 U.N.T.S. 13.
[177] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 14(2), adopted Dec. 18, 1979, 1249 U.N.T.S. 13.
[178] CEDAW General Recommendation 37 (2018) (para. 27).
[179]CEDAW General Recommendation 37 (2018) (para. 27).
[180] CEDAW General Recommendation 37 (2018) (para. 27).
[181] Special Rapporteur Report: Hum. Rts. Council, Report of the Special Rapporteur on the Rights of Indigenous Peoples, ¶ 38, U.N. Doc. A/HRC/30/41 (Aug. 6, 2015).
[182] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 2, *adopted* Dec. 18, 1979, 1249 U.N.T.S.13

b. Current Protections in Other International Treaties

- Article 25 of the International Covenant on Civil and Political Rights (ICCPR) states that "every citizen shall have the right and the opportunity, to take part in the conduct of public affairs, directly or through freely chosen representatives."[183]
- Under the Universal Declaration of Human Rights, "everyone shall have the right and the opportunity to take part in the government of his country."[184]
- The International Labour Organization Convention 169 on Indigenous and Tribal Peoples states that governments shall: "establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them."[185]
- Article 15 of the Convention on the Rights of the Child (CRC) recognizes the rights of the child to freedom of association and to freedom of peaceful assembly.[186]

c. Current Protections in Non-Binding International Human Rights Instruments

- In the Inter-American system, the American Declaration on the Rights of Indigenous Peoples (ADRIP) establishes: **"**Every person having legal capacity is entitled to participate in the government of his country, directly or through his representative, and to take part in popular elections which shall be by secret ballot and shall be honest, periodic and free."[187]
- The American Convention on Human Rights likewise recognizes the right" to take part in the conduct of public affairs, directly or through freely chosen representatives" and " to vote and to be elected in genuine periodic elections."[188]
- Under the African system, the Banjul Charter states: "Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law."[189]
- UNDRIP says: "Indigenous [P]eoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own [I]ndigenous decision-making institutions."[190]
- ADRIP sets out, "Indigenous peoples have the right to full and effective participation in decision-making, through representatives chosen by themselves in accordance with their own institutions, in matters which affect their rights, and which are related to the

[183] International Covenant on Civil and Political Rights ("ICCPR") art. 25(a), adopted Dec. 16, 1966, 999 U.N.T.S. 171.
[184] Universal Declaration of Human Rights ("UDHR") art. 21(1), G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948)
[185] Int'l Labour Organization [ILO], Indigenous and Tribal Peoples Convention, art. 6 (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.
[186] Convention on the Rights of the Child ("CRC") art. 15, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3.
[187] American Declaration of the Rights and Duties of Man ("American Declaration") art. 20, adopted May 2, 1948, OEA/Ser.L./V.II.23, doc. 21, rev. 6.
[188] American Convention on Human Rights ("Pact of San Jose") art. 23, adopted Nov. 22, 1969, O.A.S.T.S. No. 36.
[189] African Charter on Human and Peoples' Rights ("Banjul Charter") art. 13, adopted June 27, 1981, 1520 U.N.T.S. 217, 21 I.L.M. 58 (1982).
[190] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), adopted Sept. 13, 2007.

development and execution of laws, public policies, programs, plans, and actions related to [I]ndigenous matters."[191]

- Moreover, it recognizes that Indigenous participation and consent are critical in matters concerning them. Thus, "States shall consult and cooperate in good faith with the [I]ndigenous [P]eoples concerned, through their own representative institutions, in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."[192]

d. Current Normative Content

- The right to directly and indirectly participate in political and public life is important in empowering individuals and groups and is one of the core elements of human rights-based approaches aimed at eliminating discrimination.[193]
- The right to political participation is inextricably linked to other human rights such as the rights to peaceful assembly and association, freedom of expression and opinion, and the rights to education and information.[194] Moreover, this right stems broadly from the right to self-determination.[195]
- Obstacles to equal political and public participation include direct and indirect discrimination on grounds such as race, color, descent, sex, language, religion, national, ethnic or social origin, birth, property, disability, nationality or other status.[196]
  - Even when there is no formal discrimination in connection with political or public participation, inequities in access to other human rights may impede the effective exercise of political participation rights of Indigenous women.[197]

III. State Actions Needed in New CEDAW General Recommendation on Indigenous Women and Girls

- States must establish mechanisms with adequate resources to ensure that Indigenous women can fully participate in political life, enabling them to exercise their leadership actively and freely in all arenas of political representation and participation.[198] This must take into account challenges brought on by emergency and unforeseen situations, such as the ongoing COVID-19 pandemic.
- States must support Indigenous women's formations at various levels enabling them to engage in healthy public debate and policy advocacy without repression from any groups or forces.

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[191] American Declaration on the Rights of Indigenous Peoples, AG/RES. 288 (XLVI-O/16), adopted June 15, 2016.
[192] American Declaration on the Rights of Indigenous Peoples, AG/RES. 288 (XLVI-O/16), adopted June 15, 2016.
[193] United Nations Human Rights Office of the High Commissioner, *Equal participation in political and public affairs*, https://www.ohchr.org/EN/Issues/Pages/EqualParticipation.aspx
[194] United Nations Human Rights Office of the High Commissioner, *Equal participation in political and public affairs*, https://www.ohchr.org/EN/Issues/Pages/EqualParticipation.aspx
[195] Special Rapporteur Report: Hum. Rts. Council, Report of the Special Rapporteur on the Rights of Indigenous Peoples, ¶ 38, U.N. Doc. A/HRC/30/41 (Aug. 6, 2015).
[196] United Nations Human Rights Office of the High Commissioner, *Equal participation in political and public affairs*, https://www.ohchr.org/EN/Issues/Pages/EqualParticipation.aspx
[197] United Nations Human Rights Office of the High Commissioner, *Equal participation in political and public affairs*, https://www.ohchr.org/EN/Issues/Pages/EqualParticipation.aspx
[198] *Toolkit for Effective Advocacy, From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions*, Indigenous Women's organizations.

- States parties must take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to Indigenous women, on equal terms with men, the right:
    - To vote in all elections and public referendums and to be eligible for election to all publicly elected bodies and appointment in government bodies;
    - To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
    - To participate in non-governmental organizations and associations concerned with the public and political life of the country."[199]
- To ensure that Indigenous women and girls have equal opportunity to lead and to participate and engage in decision-making in activities relating to disaster risk reduction and climate change, States parties must:
    - Develop programmes to ensure the participation of and leadership by Indigenous women in political life, including through Indigenous organizations, in particular women's organizations, at various levels, particularly in the context of local and community planning in relation to climate change and disaster preparedness, response and recovery;
    - Ensure the equal representation of Indigenous women in forums and mechanisms on disaster risk reduction and climate change, at the community, local, national, regional and international levels, in order to enable them to participate in and influence the development of policies, legislation and plans relating to disaster risk reduction and climate change and their implementation;
    - Take positive measures to ensure that girls, young women and women belonging to Indigenous Peoples are provided with opportunities to be represented in those mechanisms.[200]
- States parties must ensure that Indigenous women have access to judicial mechanisms in cases of corporate violations. The European Parliament resolution of 3 July 2018 on violation of the rights of Indigenous Peoples in the world, including land grabbing, "[c]alls on all states to ensure that Indigenous [P]eoples, in particular women, have access to judicial mechanisms in cases of corporate violations of their rights, and that private forms of remedy that do not ensure effective access to justice are not legitimized; calls on all states to recruit more women into their judicial systems in order to break the patriarchal system that is generally present in those structures; stresses the need to put in place the necessary mechanisms to ensure that [I]ndigenous women are not treated in a discriminatory way, including appropriate interpretation services and legal assistance…"[201]

[199] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 23: Political and public life ¶ 1, U.N. Doc. CEDAW/A/52/38 (1997).
[200] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 37: Gender-related dimensions of disaster risk reduction in the context of climate change, ¶ 36, U.N. Doc. CEDAW/C/GC (February 7, 2018).
[201]European Parliament resolution of 3 July 2018 on violation of the rights of Indigenous peoples in the world, including land grabbing (2017/2206(INI).

IV. Comparison to CEDAW General Recommendation 34

- CEDAW General Recommendation 34 recognizes that although rural women, including Indigenous women, have a right to participate in decision-making at all levels and in community-level discussion with high authorities, they are inadequately represented, possibly due to lack of education; language and literacy constraints; limited mobility and transports; conflict and security concerns; discriminatory gender norms and stereotypes; and lack of time.[202]
- Thus, in order to ensure the active, free, effective, and meaningful and informed participation of Indigenous women in political and public life, and at all levels of decision-making, General Recommendation 34 provides States parties must:
    - Establish quotas and targets for Indigenous women's representation in decision-making positions;
    - Ensure that Indigenous women can influence policy formulation, implementation and monitoring at all levels and in all areas that affect them;
    - Address unequal power relations between women and men, including decision-making and political processes at the community level;
    - Ensure the participation of Indigenous women in the elaborations and implementation of all agricultural and rural development strategies;
      Ensure that rural development projects are implemented only after participatory gender and environmental impact assessments have been conducted with full participation of Indigenous women.[203]
- General Recommendation 34 does not mention the rights of girls in relation to political participation.[204]

Right to Remedy and Access to Justice of Indigenous Women and Girls[205]

I. The Problem

a. General Overview

- Indigenous women and girls lack access to justice in both ordinary and Indigenous justice systems.[206] [207] The lack of access to justice is greatly limited due to geographic obstacles,

[202] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 53, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[203] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 54, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[204] See Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[205] This narrative received contributions from Alejandra de la Camara, Denisse Córdova Montes, Tamar Ezer, Gabriela Valentín Díaz, Mary Miller, Abril Montero Dokser, Ellen Bangoa, Alicia Limtiaco, Igdalia Rojas, Natalia Caruso, and Tapio Keihäs.
[206] Hum. Rts. Council, *Report of the Special Rapporteur on Indigenous Rights*, ¶71, U.N. Doc. A/HRC/42/37 (Aug. 2, 2019).
[207] *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("Access to justice in ordinary justice systems as well as in Indigenous ones is still a major challenge and many gaps remain.").

discrimination, marginalization, corruption, judicial structures that reflect colonial powers, and procedures that do not take into account Indigenous cultures.[208]

- Indigenous Peoples are often alienated from State justice systems because they are foreign systems that are inaccessible to them.[209]
- State justice systems often "offer extremely limited prospects for Indigenous [P]eoples to obtain redress for human rights violations and indeed often pose an increased risk of directly or indirectly discriminating against them in their rights to access to justice, to a fair trial and to physical integrity."[210] Indigenous Peoples are overrepresented at every stage of the State judicial process and experience arbitrary arrests and excessive use of force at a higher rate.[211]
    - The Special Rapporteur on Indigenous Rights noted the criminalization of Indigeneity in the Democratic Republic of the Congo with the Batwa; in Kenya with the Samburu, Maasai and Turkana Peoples; in Thailand with the Karen; in Chile with the Mapuche community; and Guatemala, for example.[212]
- Indigenous women are especially subjected to human rights abuses and are particularly likely to be left without viable recourse. [213]
- Insufficient coordination between jurisdictional powers within the State and between State justice systems and Indigenous justice systems creates gaps in social and judicial protections for women.[214]
- Indigenous women and girls are marginalized in both national and Indigenous justice systems.[215] Discrimination based on stereotypes and stigmas adversely impacts Indigenous women's right to access to justice.[216] National justice systems are often inaccessible to women because of language barriers, economic barriers, and other cultural factors.[217] Some other factors that impede women's access to justice include "illiteracy, trafficking, armed conflict, status as an asylum seeker, internal displacement, statelessness, migration, being a female head of household, widowhood, living with HIV, deprivation of liberty,

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[208] Hum. Rts. Council, *Report of the Special Rapporteur on Indigenous Rights*, ¶34, U.N. Doc. A/HRC/42/37 (Aug. 2, 2019).

[209] Hum. Rts. Council, *Report of the Special Rapporteur on Indigenous Rights*, ¶7, U.N. Doc. A/HRC/42/37 (Aug. 2, 2019).

[210] Hum. Rts. Council, *Report of the Special Rapporteur on Indigenous Rights*, ¶64, U.N. Doc. A/HRC/42/37 (Aug. 2, 2019).

[211] Hum. Rts. Council, *Report of the Special Rapporteur on Indigenous Rights*, ¶42-43, U.N. Doc. A/HRC/42/37 (Aug. 2, 2019).

[212] Hum. Rts. Council, *Report of the Special Rapporteur on Indigenous Rights*, ¶42-44, U.N. Doc. A/HRC/42/37 (Aug. 2, 2019).

[213] *See* Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples: On Indigenous Women and Girls*, ¶43, U.N. Doc. A/HRC/30/41 (2015). ("Indigenous women are routinely denied their right to remedy for abuses of their human rights.")

[214] Committee on the Elimination of Discrimination AgainstWomen, Report of the Inquiry Concerning Canada, U.N. Doc. CEDAW/C/OP.8/CAN/1, ¶203 (Mar. 30, 2015).

[215] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples: On Indigenous Women and Girls*, ¶44, U.N. Doc. A/HRC/30/41 (2015).

[216] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 33: on women's access to justice, ¶8, U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015).

[217] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples: On Indigenous Women and Girls*, ¶44, U.N. Doc. A/HRC/30/41 (2015).

criminalization of prostitution, geographical remoteness and stigmatization of women fighting for their rights."[218]

- Further, women may experience "lack of access to high-quality, gender-competent legal advice, including legal aid, as well as the often-noted deficiencies in the quality of justice systems."[219] Indigenous judicial systems are often male dominated, leaving little room for women to voice complaints.[220] Further, they may favor the male over the woman in cases of domestic violence.[221]
    - For example, the Aboriginal Justice Inquiry of Manitoba, Canada, identified biased outcomes in Indigenous domestic abuse claims favoring the male partner.[222]
- Indigenous Peoples experience "historical injustices," without redress or reconciliation.[223]
- Historical government failure to provide effective avenues for redress contributes to the continuous and systematic violations of Indigenous women and girls' rights. [224]
- When law enforcement and tribunal systems are ineffective or inaccessible, perpetrators act with impunity in an environment that is conducive to gender-based violence (GBV).[225]
- Private companies further impede Indigenous women's access to justice by requiring signed agreements prohibiting women who have been victims of extreme violence from suing the company.[226] These agreements must be signed before women have access to corporate grievance mechanisms, which have been reported to be patently disproportionate to the injury.[227]
- Extractive contracts funded through investment agreements are legally constructed "to exclude possibilities for affected communities to seek remedies and redress."[228]
- Recognition of Indigenous traditional justice systems remain limited throughout the world.[229] Even in countries whose laws enshrine recognition of the Indigenous justice

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[218] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 33: on women's access to justice, ¶9, U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015).

[219] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 33: on women's access to justice, ¶ 13, U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015).

[220] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples: On Indigenous Women and Girls*, ¶44, U.N. Doc. A/HRC/30/41 (2015).

[221] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples: On Indigenous Women and Girls*, ¶44, U.N. Doc. A/HRC/30/41 (2015).

[222] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples: On Indigenous Women and Girls*, ¶44, U.N. Doc. A/HRC/30/41 (2015).

[223] *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020).

[224] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples: On Indigenous Women and Girls*, ¶43, U.N. Doc. A/HRC/30/41 (2015).

[225] Committee on the Elimination of Discrimination AgainstWomen, Report of the Inquiry Concerning Canada, U.N. Doc. CEDAW/C/OP.8/CAN/1, ¶209 (Mar. 30, 2015).

[226] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples: On Indigenous women and girls*, ¶45, U.N. Doc. A/HRC/30/41 (2015).

[227] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples: On Indigenous women and girls*, ¶45, U.N. Doc. A/HRC/30/41 (2015).

[228] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples: On human rights defenders*, ¶34, U.N. Doc. A/HRC/39/17 (2018).

[229] Hum. Rts. Council, *Report of the Special Rapporteur on Indigenous Rights*, ¶52, U.N. Doc. A/HRC/42/37 (Aug. 2, 2019).

system as legitimate, such as Ecuador, Colombia, and Mexico, the relationship between the two systems is strained and hindered by discriminatory attitudes.[230]

- The idea of Indigenous restorative justice approaches has been historically unrecognized or unpermitted by State actors by their forcing of westernized justice.[231]
- Alternative dispute resolution may lead to greater violations of women's rights and reinforce impunity because they often operate based on patriarchal values.[232]
- In States where there are multiple systems of justice Indigenous women may not be familiar enough to decide between them or may not be "at liberty to decide which regime applies to them."[233]

b. The Impact of the Climate Crisis and Environmental Violence

- The climate crisis and environmental violence magnify the gender inequality faced by Indigenous women because Indigenous women are often excluded from decision-making and lack institutional support, and thus their access to remedies is further limited by the destruction of the environment.[234]
- Mechanisms for participation in the context of the climate crisis are weak and Indigenous Peoples are exposed to the negative consequences of the climate crisis. Without "strong mechanisms to ensure access to remedies," Indigenous Peoples remain disproportionately affected by the climate crisis.[235]
- Land and environmental defenders are on the frontline of the climate crisis. They face violence, threats, and criminalization with women defenders being disproportionately affected.[236][237] Governments are failing in investigating and bringing to justice those responsible for attacking environmental defenders.[238] Underreporting and corruption in the justice systems has made it difficult to prosecute the defenders' attackers.[239]

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[230] Hum. Rts. Council, *Report of the Special Rapporteur on Indigenous Rights*, ¶52, U.N. Doc. A/HRC/42/37 (Aug. 2, 2019).

[231] Hum. Rts. Council, *Report of the Special Rapporteur on Indigenous Rights*, ¶ 7 U.N. Doc. A/HRC/42/37 (Aug. 2, 2019).

[232] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 33: on women's access to justice, ¶16(a), U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015).

[233] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 33: on women's access to justice, ¶62, U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015).

[234] *Indigenous Peoples and Climate Change*, ILO, 7 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.

[235] *Indigenous Peoples and Climate Change*, ILO, 20 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.

[236] Global Witness, Defending Tomorrow: The Climate Crisis and Threats Against Land and Environmental Defenders (July 2020) at 6,8.

[237] *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("Indigenous Women continue to be criminalized, persecuted and killed for defending their land and rights.").

[238] Global Witness, Defending Tomorrow: The Climate Crisis and Threats Against Land and Environmental Defenders (July 2020) at 8.

[239] Global Witness, Defending Tomorrow: The Climate Crisis and Threats Against Land and Environmental Defenders (July 2020) at 10.

- In 2019, "40% of murdered defenders belonged to [I]ndigenous communities" even though Indigenous Peoples are only 5% of the world's population. Over 1 in 10 environmental defenders killed were women.[240]

II. Current Protections in International Law

a. Current Protections in CEDAW

- Under CEDAW Articles 2(c) & 2(e), "States parties are therefore required to adopt measures to ensure the practical realization of the elimination of discrimination against women, including measures that enable women to complain effectively about violations of their rights under the Convention and to obtain an effective remedy."[241]
- CEDAW's Article 15(2) provides States must "accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity."[242]
- CEDAW's Article 14(1) mentions that States must take all measures to ensure that the provisions of the Convention apply to women in rural areas.[243]
- Article 3 of CEDAW ensures that States take measures, including legislation, to protect women's "exercise and enjoyment of human rights and fundamental freedoms on a basis of equality of men," especially in the political field.[244]
- CEDAW's Article 5 seeks to modify "social and cultural patterns of conduct" to eliminate prejudices and practices that are stereotypes or support the inferiority or superiority of the sexes.[245]

b. Current Protections in Other International Treaties

- Article 8 of the Universal Declaration of Human Rights (UDHR) asserts that "[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating fundamental and human rights granted him by the constitution or by law."[246]
- Article 3(a) of the International Covenant on Civil and Political Rights (ICCPR) holds that States must "ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity."[247]

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[240] Global Witness, Defending Tomorrow: The Climate Crisis and Threats Against Land and Environmental Defenders (July 2020) at 10.

[241] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 2, adopted Dec. 18, 1979, 1249 U.N.T.S. 13.

[242] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 15(2), adopted Dec. 18, 1979, 1249 U.N.T.S. 13.

[243] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 14(1), adopted Dec. 18, 1979, 1249 U.N.T.S. 13.

[244] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 3, adopted Dec. 18, 1979, 1249 U.N.T.S. 13.

[245] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 5, adopted Dec. 18, 1979, 1249 U.N.T.S. 13.

[246] Universal Declaration of Human Rights ("UDHR") art. 8, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948).

[247] International Covenant on Civil and Political Rights ("ICCPR") art. 3(a), *adopted* Dec. 16, 1966, 999 U.N.T.S. 171.

- Article 6 of the International Convention on the Elimination of All Forms of Discrimination (ICERD) sets forth that "States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination."[248]
- The International Labour Organization (ILO) Indigenous and Tribal Peoples Convention No. 169 (ILO C169) article 8 holds that "[i]n applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws."[249] Further, "[t]hese peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle."[250]

  ILO C169 article 9 further provides, "[t]o the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected"[251] and "[t]he customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases."[252]

c. Current Protections in Non-Binding International Human Rights Instruments

- The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) article 40 states that "Indigenous [P]eoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the Indigenous [P]eoples concerned and international human rights."[253]
- UNDRIP article 4 provides "Indigenous [P]eoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs."[254]
- Article 22 of the American Declaration on the Rights of Indigenous Peoples (ADRIP) states:

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[248] International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD") art. 6, 660 U.N.T.S. 195, 212.

[249] Int'l Labour Organization [ILO] Indigenous & Tribal Peoples Convention, art. 8(1), ¶ 1(a) (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.

[250] Int'l Labour Organization [ILO] Indigenous & Tribal Peoples Convention, art. 8(2), ¶ 1(a) (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.

[251] Int'l Labour Organization [ILO] Indigenous & Tribal Peoples Convention, art. 9(1), ¶ 1(a) (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.

[252] Int'l Labour Organization [ILO] Indigenous & Tribal Peoples Convention, art. 9(2), ¶ 1(a) (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.

[253] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), art. 40, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Oct. 2, 2007.

[254] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 4, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.

- "Indigenous [P]eoples 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."
- "Indigenous law and legal systems shall be recognized and respected by national, regional and international legal systems."
- "Matters concerning Indigenous individuals or their rights or interests in the jurisdiction of each State shall be conducted in such a way as to afford Indigenous individuals the right to full representation with dignity and equality before the law. Consequently, they are entitled, without discrimination, to equal protection and benefit of the law, including the use of linguistic and cultural interpreters."[255]

- ADRIP article 33 goes on to state "Indigenous [P]eoples and individuals have the right to effective and suitable remedies, including prompt judicial remedies, for the reparation of any violation of their collective and individual rights. States, with the full and effective participation of Indigenous [P]eoples, shall provide the necessary mechanisms for the exercise of this right."[256]

d. Current Normative Content

- The CEDAW Committee has stated that the framework established by the State "must also be effective in practice, as it is not the formal existence of judicial remedies that demonstrates due diligence, but rather their actual availability and effectiveness."[257]
- The same CEDAW report states that these mechanisms must operate to protect women from violations of their rights by State and non-State actors alike, and "includes the duty to protect women from the violation of their right to equality before the law."[258]
- General Recommendation 33 of the CEDAW Committee states that "[j]usticiability requires the unhindered access by women to justice and their ability and empowerment to claim their rights as legal entitlements."[259]
- General Recommendation 33 also states that achieving justice systems of quality for women requires gender-sensitive dispute resolutions that are gender sensitive, open to practical measures, and reflect the increasing demands by women for justice.[260]
- The CEDAW Committee report on the inquiry concerning Canada stated that institutional responses must be commensurate with the needs, priorities, and seriousness of the situation to provide Indigenous women with effective investigations and prosecutions.[261]
- CEDAW General Recommendation 34 defined effective access to justice in rural areas by saying that it can only be fulfilled if authorities at all levels "including the judiciary, judicial

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[255] American Declaration on the Rights of Indigenous Peoples, art. 22,AG/RES. 288 (XLVI-O/16), adopted June 15, 2016.

[256] American Declaration on the Rights of Indigenous Peoples, art. 33,AG/RES. 288 (XLVI-O/16), adopted June 15, 2016.

[257] CEDAW Report of the inquiry concerning Canada (2015) (para. 207).

[258] CEDAW Report of the inquiry concerning Canada (2015) (para. 199).

[259] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 33: on women's access to justice, ¶ 14(a), U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015).

[260] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 33: on women's access to justice, ¶ 14(d), U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015).

[261] Committee on the Elimination of Discrimination Against Women, Report of the Inquiry Concerning Canada, U.N. Doc. CEDAW/C/OP.8/CAN/1, ¶210 (Mar. 30, 2015).

administrators and civil servants, have the resources needed and the political will to respond to violence against rural women," which includes Indigenous women.[262]

  - States should ensure the development and maintenance of courts and other judicial entities needed to guarantee women's access to justice in remote areas.[263]

- The Inter-American Court of Human Rights held that recourse "must be truly appropriate to establish whether there has been a violation of human rights and to provide everything necessary to remedy it," otherwise, the State violates its duty.[264]
- State laws as well as "religious, customary, Indigenous or community laws and practices" may coexist within one State.[265] The scope of women's right to access to justice includes both.[266]
  - States parties and non-State actors must collaborate to assess ways in which plural justice systems can work in tandem to reinforce protection for women's rights.[267]
- "The ability of Indigenous [P]eoples to continue and strengthen their own systems of administration of justice is an integral component of their rights to self-governance, self-determination and access to justice under international human rights instruments."[268]
- Indigenous courts and "chieftaincy-based alternative dispute resolution, where chiefs and other community leaders resolve interpersonal disputes," provide greater flexibility and reduce costs for women seeking justice.[269]
- The right to access to justice is not a collective right in and of itself, but it applies to violations of collective rights as well as individual rights.

III. State Actions Needed in New CEDAW General Recommendation on Indigenous Women and Girls

- Indigenous women and girls must have equal right to access to justice and remedy. To achieve this right, States must make judicial entities available to Indigenous women and girls throughout the entire territory.[270]

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[262] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶25(c), U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

[263] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 33: on women's access to justice, ¶ 16(a), U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015).

[264] IACHR, Arguments before the Inter-American Court of Human Rights in the case of Yakye Axa v. Paraguay. Cited in: I/A Court H.R., Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, par. 52(b).

[265] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 33: on women's access to justice, ¶ 5, U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015).

[266] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 33: on women's access to justice, ¶ 5, U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015).

[267] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 33: on women's access to justice, ¶63, U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015).

[268] Hum. Rts. Council, *Report of the Special Rapporteur on Indigenous Rights* (focusing on access to justice), ¶13-14, U.N. Doc. A/HRC/42/37 (Aug. 2, 2019).

[269] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 33: on women's access to justice, ¶57, U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015).

[270] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 33: on women's access to justice, ¶62, U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015).

- States' formal framework must be actually available and effective to women and girls, not merely present.[271] This must be full and appropriate information in their mother tongue.
- States must develop programs to enhance the presence of Indigenous women in the justice system to create a more inclusive system.[272]
- States must create culturally relevant mechanisms for Indigenous women to access justice for violence against women.[273]
- States must foster effective communication between law enforcement branches and between State and customary Indigenous law enforcement systems to better protect women.[274]
    - Federal criminal justice reform should incorporate tribal jurisdiction in order to achieve successful outcomes for Indigenous women who are victims, survivors or currently experiencing multiple forms of violations.
- States must address biased attitudes and stereotyping in law enforcement to encourage Indigenous women and girls to come forward with complaints.[275]
    - Mechanisms to address biased attitudes should address misconceptions about Indigenous Peoples including Indigenous women and their intersectional identities like transgender or two-spirit people and Indigenous women and girls with disabilities.
    - States should provide Indigenous women and girls with effective and accessible complaint instruments for misconduct during investigations, ensuring full understanding, including availability of instruments in their mother tongue.
- States must create legal frameworks that use disaggregated data to investigate missing, trafficked, and murdered Indigenous women and girls.[276]
- States must provide disaggregated data and information about Indigenous women and girls and develop techniques for "data collection, processing, and analysis."[277]
- States must "create mechanisms [with adequate resources] to guarantee access to justice for Indigenous Women and Girls, both in State-operated and in Indigenous judicial institutions."[278]
- Even where Indigenous Peoples, particularly women and girls, have the possibility to resort to their traditional mechanisms to resolve a dispute, they should be able to choose the ordinary justice system instead. States, through their National Women Machineries and justice systems, must strengthen and enable Indigenous customary laws and justice systems

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[271] Committee on the Elimination of Discrimination AgainstWomen, Report of the Inquiry Concerning Canada, U.N. Doc. CEDAW/C/OP.8/CAN/1, ¶209 (Mar. 30, 2015).

[272] Hum. Rts. Council, *Report of the Special Rapporteur on Indigenous Rights*, ¶38, U.N. Doc. A/HRC/42/37 (Aug. 2, 2019).

[273] Lucy Mulenkei, *Notes from CEDAW Expert Meeting on Indigenous Women Rights*, MADRE, FIMI, CWGL, WHRI (Mar. 15, 2019).

[274] Committee on the Elimination of Discrimination AgainstWomen, Report of the Inquiry Concerning Canada, U.N. Doc. CEDAW/C/OP.8/CAN/1, ¶203 (Mar. 30, 2015).

[275] Committee on the Elimination of Discrimination AgainstWomen, Report of the Inquiry Concerning Canada, U.N. Doc. CEDAW/C/OP.8/CAN/1, ¶207 (Mar. 30, 2015).

[276] Committee on the Elimination of Discrimination Against Women, Report of the Inquiry Concerning Canada, U.N. Doc. CEDAW/C/OP.8/CAN/1, ¶217 (Mar. 30, 2015).

[277] *Toolkit for Effective Advocacy, From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions*, Indigenous Women's organizations.

[278] *Toolkit for Effective Advocacy, From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions*, Indigenous Women's organizations.

to effectively address violations of indigenous women's rights and gender-based violence consistent with the CEDAW and other human rights standards.

- States must also "ensure that women have a real and informed choice concerning the applicable law and the judicial forum within which they would prefer their claims to be heard."[279]
    - To achieve real and informed choice, States should disseminate information on possible legal systems and what each entail.
- International human rights law must provide for greater recognition of a collective right to truth by society when it comes to grave and systemic human rights violations. The following are examples of recognition of the collective right to truth:
    - This is already recognized by the Inter-American human rights system. In *Ellacuria v. El Salvador*, the Inter-American Court on Human Rights likewise emphasized that the right to know the truth is "a collective right that ensures society access to information that is essential for the workings of democratic systems."[280]
    - In a study on the right to truth, the OHCHR recognized that societies are entitled "to know the truth about serious human rights violations" and that the right to truth serves as a direct mechanism fundamental "to prevent future recurrence of such events."[281]
    - Former Secretary General Ban Ki-Moon explained that exposing the truth helps "entire societies to foster accountability for violations" and can "provide catharsis and help produce a shared history of events that facilitates healing and reconciliation."[282]
- States must ensure accessible, adequate, and appropriate essential services necessary to guarantee the right to remedy and access to justice. These include legal support, translation services, transportation, psychological interventions, security (such as hallway houses and safehouses) and other logistical considerations.[283]

IV. Comparison with State Actions in CEDAW General Recommendation 34

- General Recommendation 34 says States should guarantee access to justice for rural women, which includes Indigenous women, and ensure non-discrimination. This includes an analysis of current laws, enacting legislation to reduce conflicts of law, increase women's legal awareness, ensuring free or affordable legal aid, ensuring formal and informal mechanisms, and training legal officials on the rights of Indigenous women.[284]

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[279] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 33: on women's access to justice, ¶16(a), U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015).

[280] Ellacuria v. El Salvador, Case 10.488, Inter-Am. Comm'n H.R., Report No. 136/99, OEA/Ser.L/V/II.106 doc. 3 rev. ¶ 224 (1999).

[281] U.N. Office of the High Comm'r for Human Rights, Economic and Social Council, Promotion and Protection of Human Rights: Study on the Right to Truth, E/CN.4/2006/91, ¶¶ 15, 37 (Feb. 8, 2006)

[282] United Nations Secretary-General, United Nations, Secretary-General's Message on the International Day for the Right to Truth of Victims of Gross Human Rights Violations (Mar. 24, 2011), https://www.un.org/sg/en/content/sg/statement/2011-03-24/secretary-generals-message-international-day-right-truth-victims.

[283] *See* Hum. Rts. Council, Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities, ¶20, U.N. Doc. A/HRC/27/65 (Aug. 7, 2014).

[284] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶9, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

- General Recommendation 34 ensures physical access to courts and justice mechanisms and provides an example of mobile courts.[285]
- Girls' rights are mentioned in regards to violence against Indigenous women and girls by ensuring access to justice, compensation, and "other forms of redress or reparation" by those in rural areas.[286]
- However, General Recommendation 34 does not mention women's rights to their customary and traditional legal systems, the ability to choose between traditional and state systems, or restorative justice systems.[287]

Right to Freedom from Gender-Based Violence (GBV) of Indigenous Women and Girls[288]

I. The Problem

a. General Overview

- GBV is an alarming and pressing issue among Indigenous women and girls globally that amounts to genocide in some cases and includes domestic violence, physical and sexual violence, disappearances, femicide, trafficking for sexual exploitation, forced sterilization, forced surrogacy and early and forced marriages and unions, among others.
- More than 33 percent of Indigenous women are raped during their lifetime[289] while almost 80 percent of women with disabilities have experienced violence and are four times more likely than other women to suffer sexual violence. Women and girls with disabilities are also two to three times more likely to be child brides and undergo violence in the name of tradition, such as female genital mutilation. They are also subjected to other forms of harmful practices, such as 'virgin testing', and 'virgin rapes', and experience neglect linked to son preference, extreme dietary restrictions, as well as infanticide, forced sterilization and abortion.[290]
- Inter-communal and intra-communal conflicts—often induced by new-colonial outside interests—involving Indigenous communities in Africa often result in GBV.[291]
- In all Pacific countries, there are high levels of violence against women as compared to global averages. National statistics in 11 countries showed reported lifetime prevalence rates for physical and sexual violence against women by intimate partners ranging from

[285] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶9, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).
[286] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶25(c), U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).
[287] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

[288] This narrative received contributions from Gita Howard, Yilian Pimienta, Denisse Córdova Montes, Tamar Ezer. Gabriela Valentín Díaz, Mary Miller, Abril Montero Dokser, Alicia Limtiaco, Ellen Bangoa, Igdalia Rojas, Natalia Caruso, and Tapio Keihäs.
[289] United Nations (6 August 2015). Report of the Special Rapporteur on the rights of Indigenous Peoples, Victoria Tauli Corpuz. A/HRC/30/41. p. 13.
http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_41_ENG.docx
[290] UN Women, Fact Sheet on Indigenous Women with disabilities.
Design-Factsheet-IndigenousWomenDisabilities-MED_RES-Final-V2 (unwomen.org)
[291] United Nations Inter-Agency Support Group on Indigenous Issues, *Thematic Paper on the Elimination and Responses to Violence, Exploitation and Abuse of Indigenous Girls, Adolescents and Young Women* (2013), p. 10.

25% in Palau to 68% in Kiribati. In tonga, rates of non-partner violence are higher at 68% than intimate partners rates at 40%.[292]

- In North America, for instance, Native American and Alaska Native women experiencing sexual assault at a rate 2.5 times higher than other women.[293] In Canada, though Indigenous women make up only 4% of the population, they are 25% of all the female murdered individuals. The discrimination spans past being disproportionally represented in the makeup of the victims, and into the criminal justice process, as even today, nearly half of these cases remain unsolved.[294]
- The final report of the National Inquiry into Missing and Murdered Indigenous Women recognized that violence perpetuated against Indigenous Peoples, particularly, Indigenous women and girls reached the level of a genocide.[295]
- Violations of the collective dimensions of Indigenous Peoples' rights to self-determination, to culture, and to land and natural resources, among others, aggravate violations of Indigenous women's individual right to be free from GBV.[296] Violations of the right of Indigenous women and girls to be free from GBV are intimately intertwined with environmental, spiritual, and cultural violence, often the result of racism and the legacy of colonialism.
- The dominant culture-based paradigms that justify or explain the violations of Indigenous women's rights, reducing violence against women to a cultural problem, must be addressed.[297]
    - States must not invoke any cultural discourse, including notions of custom, tradition or religion, to justify or condone any act of violence.[298] Rather, States should condemn such violence, which entails denouncing any cultural discourse put forward to justify it.[299]
- There is a widespread lack of data and research on the impact of GBV on Indigenous women and girls; however available information shows that Indigenous women and girls experience higher rates of gender-based violence compared to non-Indigenous women, lower reporting rates, limited or no access to quality and culturally and linguistically relevant services, racialized policing, limited or no access to justice and insufficient relevant public policies to prevent and protect them from violence[300].

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[292] Pacific Women Shaping Pacific Development. (March 2017). Women's Economic Empowerment Syn- thesis Report, Informing the Pacific Women Shaping Pacific Development Roadmap 2017-2022. Pacific Women Shaping Pacific Development, Australian Aid.

[293] Hum. Rts. Council, *Report of the Special Rapporteur on Rights the Rights of Indigenous Women and Girls*, ¶47(d), U.N. Doc. A/HRC/30/41 (2015); ("It has been estimated that one out of three [I]ndigenous women has suffered sexual violence.").

[294] Missing and Murdered Indigenous Women in British Columbia, Canada, INTER-AM. COMM'N ON HUMAN RIGHTS, 11 (Dec. 21, 2014), https://www.oas.org/en/iachr/reports/pdfs/Indigenous-women-bc-canada-en.pdf>.

[295] The Final Report of the National Inquiry Into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place*, pg. 355 (2019).

[296][296] Violence and Indigenous Women, ECMIA & CHIRAPAQ (2013), http://chirapaq.org.pe/en/violence-and-indigenous-women.

[297] *See* Hum. Rts. Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, U.N. Doc. A/HRC/4/34 (2007).

[298] *See* Hum. Rts. Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, U.N. Doc. A/HRC/4/34 (2007).

[299] *See* Hum. Rts. Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, U.N. Doc. A/HRC/4/34 (2007).

[300] Global Study on the Situation of Indigenous Women and Girls in the Framework of the 25th Anniversary of the Beijing Declaration and Platform for Action (BDPfA), FIMI, 2020.

- Mainstream efforts to address GBV do not typically integrate Indigenous dimensions of violence thus reinforcing systems of oppression and exclusion and failing to address the historical trauma of colonization.[301]
- The status of women in customary law can limit their ability to challenge harmful practices, to access resources and family property, and to seek child custody. Customary law language is open to interpretation, and "new custom law" is sometimes introduced to limit women's autonomy. Male chiefs and traditional elders preside over traditional courts with jurisdiction over village, family and personal issues. This customary law system has sometimes legitimized male power and dominance over women, and sanctioned or permitted violence against women.[302]
- The negative depiction of Indigenous women and girls in media platforms also exacerbates GBV against Indigenous women and girls.[303]
- The exclusion of Indigenous midwifery from official health policies and the criminalization of Indigenous women and girls for exercising their right to culture through the preservation and transfer of traditional knowledge and medical practices, such as Indigenous midwifery, are also forms of GBV.[304]
- Among other forms of gender-based violence, Indigenous women have experienced forced and coerced sterilization at disproportionate rates. There has been a continuous history of forced and coerced sterilization of Indigenous women in the Americas—starting in the 1800s,[305] and continuing to this day.
    - In Canada, specifically, Indigenous women have experienced forced sterilization in public hospitals for several decades.[306]
        - Indigenous women have raised this issue at the regional human rights level. Indigenous woman and attorney, Alisa Lombard, and colleagues successfully requested a hearing with the Inter-American Commission on Human Rights (IACHR) on forced sterilization of Indigenous women in Canada.[307] At a subsequent hearing, the IACHR questioned the Canadian

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[301] Mary F. Oneha, Lois Magnussen, and Jan Schoultz, *The Voices of Native Hawaiian Women: Perceptions, Responses and Needs Regarding Intimate Partner Violence*, Californian journal of health promotion (2010).
[302] Pacific Women Shaping Pacific Development , March 2017.
[303] See Tucker, Angie, *Media and the Perpetuation of Western Bias: Deviations of Ideality: Media's Role in the Reinforcement of Negative Stereotypes of Indigenous Identities and the Manifestations of Violence Toward Murdered Women* (May 2016), https://www.mtroyal.ca/nonprofit/InstituteforCommunityProsperity/_pdfs/icp_angie_studentreport.pdf.
[304] *Indigenous midwives demand their recognition by the States at the UN*, CHIRAPAQ (April 2018), http://chirapaq.org.pe/en/indigenous-midwives-demand-their-recognition-by-the-states-at-the-un.
[305] *See* Amnesty International, *Indigenous women in Canada continue to be coercively or forcibly sterilized*, (November 13, 2018) https://www.amnesty.ca/blog/indigenous-women-canada-continue-be-coercively-or-forcibly-sterilized; *see* Sally J. Torpy, *Native American Women and Coerced Sterilization: On the Trail of Tears in the 1970s*, American Indian Culture and Research Journal 24:2 https://www.law.berkeley.edu/php-programs/centers/crrj/zotero/loadfile.php?entity_key=QFDB5MW3; International Justice Resource Center, *Forced Sterilization of Indigenous Women in Canada*, https://ijrcenter.org/forced-sterilization-of-indigenous-women-in-canada/; Center for World Indigenous Studies, *Forced Sterilization of 272,000 Indigenous Women 'Not a Crime Against Humanity': Public Prosecutor*, (September 13, 2016) https://intercontinentalcry.org/forced-sterilization-272000-indigenous-women-not-crime-humanity-public-prosecutor/.
[306] International Justice Resource Center, *Forced Sterilization of Indigenous Women in Canada*, https://ijrcenter.org/forced-sterilization-of-indigenous-women-in-canada/.
[307] International Justice Resource Center, *Forced Sterilization of Indigenous Women in Canada*, https://ijrcenter.org/forced-sterilization-of-indigenous-women-in-canada/.

government publicly on its efforts to address the issue.[308] In response, the Canadian government acknowledged its role and promised to implement proposed reforms.[309]

- In May 2018, the International Justice Resource Center (IJRC) and Lombard attended the 168th Period of Sessions of the Inter-American Commission on Human Rights in Santo Domingo, Dominican Republic in order to further inform the Commission on the issue.[310] In January 2019, the IACHR published a press release expressing "deep concern" over the claims of forced sterilization of Indigenous women in Canada, and called on the Canadian government to take measures in addressing the allegations.[311]

- Peru's Health Ministry estimates that over 200,000 Indigenous women underwent forced or coerced sterilization in Peru between 1995-2001 as part of the "National Program for Reproductive Health and Family Planning (PNSRPF)".[312]
  - In 1999, human rights organizations brought a case of one of the victims before the IACHR, Mamérita Mestanza Chávez v. Perú.[313] The IACHR approved a settlement agreement, where the State agreed to investigate the facts, apply legal punishments, and provide Ms. Mestanza's children free primary and secondary education and guarantee free health insurance for her family. The government failed to provide secondary education to her children, and closed the promised investigations, alleging that there was a lack of evidence that mostly poor and Indigenous women were sterilized against their will.

- The impacts of forced sterilization can be devastating, resulting in feelings of grief and loss of self-esteem.[314] In some cultures, it might even result in abandonment by partners or loss of economic support.[315] Furthermore, women and girls who have undergone non-consensual sterilization are likely to distrust the healthcare system and be deterred from seeking future medical care.[316]

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[308] International Justice Resource Center, *Forced Sterilization of Indigenous Women in Canada*, https://ijrcenter.org/forced-sterilization-of-indigenous-women-in-canada/.
[309] International Justice Resource Center, *Forced Sterilization of Indigenous Women in Canada*, https://ijrcenter.org/forced-sterilization-of-indigenous-women-in-canada/.
[310] International Justice Resource Center, *Forced Sterilization of Indigenous Women in Canada*, https://ijrcenter.org/forced-sterilization-of-indigenous-women-in-canada/.
[311] Organization of American States, *IACHR expresses its deep concern over the claims of forced sterilizations against indigenous women in Canada*, (Jan. 18, 2019), http://www.oas.org/en/iachr/media_center/PReleases/2019/010.asp.
[312] *See* Jacquelyn Kovarik, *Silenced No More in Peru*, nacla (September 10, 2019); *see* Angel Paez, *Peru: IACHR Calls for Justice for Victims of Forced Sterilization*, Inter Press Service, (Nov. 26, 2009); *see also* Open Society Foundations, *Against Her Will: Forced and Coerced Sterilization of Women Worldwide*, at 3.
[313] Center for Reproductive Rights, *Human Rights Organizations Condemn Peru for Ending Criminal Investigation into Mass Forced Sterilization*, (March 24, 2014), https://reproductiverights.org/press-room/human-rights-organizations-condemn-peru-for-ending-criminal-investigation.
[314] TORTURE IN HEALTHCARE SETTINGS: REFLECTIONS ON THE SPECIAL RAPPORTEUR ON TORTURE'S 2013 THEMATIC REPORT 19 (2014) at 25.
[315] TORTURE IN HEALTHCARE SETTINGS: REFLECTIONS ON THE SPECIAL RAPPORTEUR ON TORTURE'S 2013 THEMATIC REPORT 19 (2014) at 25.
[316] TORTURE IN HEALTHCARE SETTINGS: REFLECTIONS ON THE SPECIAL RAPPORTEUR ON TORTURE'S 2013 THEMATIC REPORT 19 (2014) at 25.

- Additionally, because Indigenous women and girls are specifically targeted, forced and coerced sterilization in this instance can amount to genocide.[317]
    - In a National Inquiry into Missing and Murdered Indigenous Women, Canada recognized forced or coerced sterilization as a reason for declaring a Colonial Genocide.[318]
    - In Asia, there are alarming cases of girls being trafficked into forced surrogacy. Forced surrogacy is a lucrative underground form of GBV for which Indigenous women and girls are at risk.[319]

b. The Impact of the Climate Crisis and Environmental Violence

- Against this backdrop of abuse, the climate crisis and capitalism-induced environmental violence is displacing communities at increasing rates and leading to economic instability, land disputes, and disruptions in social safety nets, increasing the risk of GBV.[320]
- Especially relevant to Indigenous communities is the explanation that common examples of environmental factors that provoke GBV are "economic activities including global supply chains, extractive and offshoring industry, militarization, foreign occupation, armed conflict, violent extremism and terrorism." [321]
- Indigenous women's and girls' disproportionate exposure to the climate crisis can also cause forced migration.[322]
- Forced migration presents a variety of additional challenges for Indigenous women and girls. This includes increased rates of violence, including sex trafficking of Indigenous women and girls. Furthermore, as Indigenous women are driven from their territories, Indigenous lifestyles and culture disappear as well.[323]
    - "In nearly every region of the world, Indigenous [P]eoples are being displaced and severely affected by violence." Indigenous women and girls are subjected to sexual violence and rape.[324]

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[317] *See* National Inquiry Into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place, The Final Report of the National Inquiry Into Missing and Murdered Indigenous Women and Girls,* at 54 ("The National Inquiry's findings support characterizing these acts, including violence against Indigenous women, girls, and 2SLGBTQQIA people, as genocide").
[318] *See* National Inquiry Into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place, The Final Report of the National Inquiry Into Missing and Murdered Indigenous Women and Girls,* at 54.
[319] *See Surrogate Motherhood: A Violation of Human Rights*, EUROPEAN CTR. FOR L. AND JUSTICE 1, 12 (Apr. 26, 2012).
[320] World Health Organization ("WHO"), Gender, Climate Change and Health, pg. 16 (2014).
[321] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 35: Gender-Based Violence Against Women, updating GR 19, ¶14, U.N. Doc. CEDAW/C/GC/35 (2017); ("Se ha incrementado la violencia de género antes, durante y luego de conflictos sociales, ecoterritoriales y armados.").
[322] *Indigenous Peoples and Climate Change*, ILO 1, 14 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf; Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("Las mujeres indígenas son criminalizadas por defender sus derechos y son víctimas de violencia sexual, esterilizaciones forzadas y migración forzadas para despojarlas de sus territorios.").
[323] Press Release U.N. Dep't of Econ. And Soc. Aff., UN urges protection of Indigenous People's rights during migration (Aug. 8, 2018) (on file with https://www.un.org/development/desa/en/news/social/protection-of-indigenous-peoples.html).
[324] *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020).

    - Due to water scarcity, Indigenous women and girls travel long distances to search for water which leaves them at greater risk of sexual violence.[325]
    - Indigenous women and girls are more likely to endure discriminatory practices, like forced sterilizations, and exclusion from healthcare.[326]
- Moreover, Indigenous leaders have been at the forefront of sounding the alarm on the climate crisis and may also experience GBV as human rights defenders confronting environmental degradation.[327]
- "Women human rights defenders are attacked because of who they are and what they do. The risks are even greater for those facing intersecting forms of discrimination –if you are a woman and from a racial minority, [I]ndigenous, poor, lesbian, bisexual or trans[gender], a sex worker, you have to fight so much harder to have your voice heard by those in power…" [328]
- Indigenous women and girls are also disproportionately impacted by environmental violence that threatens their health.[329]. Environmental violence also refers to the conscious proliferation of environmental toxins that are known to carry high risks and impact for the environment and human health.[330]
- This environmental violence not only affects Indigenous women's and girls' right to be free from violence, but implicates a myriad of other rights, such as the right to health, the right to a healthy environment, the right to life, the right to food, the right to culture, and the right to self-determination, among others.[331]
- Many women and girls are being forcibly sterilized because of the belief that limiting population growth can help with the climate crisis.[332]

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[325] *Indigenous Peoples and Climate Change*, ILO 18 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.
[326] *Indigenous Peoples and Climate Change*, ILO 17 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.
[327] Woman Human Rights Defenders Confronting Extractive Industries – The Association for Women's Rights in Development (AWID), pg. 12 (https://www.awid.org/sites/default/files/atoms/files/whrds-confronting_extractive_industries_report-eng.pdf, (2017).
[328] Amnesty International, *Challenging Power, Fighting Discrimination: A Call to Action to Recognize and Protect Human Rights Defenders*, 2019 (Index ACT 30/1139/2019)
[329] *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("It has introduced the concept of ecological violence by Indigenous Women to illuminate the ways that the health, livelihoods, social status, and cultural survival of Indigenous Women are threatened by policies and practices that harm the Earth, its climate stability, and its many ecosystems.").
[330] Andrea Carmen and Vi Waghiyi, *Indigenous Women and Environmental Violence*, INTERNATIONAL INDIAN TREATY COUNCIL AND INDIGENOUS WOMEN'S ENVIRONMENTAL AND REPRODUCTIVE HEALTH INITIATIVE AND NATIVE VILLAGE OF SAVOONGA, ST. LAWRENCE ISLAND, ALASKA AND ALASKA COMMUNITY ACTION ON TOXICS 1, 4 (Jan. 2012), https://www.un.org/esa/socdev/unpfii/documents/EGM12_carmen_waghiyi.pdf.
[331] Andrea Carmen and Vi Waghiyi, *Indigenous Women and Environmental Violence*, INTERNATIONAL INDIAN TREATY COUNCIL AND INDIGENOUS WOMEN'S ENVIRONMENTAL AND REPRODUCTIVE HEALTH INITIATIVE AND NATIVE VILLAGE OF SAVOONGA, ST. LAWRENCE ISLAND, ALASKA AND ALASKA COMMUNITY ACTION ON TOXICS 1, 4 (Jan. 2012), https://www.un.org/esa/socdev/unpfii/documents/EGM12_carmen_waghiyi.pdf; Memorandum from Rebecca Pendleton on Notes from CEDAW Expert Meeting on Indigenous Women Rights (MADRE, FIMI, CWGL, WHRI) (Mar. 15, 2019) (on file with author) ("The [new General Recommendation] needs to look at GBV against indigenous women and how this intersects with environmental violence.").
[332] Caitlin Fendley, *Eugenics is Trending. That's a problem.*, THE WASHINGTON POST (Feb. 17, 2020), https://www.washingtonpost.com/outlook/2020/02/17/eugenics-is-trending-thats-problem/; Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("Sabemos que existen países . . . para controlar la natalidad, las mujeres son literalmente obligadas a hacerse operaciones para no tener más hijos mediante políticas de esterilizaciones forzadas que quedan impunes.").

- In 2005, the UK funded a program to curb India's population by sterilizing women. A paper published by the UK's Department for International Development in 2010 cited the need to fight the climate crisis as a key reason for sterilization programs. The paper claims that reducing the population would cut greenhouse gases although there would be "complex human rights and ethical issues" in forced sterilizations.[333]
    - The Indigenous women and girls in India are the "most frequently targeted and are most vulnerable to pressure to be sterili[z]ed."[334]

II. Current Protections in International Law

a. Current Protections in CEDAW

- The right to be free from gender-based violence is found under the right to equality and non-discrimination. In CEDAW, that takes form in articles 2 and 5. These articles state CEDAW "condemn[s] discrimination against women in all its forms," and demands States "take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women," in articles 2 and 5 respectively.[335]
- CEDAW's Article 14 mentions that States must eliminate discrimination against women in rural areas to ensure a "basis of equality of men and women."[336]
- Article 16 of CEDAW seeks to eliminate discrimination against women in matters relating to marriage by ensuring the right to enter into marriage only with "free and full consent" and protecting the same rights and responsibilities during marriage and parenthood.[337]
- In CEDAW General Recommendation 19, the CEDAW Committee states that the definition of discrimination under CEDAW encapsulates GBV and defines GBV as "violence that is directed against a woman because she is a woman or that affects women disproportionately." [338]
- This definition is reiterated in General Recommendation 35.
- The CEDAW Committee stated in General Recommendation 35 that "on the core obligations of States parties under article 2 of the Convention, it is indicated that the obligations of States are to respect, protect and fulfil women's rights to non-discrimination and the enjoyment of de jure and de facto equality."[339] States have the "overarching

[333] Gethin Chamberlain, *UK aid helps to fund forced sterilization of India's poor*, THE GUARDIAN (Apr. 14, 2012), https://www.theguardian.com/world/2012/apr/15/uk-aid-forced-sterilisation-india.
[334] Gethin Chamberlain, *UK aid helps to fund forced sterilization of India's poor*, THE GUARDIAN (Apr. 14, 2012), https://www.theguardian.com/world/2012/apr/15/uk-aid-forced-sterilisation-india.
[335] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 2 and 5, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.
[336] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 14, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.
[337] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 16, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.
[338] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 19: Violence Against Women, ¶6, U.N. Doc. CEDAW/C/GC/19 (1992).
[339] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 35: Gender-Based Violence Against Women, updating GR 19, ¶11, U.N. Doc. CEDAW/C/GC/35 (2017).

obligation…to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, including gender-based-violence against women."[340]

- In General Recommendation 35, the CEDAW Committee also elaborates on what is known as the "due diligence" standard. [341]
    - "Article 2(e) of the Convention explicitly provides that States parties are required to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise." [342]
    - "This obligation… underpins the Convention as a whole and accordingly States parties will be responsible if they fail to take all appropriate measures to prevent as well as to investigate, prosecute, punish and provide reparation for acts or omissions by non-State actors which result in gender-based violence against women."[343]
- The CEDAW Committee calls upon States to take account of intersecting forms of discriminating in addressing GBV in paragraph 23 on State responsibilities: "…In so doing, women's diversity and the risks of intersectional discrimination stemming from it should be taken into consideration."[344]
- The CEDAW Committee also stated in General Recommendation 35 that "women's right to have a life free from GBV is indivisible from and interdependent with other human rights, including the right to life, health, liberty and security of the person, the right to marriage and family, which includes equality and equal protection within the family, freedom from torture, cruel, inhumane or degrading treatment, freedom of expression, movement, participation, assembly and association."[345]
- The CEDAW Committee has recognized in General Recommendation No. 35, that GBV "takes [on] multiple forms, including … physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty." [346]
- CEDAW protects women's right to reproductive health in its preamble, stating, "the role of women in procreation should not be a basis for discrimination."[347]
- In General Recommendation 24, the CEDAW Committee "affirm[ed] that access to healthcare, including reproductive health, is a basic right" and recommended that states "ensure the removal of all barriers to women's access to health services, education and information, including in the area of sexual and reproductive health."[348]

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[340] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 35: Gender-Based Violence Against Women, updating GR 19, ¶21(b), U.N. Doc. CEDAW/C/GC/35 (2017).
[341] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 35: Gender-Based Violence Against Women, updating GR 19, ¶24(b), U.N. Doc. CEDAW/C/GC/35 (2017).
[342] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 35: Gender-Based Violence Against Women, updating GR 19, ¶24(b), U.N. Doc. CEDAW/C/GC/35 (2017).
[343] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 35: Gender-Based Violence Against Women, updating GR 19, ¶24(b), U.N. Doc. CEDAW/C/GC/35 (2017).
[344] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 35: Gender-Based Violence Against Women, updating GR 19, ¶23(b), U.N. Doc. CEDAW/C/GC/35 (2017).
[345] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 35: Gender-Based Violence Against Women, updating GR 19, ¶15, U.N. Doc. CEDAW/C/GC/35 (2017).
[346] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 35: Gender-Based Violence Against Women, updating GR 19, ¶14, U.N. Doc. CEDAW/C/GC/35 (2017).
[347] CEDAW, preamble.
[348] Comm. On the Elimination of Discrimination Against Women ("CEDAW"), General Recommendation No. 24: Article 12 on the Convention (Women and Health), ¶1, U.N. Doc. A/54/38/Rev.1, chap.1 (1999).

- In General Recommendation 24, the CEDAW Committee explained, "Acceptable [health] services are those which are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality, and is sensitive to her needs and perspectives. State parties should not permit forms of coercion, such as non-consensual sterilization…that violate women's rights to informed consent and dignity."[349]
- CEDAW General Recommendation 35 on gender-based violence against women specially acknowledges, "Violations of women's sexual and reproductive health and rights, such as forced sterilization, forced abortion…are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment."[350]

b. Current Protections in Other International Treaties

- Acts of gender-based violence (GBV) infringe on a core set of rights: the rights to equality and non-discrimination,[351] the right to security of person[352], the right to privacy,[353] the right to freedom from torture and cruel, inhuman and degrading treatment (CIDT),[354] the right to health,[355] and the right to life.[356]
- The Convention on the Prevention and Punishment of the Crime of Genocide states in article 4 that "persons committing genocide or any other acts enumerated in article II shall be punished, whether they are constitutionally responsible rules, public officials or private individuals."[357]
- Article 2 defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.[358]

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[349] Comm. On the Elimination of Discrimination Against Women ("CEDAW"), General Recommendation No. 24: Article 12 on the Convention (Women and Health), ¶ 24, U.N. Doc. A/54/38/Rev.1, chap.1 (1999).
[350] Comm. On the Elimination of Discrimination Against Women ("CEDAW Comm.") General Recommendation recommendation No. 35: on gender-based violence against women, ¶ 18, CEDAW/C/GC/35 (July 14, 2017).
[351] CEDAW, Art. 2, ("States Parties condemn discrimination against women in all its forms"); ICESCR, Art. 2(2) ("The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present covenant will be exercised without discrimination of any kind"); ICCPR, Arts. 3, 26, ("The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant," "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law").
[352] ICCPR, Art. 9(1). ("Everyone has the right to liberty and security of person.").
[353] ICCPR, Art. 17 ("No one shall be subjected to arbitrary or unlawful interference with his privacy...").
[354] CAT, Art. 2(1), ("Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction"), Art. 16(1) ("Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel inhuman or degrading treatment or punishment which do not amount to torture as defined by article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.") ICCPR, Art. 7 ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment").
[355] CEDAW, Art. 12 ("State Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care services…"); ICESCR, Art. 12(1) ("The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health").
[356] ICCPR, Art. 6 ("Every human has the inherent right to life.").
[357] Convention on the Prevention and Punishment of the Crime of Genocide ("CPPCG") art. 4, 1249 U.N.T.S. 13.
[358] Convention on the Prevention and Punishment of the Crime of Genocide ("CPPCG") art. 2, 1249 U.N.T.S. 13.

- CESCR's General Comment 22 specifically focuses "on the right to sexual and reproductive health," establishing that "reproductive health is an integral part of the right to health."[359] The General Comment noted that "health facilities, goods, information and services related to sexual and reproductive healthcare should be accessible to individuals and groups without discrimination and free from barriers."[360]
- The International Labour Organisation's Convention 190 (ILO C190) on Violence and Harassment recognizes the right of everyone to a world of work free from violence and harassment, including gender-based violence and harassment.[361]
    - ILO C190 defines "violence and harassment" in the world of work as "a range of unacceptable behaviors and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm."[362]
    - Additionally, ILO C190 defines "gender-based violence and harassment" as "violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment."[363]

c. Current Protections in Non-Binding International Human Rights Instruments

- The United Nations Declaration on the Elimination of Violence Against Women, defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." [364]
- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) mandates in Article 22 that "particular attention be paid to the rights and special needs of Indigenous elders, women, youth, children and persons with disabilities in the implementation of this declaration."[365]
    - The second part of Article 22 mandates states to take measures "in conjunction with Indigenous [P]eoples, to ensure that [I]ndigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination."[366]
- UNDRIP's Article 24(2) states that, "Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take

[359] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 22: on the right to sexual and reproductive health, ¶ 1, U.N. Doc. CESCR/C/12/GC/22 (May 2, 2016).
[360] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 22: on the right to sexual and reproductive health, ¶ 15, U.N. Doc. CESCR/C/12/GC/22 (May 2, 2016).
[361] Int'l Labour Organization [ILO], *Violence and Harassment*, art. 2 (2019).
[362] Int'l Labour Organization [ILO], *Violence and Harassment*, art. 1 (2019).
[363] Int'l Labour Organization [ILO], *Violence and Harassment*, art. 1 (2019).
[364] United Nations General Assembly Declaration on the Elimination of Violence Against Women, art. 1, A/RES/48/104 (1993).
[365] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), art. 22 ¶1 G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[366] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), art. 22 ¶2 G.A. Res. 61/295, U.N. Doc. A/Rv
ES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.

the necessary steps with a view to achieving progressively the full realization of this right."[367]

- The American Declaration on the Rights of Indigenous Peoples (ADRIP) states in Article 7 on Gender Equality that "Indigenous women have the right to the recognition, protection, and enjoyment of all human rights and fundamental freedoms provided for in international law, free from discrimination of any kind."[368]
- ADRIP mandates in Article 7 on Gender Equality that states "adopt, in conjunction with Indigenous [P]eoples, the necessary measures to prevent and eradicate all forms of violence and discrimination, particularly against [I]ndigenous women and children."[369]
- Article 11 of ADRIP also provides for specific Protection Against Genocide, stating that "Indigenous [P]eoples have the right not to be the object of any form of genocide or attempts to exterminate them," pointing to a collective dimension of the Right to Freedom from GBV.[370]
- In Article 18(3) of ADRIP, on the right to health, ADRIP provides that, "States shall take measures to prevent and prohibit [I]ndigenous [P]eoples and individuals from being subjects of research programs, biological or medical experimentation, or sterilization without their free, prior and informed consent. Likewise, [I]ndigenous [P]eoples and individuals have the right, as appropriate, to access to their data, medical records, and documentation of research conducted by individuals and institutions, whether public or private."[371]
- Paragraph 18 of the Outcome Document of the World Conference on Indigenous Peoples states that "We commit ourselves to intensifying our efforts, in cooperation with [I]ndigenous [P]eoples, to prevent and eliminate all forms of violence and discrimination against [I]ndigenous [P]eoples and individuals, in particular women, children, youth, older persons and persons with disabilities, by strengthening legal, policy and institutional frameworks." [372]
- According to the International Federation of Gynecology and Obstetrics (FIGO) guidelines, only women themselves can consent to sterilization and forced or coerced sterilization cannot be justified on the premises of medical emergency.[373]
- The World Medical Association's (WMA) International Code of Ethics provides that physicians are expected to "respect a competent patient's right to accept or refuse treatment," "not allow [clinical] judgment to be influenced by…unfair discrimination," and "respect the rights and preferences of patients."[374] Specifically, the WMA condemns forced

[367] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 24, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[368] American Declaration on the Rights of Indigenous Peoples, AG/RES. 288 (XLVI-O/16), art. 7 *adopted* June 15, 2016.
[369] American Declaration on the Rights of Indigenous Peoples, AG/RES. 288 (XLVI-O/16), art. 7 *adopted* June 15, 2016.
[370] American Declaration on the Rights of Indigenous Peoples, AG/RES. 288 (XLVI-O/16), art. 11 *adopted* June 15, 2016.
[371] American Declaration on the Rights of Indigenous Peoples ("ADRIP") art. XVIII, AG/Res. 2888 (XLVI-O/16), *adopted* June 16, 2016.
[372] United Nations General Assembly Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, ¶18 G.A. Res. 69/2, U.N. Doc. A/RES/69/2 (Sept. 25, 2014), *adopted* Sept. 22, 2014.
[373] FIGO, International Federation of Gynecology & Obstetrics, *Female Contraceptive Sterilization* (June 2011), at para. 10.
[374] The World Medical Association International Code of Medical Ethics at 1, 2, https://www.wma.net/wp-content/uploads/2006/09/International-Code-of-Medical-Ethics-2006.pdf.

sterilization, calling for consent to be obtained when the patient is not under significant stressors and for national medical associations "to advocate against forced and coerced sterilisation in their own countries and globally."[375]

d. Current Normative Content

- The CEDAW Committee notes in General Recommendation 35 that "discrimination against women is inextricably linked with other factors that may affect their lives. The Committee's jurisprudence highlights that these may include ethnicity/race, [I]ndigenous or minority status, colour, socioeconomic status and/or caste…Accordingly, because women experience varying and intersecting forms of discrimination, which have an aggravating negative impact, the Committee acknowledges that gender-based violence may affect some women to different degrees, or in different ways, so appropriate legal and policy responses are needed…". [376]
- As the CEDAW Committee has recognized, GBV is often exacerbated by "cultural, economic, ideological, technological, political, religious, social and environmental factors."[377]
- Forced and coerced sterilization of Indigenous women violates several fundamental rights in several human rights instruments, including non-discrimination and equality,[378] security of person,[379] health,[380] family, information,[381] privacy,[382] and freedom from torture and cruel, inhuman, and degrading treatment.[383]
- Forced and coerced sterilization is a violation of the right to freedom from torture and cruel, inhuman, and degrading treatment under the ICCPR and CAT.

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[375] World Medical Association Statement on Forced and Coerced Sterilisation, Adopted by the 63rd WMA General Assembly, Bangkok, Thailand (Oct. 2012), https://www.wma.net/policies-post/wma-statement-on-forced-and-coerced-sterilisation/.

[376] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 35: Gender-Based Violence Against Women, updating GR 19, ¶12, U.N. Doc. CEDAW/C/GC/35 (2017).

[377] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 35: Gender-Based Violence Against Women, updating GR 19, ¶14, U.N. Doc. CEDAW/C/GC/35 (2017).

[378] CEDAW, Art. 2, ("States Parties condemn discrimination against women in all its forms"); ICESCR, Art. 2(2) ("The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present covenant will be exercised without discrimination of any kind"); ICCPR, Arts. 3, 26, ("The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant," "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law").

[379] ICCPR, Art. 9(1).

[380] CEDAW, Art. 12 ("State Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care services, including those related to family planning....State Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation"); ICESCR, Art. 12(1) ("The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health").

[381] CEDAW, Art. 10(h) ("State Parties shall...ensure...access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning"); ICCPR, Art. 19(2), "Everyone shall have the right to...receive and impart information and ideas of all kinds...").

[382] ICCPR, Art. 17 ("No one shall be subjected to arbitrary or unlawful interference with his privacy...")

[383] CAT, Art. 2(1), "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction"); CAT, Art. 16 ("Each State party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman, or degrading treatment or punishment…"); ICCPR, Art. 7 ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment").

- The Human Rights Committee in General Comment 28 recognized that forced abortion or sterilization can rise to a violation of torture or cruel, inhuman, or degrading treatment, requesting that states provide the Committee information on measures to prevent these coercive practices.[384]
- The Special Rapporteur on Torture stated, "Forced sterilization is an act of violence, a form of social control, and a violation of the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment."[385] The Special Rapporteur on Torture, Juan Mendez, also confirmed that "forced abortions or sterilizations carried out by State officials in accordance with coercive family planning laws or policies may amount to torture."[386] Mendez further recognized that forced and coerced abortion can cause "tremendous and lasting physical and emotional suffering."[387]
- A joint U.N. interagency statement from UNAIDS, UNDP, UNFPA, UNICEF, and WHO reaffirmed, "sterilization as a method of contraception and family planning should be available, accessible, acceptable, of good quality, and free from discrimination, coercion, and violence, and that laws, regulations, policies and practice should ensure that the provision of procedures resulting in sterilization is based on the full, free and informed decision-making of the person concerned."[388]
- In the United Nations Committee Against Torture's 2018 Concluding Observations on Canada, the Committee noted concern at, "reports of extensive forced or coerced sterilization of [I]ndigenous women and girls dating back to the 1970s and including recent cases in the province of Saskatchewan between 2008 and 2012 . . ."[389] The Committee further recommended that Canada ensure allegations of forced or coerced sterilization be investigated, provide adequate redress to the survivors, and adopt legislative and policy measures to prevent and to criminalize forced or coerced sterilization of women.[390] The Committee additionally recommended to Canada to "raise awareness among [I]ndigenous women and medical personnel" of that requirement for "free, prior and informed consent with regard to sterilization."[391]
    - Forced/coerced sterilization implicates universal rights belonging to individuals.
    - The collective dimension is that forced or coerced sterilization of Indigenous women on a mass scale can amount to genocide.
- The Convention on the Prevention and Punishment of the Crime of Genocide, Art. 2, defines genocide as, "any of the following acts committed with intent to destroy, in whole

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[384] Hum. Rts. Comm. ("HRC"), General Comment No. 28: Equality of rights between men and women, ¶ 7, U.N. Doc CCPR/C/21/Rev.1/Add.10 (2000).
[385] Hum. Rts. Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,* ¶ 48, A/HRC/22/53, (2013).
[386] Hum. Rts. Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,* ¶ 48, A/HRC/22/53, (2013).
[387] Hum. Rts. Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,* ¶ 48, A/HRC/22/53, (2013).
[388] *Eliminating forced, coercive, and otherwise involuntary sterilization, An interagency statement,* UNAIDS, UNDP, UNFPA, UNICEF, WHO (2014), at 1.
[389] Comm. Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Cat. Comm."), *Concluding observations on the seventh periodic of Canada, UN Doc. No. CAT/C.CAN/CO/7,* 21 December 2018, paras. 50-51.
[390] Committee Against Torture, Concluding observations on the seventh periodic of Canada, ¶ 50-51, UN Doc. CAT/C.CAN/CO/7, (December 21, 2018).
[391] Committee Against Torture, Concluding observations on the seventh periodic of Canada, ¶ 50-51, UN Doc. CAT/C.CAN/CO/7, (December 21, 2018).

or in part, a national, ethical, racial, or religious group . . . (d) Imposing measures intended to prevent births within the group."

III. State Actions Needed in New CEDAW General Recommendation on Indigenous Women and Girls

- States must expand international human rights law to reflect that gender-based violence can manifest in spiritual violence and environmental violence.[392]
    - The Inter-American Commission on Human Rights has identified that spiritual violence "takes place when acts of violence and discrimination against Indigenous women not only harm those women individually, but also negatively impact the collective identity of the communities to which they belong. [393]
- States must also expand the definition of GBV beyond a gender binary to refer to violence targeting or disproportionately impacting individuals due to their gender or prevailing gender norms and preferences, not just women.
    - Over the past decade, various UN bodies have also recognized violence against individuals based on their sexual orientation and/or gender identity as a form of GBV, since they are "driven by a desire to punish those defying gender norms,"[394] but should also recognize structural violence towards Indigenous women and girls such as racism, discrimination, and cultural stereotyping.
- Further, grave and systemic gender-based violence against Indigenous women and girls must be recognized as genocide.
    - The final report of the National Inquiry into the Missing and Murdered Indigenous Women declared that the violence against Indigenous Peoples, particularly Indigenous women and girls, perpetrated by the Canadian government constituted an ongoing colonial genocide.[395]
- States must also acknowledge and address discrimination as a form of violence, accounting for the various intersecting forms of discrimination Indigenous women and girls experience.[396]

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[392] Concept Note for a General Recommendation on the Rights of Indigenous Women (2019) ("[Indigenous women] 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. They also suffer spiritual violence as a result of attacks on their spiritual practices.").

[393] Organization of American States, Inter-American Commission on Human Rights, *Indigenous Women and their Human Rights in the Americas,* Graphic Booklet, pg. 5 (2017).

[394] Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. HRC/19/41. Geneva: United Nations Human Rights Council (2011); *see also* Human rights, sexual orientation and gender identity. HRC/RES/17/19. Geneva: United Nations Human Rights Council (2011); *see also* Human rights, sexual orientation and gender identity. HRC/RES/27/32. Geneva: United Nations Human Rights Council (2014); Discrimination and violence against individuals based on their sexual orientation and gender identity. HRC/29/23. Geneva: United Nations Human Rights Council (2015); Protection against violence and discrimination based on sexual orientation and gender identity. HRC/RES/32/2. Geneva: United Nations Human Rights Council (2016).

[395] The Final Report of the National Inquiry Into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place*, pg. 355 (2019).

[396] Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("Instar a los Estados a fortalecer los marcos legales y las políticas públicas para que las mujeres indígenas y sus diversas realidades como titulares de derechos de leyes, políticas y planes para la igualdad de género y una vida libre de violencia. Se debe tomar en cuenta las múltiples y simultáneas formas de

- States must ensure that systems—including legal systems—in place to protect Indigenous women and girls from GBV are available and accessible both in and out of Indigenous communities and ensure that those who are meant to protect Indigenous women and girls, believe the truth of their allegations and act upon those allegations.[397]
- These systems must provide true, full, and effective access to justice for Indigenous women and girls who experience GBV[398] both in State-operated and in Indigenous judicial institutions. These mechanisms must combat impunity in cases of violence and discrimination against Indigenous women, through effective criminal investigations that bring perpetrators to justice and ensure that crimes are duly sanctioned and should be in line with CEDAW General Recommendation 33 (2015) on women's access to justice.
- States must address all forms of violence committed in the name of tradition, such as female genital mutilation and forced child marriage; domestic, institutional and political violence; and violence perpetrated during armed conflicts and the militarization of Indigenous territories, including witch-hunting and racial discrimination.
- States must investigate allegations of forced or coerced sterilizations of Indigenous women and girls, and ensure justice and reparations to their families.[399]
- States must also protect women and girls from human trafficking for organs, surrogacy, and forced sterilizations.
- States must appoint a special representative to meet with survivors and their families to hear their requests for justice and reparations.
- States must apply existing criminal legislation on aggravated assault for cases of forced or coerced sterilization and human trafficking for organs and surrogacy.
- States must ensure government policies and practices explicitly prohibit sterilization and surrogacy without free, prior and informed consent.
- States must increase the number of Indigenous healthcare professionals and provide cultural competency training to all healthcare professionals.[400]
- States must ensure that laws and policies prohibiting forced sterilization and surrogacy are translated into guidelines and training for health providers.

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discriminación por sexo, género, orientación sexual, identidad de género, expresión de género, características sexuales, identidad étnica racial y clase, espiritualidad.").

[397] Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("Violencia sexual contra niñas, jóvenes y mujeres es un gran problema que enfrentan las mujeres indígenas dentro y fuera de las comunidades y pueblos indígenas; se toman represalias buscando silenciarnos si esta violencia ejercida por gente de la propia comunidad es denunciada, no se les cree a las víctimas, las tradiciones protegen a los agresores, no se habla de esos temas.").

[398] Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("En relación al acceso a la justicia debe reconocerse y reforzarse el reconocimiento de los sistemas de justicia indígena, el derecho a la regulación y resolución de los conflictos internos, incluida la facultad de conocer y resolver casos de violencia contra las mujeres.").

[399] *Toolkit for Effective Advocacy, From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions*, Indigenous Women's organizations, ("Unify and consolidate their approaches to prevent, investigate and redress all forms of individual and collective violence committed against Indigenous Women and Girls."), ("States should create mechanisms to guarantee access to justice for Indigenous Women and Girls.").

[400] *See* Amnesty International, *Indigenous women in Canada continue to be coercively or forcibly sterilized*, (November 13, 2018), https://www.amnesty.ca/blog/indigenous-women-canada-continue-be-coercively-or-forcibly-sterilized; *Toolkit for Effective Advocacy, From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions*, Indigenous Women's organizations, ("States should ensure access to quality . . . health services that are culturally and linguistically appropriate.").

- States must make sure that health facilities are monitored for compliance to global standards, including human rights standards.
- States must ensure that Indigenous women and girls have an accessible complaint mechanism in hospitals.
- States must acknowledge that their actions, including violence against Indigenous women, can amount to genocide.[401] The main gap under human rights law relates to the collective dimension of genocide.
- Although human rights bodies have addressed forced/coerced sterilization of women, they should address it within the context of Indigenous populations. To this day, states are not held accountable for forced/coerced sterilization of Indigenous women and girls.[402]
- Human rights bodies must also acknowledge that coerced and forced sterilization of Indigenous women and girls can amount to genocide and elaborate on the international legal implications of this.
- Forced surrogacy and witch-hunting should be considered a form of GBV and a criminal act.
- Information about GBV and related government services must be available in local languages and local healthcare providers must be sensitized.

IV. Comparison to CEDAW General Recommendation 34

- General Recommendation 34 seeks to eliminate violence against rural women and girls, including Indigenous women and girls, by raising awareness and eliminating discriminatory practices. Measures should be taken aimed at "preventing, investigating, prosecuting and punishing acts of violence." States should ensure access to justice, compensation, and "other forms of redress or reparation" by those in rural areas.[403]
- It mentions that States should ensure services for survivors that are accessible in Indigenous areas and that these services avoid "stigmatization" and protect privacy.[404]
- Additionally, General Recommendation 34 mentions the violence against Indigenous women human right defenders and asks states to implement measures to prevent and address this violence.[405]
- General Recommendation 34 acknowledges that displacement, water scarcity, and unsafe transportation can lead to gender-based violence, including sexual harassment and attacks.[406]

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[401] *See* National Inquiry Into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place, The Final Report of the National Inquiry Into Missing and Murdered Indigenous Women and Girls*, at 54.
[402] Center for World Indigenous Studies, *Forced Sterilization of 272,000 Indigenous Women 'Not a Crime Against Humanity': Public Prosecutor*, (September 13, 2016), https://intercontinentalcry.org/forced-sterilization-272000-indigenous-women-not-crime-humanity-public-prosecutor/.
[403] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶25, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).
[404] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶25, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).
[405] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶25, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).
[406] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶61, 82, 86, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

- General Recommendation 34 promotes the protection of Indigenous girls from gender-based violence using school programs.[407]
- There is no mention of genocide or freedom from gender-based violence as "the collective right to live in freedom, peace and security as distinct peoples and [to] not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group."[408]
- CEDAW General Recommendation 34 does not make explicit mention of the right to be free from forced sterilization.[409]
- However, forced sterilization is a form of gender-based violence.[410]
- The Recommendation recognizes Indigenous women are disproportionately affected by gender-based violence and lack adequate access to justice and remedies for these right violations.[411]
- The General Recommendation provides States should sensitize Indigenous women, men, boys and girls to the rights of Indigenous women and girls with the goal of eliminating discriminatory attitudes which condone gender-based violence.[412]
- For girls specifically, General Recommendation 34 states girls are at special risk for violence.[413]
- CEDAW General Recommendation 34 further acknowledges that Indigenous women and girls suffer from gender-based violence in a variety of situations, preventing the full exercise of other human rights.[414]

[407] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶43, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).
[408] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016); United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), art. 18 ¶2 G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[409] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[410] *See* Amnesty International, *Indigenous women in Canada continue to be coercively or forcibly sterilized*, (November 13, 2018) https://www.amnesty.ca/blog/indigenous-women-canada-continue-be-coercively-or-forcibly-sterilized; *see* Sally J. Torpy, *Native American Women and Coerced Sterilization: On the Trail of Tears in the 1970s*, American Indian Culture and Research Journal 24:2 https://www.law.berkeley.edu/php-programs/centers/crrj/zotero/loadfile.php?entity_key=QFDB5MW3; International Justice Resource Center, *Forced Sterilization of Indigenous Women in Canada*, https://ijrcenter.org/forced-sterilization-of-indigenous-women-in-canada/; Center for World Indigenous Studies, *Forced Sterilization of 272,000 Indigenous Women 'Not a Crime Against Humanity': Public Prosecutor*, (September 13, 2016) https://intercontinentalcry.org/forced-sterilization-272000-indigenous-women-not-crime-humanity-public-prosecutor/.
[411] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 6, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[412] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 25(a), U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[413] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 24, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[414] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

The Right to Equality in Marriage and Family Relations of Indigenous Women and Girls[415]

I. The Problem

a. General Overview

- The violation of other rights, like the rights to equality and non-discrimination, inhibit Indigenous women and girls' ability to full exercise the right to marry and family on an equal level to men.
- Some manifestations of the inequalities faced by Indigenous women and girls include "domestic violence, child marriage, forced pregnancy, honour crimes, female genital mutilation, femicide, non-partner sexual violence and exploitation, sexual harassment, trafficking and violence in conflict situations."[416]
- Many of these manifestations can be traced to patriarchal attitudes and historic discrimination against Indigenous women and girls.[417]
- The persistent discrimination in Indigenous women's equal right to marriage and family is manifested in many ways, including the limitation of Indigenous women and girls' access to land.[418]
- Indigenous women and girls are also often regarded as the embodiment of culture and are thus carriers of Indigenous group identity.[419] "In many instances, this relationship between gender and culture is used as a basis for justifying violations of women's and girls' human rights."[420] This can subordinate women and take away the right to make autonomous decisions about marriage and family.[421]
- Another consequence of inequality is the prospect of forced and early marriage and unions for Indigenous girls.[422]

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[415] This narrative received contributions from Gabriela Valentín Díaz, Denisse Córdova Montes, Mary Miller, Abril Montero Dokser, Alicia Limtiaco, Ellen Bangoa, Igdalia Rojas, and Natalia Caruso.

[416] *Breaking the Silence on Violence against Indigenous Girls, Adolescents and Young Women*, UNICEF 1, 3 (2013), https://www.unfpa.org/sites/default/files/resource-pdf/VAIWG_FINAL.pdf [hereinafter *Breaking the Silence on Violence against Indigenous Girls*].

[417] *Breaking the Silence on Violence against Indigenous Girls, Adolescents and Young Women*, UNICEF 1, 3 (2013), https://www.unfpa.org/sites/default/files/resource-pdf/VAIWG_FINAL.pdf.

[418] *Indigenous Women and the UN system*, UN.ORG (last visited Nov. 12, 2020)

[419] U.N. Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the U.N. Permanent F. on Indigenous Issues, Briefing Note No. 6: Gender and Indigenous Peoples' Human Rights 1, 20 (Feb. 2010), https://www.un.org/esa/socdev/unpfii/documents/BriefingNote6_GREY.pdf [hereinafter Gender and Indigenous Peoples' Human Rights].

[420] U.N. Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the U.N. Permanent F. on Indigenous Issues, Briefing Note No. 6: Gender and Indigenous Peoples' Human Rights 1, 20 (Feb. 2010), https://www.un.org/esa/socdev/unpfii/documents/BriefingNote6_GREY.pdf.

[421] U.N. Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the U.N. Permanent F. on Indigenous Issues, Briefing Note No. 6: Gender and Indigenous Peoples' Human Rights 1, 20 (Feb. 2010), https://www.un.org/esa/socdev/unpfii/documents/BriefingNote6_GREY.pdf.

[422] *See Breaking the Silence on Violence against Indigenous Girls, Adolescents and Young Women*, UNICEF (2013), https://www.unfpa.org/sites/default/files/resource-pdf/VAIWG_FINAL.pdf; UNICEF, Child Marriage (April 2020), https://data.unicef.org/topic/child-protection/child-marriage/, ("Across the globe, levels of child marriage are highest in sub-Saharan Africa, where 35 per cent of young women were married before age 18, followed by South Asia, where nearly 30 per cent were married before age 18. Lower levels of child marriage are found in Latin America and

- Forced marriage can have a ripple effect on other rights of Indigenous girls, forcing them to leave school or engage in unpaid care work.[423]
- Additionally, Indigenous women and girls are at-risk of losing their nationality, property, and identity when they marry. This is a direct manifestation of discrimination enshrined in both customary and statutory laws that are based on the superiority of the male sex.[424] This is due to the concept of dependent nationality. "When countries of both spouses follow the principle of dependent nationality, women lose their own nationality upon marriage with a foreign husband and gain their husband's nationality."[425] These laws are discriminatory when they "allow only men to transmit their nationality to their foreign spouses and their children," severely impacting Indigenous women's right to equality in marriage.[426]
- Furthermore, "[c]hild marriage can also lead to violations of the rights to life and health, as young girls often experience complications with pregnancy and childbirth, which can result in death. In addition, child marriage creates vulnerability to marital rape."[427]

b. The Impact of the Climate Crisis and Environmental Violence

- The climate crisis and environmental violence make it more difficult for Indigenous women and girls to fully access their rights, including the right to marriage and family.
- Indigenous women and girls are being displaced from their ancestral lands at disproportionate rates, making them more susceptible to violence and discrimination.[428]
- Specifically, forced migration can deprive Indigenous women of their right to marriage and family and expose them to serious violations of their right to be free from gender-based violence.[429]

Caribbean (24 per cent, data not shown), the Middle East and North Africa (17 per cent), and Eastern Europe and Central Asia (12 per cent, data not shown).")

[423] Hum. Rts. Council, Report of the Special Rapporteur on the rights of indigenous peoples, ¶ 28, U.N. Doc. A/HRC/30/41 (2015); Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("Decíamos que, con respecto a la educación occidental, queremos tener derecho a la educación sin limitaciones, porque si bien hoy en día las estudiantes adolescentes y adultas que se embarazan acceden a la educación, al no contar los establecimientos educacionales con guarderías y/o jardines infantiles, especialmente en las zonas rurales, no pueden continuar sus estudios. No todas cuentan con ayuda de sus familias para el cuidado de las personas menores.").

[424] *See* Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 5, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.

[425] Working Group on the issue of discrimination against women in law and in practice, *Discrimination against women in nationality*, U.N. HUM. RTS. SPECIAL PROCEDURES 1, 1 (May 2017), https://www.ohchr.org/Documents/Issues/Women/WG/DiscriminationAgainstWomenNationality.pdf.

[426] Working Group on the issue of discrimination against women in law and in practice, *Discrimination against women in nationality*, U.N. HUM. RTS. SPECIAL PROCEDURES 1, 2 (May 2017), https://www.ohchr.org/Documents/Issues/Women/WG/DiscriminationAgainstWomenNationality.pdf.

[427] Hum. Rts. Council, Report of the Special Rapporteur on the rights of indigenous peoples, ¶ 56, U.N. Doc. A/HRC/30/41 (2015).

[428] *Indigenous Peoples and Climate Change*, ILO 1, 14 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.

[429] *Indigenous Peoples and Climate Change*, ILO 1, 14 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf; Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("Las mujeres indígenas son criminalizadas por defender sus derechos y son víctimas de violencia sexual, esterilizaciones forzadas y migración forzadas para despojarlas de sus territorios.").

II. Current Protections in International Law

a. Current Protections in CEDAW

- The right to equality in all matters relating to marriage and family relations is explicitly articulated in Article 16 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).[430]
    - This right is intimately related to equality and non-discrimination, which is contained in CEDAW in Articles 2, 5 and 15, as well as to women's equal right with men in all matters relating to nationality, which in contained in article 9 of CEDAW.[431]
- CEDAW's Article 11 seeks to prevent discrimination against women on the grounds of marriage or maternity by ensuring States prohibit job dismissal due to pregnancy or marital status and introduce maternity leave.[432]
- CEDAW's Article 14 mentions that States must eliminate discrimination against women in rural areas to ensure a "basis of equality of men and women."[433]
- CEDAW General Recommendation No. 21 on Equality in Marriage and Family Relations expands on the interpretation of CEDAW articles in the context of women's right to equality in marriage and family and recognizes "the importance of culture and tradition in shaping the thinking and behaviour of men and women and the significant part they play in restricting the exercise of basic rights by women."[434]

b. Current Protections in Other International Treaties

- The Universal Declaration of Human Rights (UDHR) protects this fundamental right in article 16.[435] The article states men and women have the right to marry on equal grounds. It also states, "Marriage shall be entered into only with the free and full consent of the intending spouses."[436]
- Article 23 of the International Covenant on Civil and Political Rights (ICCPR) similarly states, "The right of men and women of marriageable age to marry and to found a family shall be recognized. No marriage shall be entered into without the free and full consent of the intending spouses. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage

[430] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 16, adopted Dec. 18, 1979, 1249 U.N.T.S. 13.
[431] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 2, 5, 9, and 15, adopted Dec. 18, 1979, 1249 U.N.T.S. 13.
[432] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 11, adopted Dec. 18, 1979, 1249 U.N.T.S. 13.
[433] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 14, adopted Dec. 18, 1979, 1249 U.N.T.S. 13.
[434] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 21 on equality in marriage and family relations, ¶ 3, U.N. Doc. CEDAW/C/GC/21 (1994).
[435] Universal Declaration of Human Rights ("UDHR") art. 16, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948).
[436] Universal Declaration of Human Rights ("UDHR") art. 16, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948).

and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children."[437]

- The International Covenant on Economic, Social and Cultural Rights (ICESCR) in its article 10 states that marriage should be entered into with free consent and provides protection for families, stating "[t]he widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society."[438]

c. Current Protections in Non-Binding International Human Rights Instruments

- Article 16 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) ensures men and women the same right to enter into marriage with full consent.[439]
- It further guarantees men and women the same rights as parents regardless of their marital status. Furthermore, it provides the same rights to both spouses "in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration."[440]
- Relating to children, UNDRIP article 16 makes clear "[t]he betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory."[441]
- Notably, the Convention on the Rights of the Child (CRC) does not explicitly mention protections from child marriage guaranteed to children. However, "child marriage is connected to other rights—such as the right to express their views freely, the right to protection from all forms of abuse, and the right to be protected from harmful traditional practices—and is frequently addressed by the Committee on the Rights of the Child."[442]
- For example, in the CRC General Comment on Indigenous Children, the CRC Committee characterizes child marriage as prejudicial to the child's dignity, health and development and further suggests that where such harmful practices exist, States should work to eradicate them.[443]

d. Normative Content

- The normative content of the right to marriage and family is set out in General Comment 19 on the Protection of the Family from the Human Rights Committee.

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[437] International Covenant on Civil and Political Rights ("ICCPR") art. 23, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171.
[438] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 10, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3.
[439] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 16, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[440] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 16, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[441] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 16, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[442] *Child Marriage and the Law*, UNICEF 1, 2 (2007), https://www.unicef.org/french/files/Child_Marriage_and_the_Law.pdf.
[443] Comm. on the Rts. of the Child ("CRC Comm."), General Comment No. 11: Indigenous children and their rights under the Convention, ¶ 22, U.N. Doc. CRC/C/GC/11 (Feb. 12, 2009)

- General Comment 19 states that the right to marriage belongs to men and women of marriageable age.[444]
- Marriage requires free and full consent of both intended spouses.[445]
- While there is no set marriageable age, the age must be one that allows each spouse to give such consent.[446]
- Marriage can also be a religious or civil act.[447]
- The spouses must be equal in both rights and responsibilities within the marriage and its dissolution.[448]
- "This equality extends to all matters arising from their relationship, such as choice of residence, running of the household, education of the children and administration of assets."[449]
- More specifically, "no sex-based discrimination should occur in respect of the acquisition or loss of nationality by reason of marriage."[450]
- Each spouse has the right to retain their family name or participate in the choosing of a new one.[451]
- Family, as a cornerstone of society, is also entitled to the protection of States. [452]
- This protects different concepts of family as well.[453]

III. State Actions Needed in New CEDAW General Recommendation on Indigenous Women and Girls

- In order to safeguard the right to marriage and family for Indigenous women, States must ensure access to all other human rights, especially equality and non-discrimination. This equality must extend to the rights and responsibilities of spouses as to marriage.[454]
- States must address customary and statutory laws that deprive Indigenous women of their nationality, property, and identity upon marriage.[455]

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[444] Hum. Rts. Comm. ("HRC"), General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses, ¶ 4 (July 27, 1990).
[445] Hum. Rts. Comm. ("HRC"), General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses, ¶ 4 (July 27, 1990).
[446] Hum. Rts. Comm. ("HRC"), General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses, ¶ 4 (July 27, 1990).
[447] Hum. Rts. Comm. ("HRC"), General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses, ¶ 4 (July 27, 1990).
[448] Hum. Rts. Comm. ("HRC"), General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses, ¶ 6 (July 27, 1990).
[449] Hum. Rts. Comm. ("HRC"), General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses, ¶ 8 (July 27, 1990).
[450] Hum. Rts. Comm. ("HRC"), General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses, ¶ 7 (July 27, 1990).
[451] Hum. Rts. Comm. ("HRC"), General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses, ¶ 7 (July 27, 1990).
[452] Hum. Rts. Comm. ("HRC"), General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses, ¶ 1 (July 27, 1990).
[453] Hum. Rts. Comm. ("HRC"), General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses, ¶ 2 (July 27, 1990).
[454] Hum. Rts. Comm. ("HRC"), General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses, ¶ 23(4) (July 27, 1990).
[455] *See* Working Group on the issue of discrimination against women in law and in practice, *Discrimination against women in nationality*, U.N. HUM. RTS. SPECIAL PROCEDURES (May 2017),

- There currently exists a gap of knowledge on the state of Indigenous girls and the specific dynamics of child, early, and forced marriage.[456] States must invest in research and data collection on the effects of these violations on the rights of Indigenous girls in order to understand how to address forced, early and child marriage as well as to monitor the impact of policies and plans meant to address the problem.[457]
- States must establish a minimum age for marriage and provide comprehensive information, education, and access to Indigenous women and girls on sexual and reproductive health, including the prevention of pregnancy.[458] This can take the form of national policies that are implemented in order to prevent child marriage and early pregnancy.[459] The minimum age established should enable each spouse to give their full consent.[460]
- States must "[e]nsure the active involvement of [Indigenous] women, girls, and adolescents in the design, implementation and evaluation of strategies to address child, early, and forced marriage for their relevance, sustainable and meaningful impact."[461]
- States must "[e]nsure the participation of [Indigenous] girls, and [Peoples] through comprehensive approaches that address the root causes of child, early, and forced marriage, including poverty and gender inequality."[462] Such approaches include access to education, including comprehensive education on sexuality, sexual and reproductive health, equal rights to employment, access to productive resources, and greater financing of grassroots initiatives directed at amplifying voice of Indigenous girls in their mother tongue.[463]

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[456] *See Breaking the Silence on Violence against Indigenous Girls, Adolescents and Young Women*, UNICEF (2013), https://www.unfpa.org/sites/default/files/resource-pdf/VAIWG_FINAL.pdf; Hum. Rts. Council, Report of the Special Rapporteur on the rights of indigenous peoples, ¶ 56, U.N. Doc. A/HRC/30/41 (2015); Memorandum from Rebecca Pendleton on Notes from CEDAW Expert Meeting on Indigenous Women Rights (MADRE, FIMI, CWGL, WHRI) (Mar. 15, 2019) (on file with author) ("There needs to be a deeper analysis of indigenous women with disabilities and a stronger focus on issues effecting indigenous girls, such as issues of child-marriage, child-widows and child exploitation. We need to review the relevant reports and mechanism already in place in order to support our next steps moving forward.").

[457] *Recommendation for actions against child and forced marriages,* Office of the High Commissioner for Human Rights ("OHCHR") Compilation (September 2017), 16, https://www.ohchr.org/Documents/Issues/Women/WRGS/CEFM/RecommendationsForActionEbook.pdf.

[458] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 16(2), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007; Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("No se puede alegar costumbre y naturalizar los matrimonios tempranos. Las niñas y adolescentes sufren esta problemática porque no hay garantía de esos derechos básicos. No se trabaja en la prevención del embarazo a temprana edad, a veces lo ven como una salida a la violencia que viven y por la falta de oportunidades.").

[459] *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("Indigenous Women highlighted during the regional meetings that early and forceful marriages and unions; and teenage pregnancies is increasing everyday as the national policies are not implemented to prevent these situations").

[460] Hum. Rts. Comm. ("HRC"), General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses, ¶ 4 (July 27, 1990).

[461] *Recommendation for actions against child and forced marriages,* Office of the High Commissioner for Human Rights ("OHCHR") Compilation (September 2017), 12, https://www.ohchr.org/Documents/Issues/Women/WRGS/CEFM/RecommendationsForActionEbook.pdf.

[462] *Recommendation for actions against child and forced marriages,* Office of the High Commissioner for Human Rights ("OHCHR") Compilation (September 2017), 13, https://www.ohchr.org/Documents/Issues/Women/WRGS/CEFM/RecommendationsForActionEbook.pdf.

[463] *Recommendation for actions against child and forced marriages,* Office of the High Commissioner for Human Rights ("OHCHR") Compilation (September 2017), 13, https://www.ohchr.org/Documents/Issues/Women/WRGS/CEFM/RecommendationsForActionEbook.pdf.

- States must "[s]trengthen efforts to ensure accountability at the national level, including monitoring and tracking funding for [Indigenous] women's rights and child protection."[464]
- States must "[a]ddress the widespread cultural and social acceptance of child and forced marriage" of Indigenous Peoples.[465]
    - Strengthen and enable customary institutions to effectively respond to child and forced marriage consistent with human rights standards.

IV. Comparison to State Actions in CEDAW General Recommendation 34

- General Recommendation 34 provides for equality for women in marriage and family relations.[466]
- The General Recommendation specifically acknowledges rural women and girls, which includes Indigenous women and girls, are often affected by harmful practices based on discrimination like forced and/or child marriage.[467]
- It further states these practices should be eliminated.[468]
- The recommendation highlights that Indigenous women and girls are at-risk of losing their nationality through marriage with a foreigner or divorce. This is a consequence of a lack of equal rights with men.[469]
- General Recommendation 34 says States should harmonize their laws on a foundation of equality in family relations and marriage.[470]
- Furthermore, States should prevent and prohibit child and forced marriage for Indigenous women and girls.[471]
- Perpetuating the status quo of child and forced marriage inhibits access to a variety of other rights, especially education for Indigenous women and girls.[472]

[464] *Recommendation for actions against child and forced marriages,* Office of the High Commissioner for Human Rights ("OHCHR") Compilation (September 2017), 14, https://www.ohchr.org/Documents/Issues/Women/WRGS/CEFM/RecommendationsForActionEbook.pdf.
[465] *Recommendation for actions against child and forced marriages,* Office of the High Commissioner for Human Rights ("OHCHR") Compilation (September 2017), 14, https://www.ohchr.org/Documents/Issues/Women/WRGS/CEFM/RecommendationsForActionEbook.pdf.
[466] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 32, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[467] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 22, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[468] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 23, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[469] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 28, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[470] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 33, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[471] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 34, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[472] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 42, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

The Right to Education of Indigenous Women and Girls[473]

I. The Problem

a. General Overview

- Access, permanence, and completion of all education levels is impeded for Indigenous girls due to "poverty, discrimination, lack of cultural relevance and, often, instruction delivered only in the dominant language, resulting in lower educational achievement, higher dropout rates, loss of heritage languages and lower self-esteem."[474]
- Indigenous girls with disabilities may be hindered from attending school if facilities are not accessible.
- Indigenous girls face unfriendly school environments, gender discrimination, violence, sexual abuse, early and forced marriages and unions and pregnancy, and these issues contribute to high dropout rates.[475]
- Indigenous girls are more disadvantaged than Indigenous boys when it comes to accessing, permanence and completion of education.[476]
    - In the rural areas of Ecuador, 48% of Indigenous women and 32% of Indigenous men are illiterate, compared to 18% of non-Indigenous women.[477]
    - In Guatemala, 71% of Indigenous boys are in school, compared to only 54% of Indigenous girls.[478] By the time they are sixteen, only 25% of Indigenous girls are still enrolled in school, compared with 45% of boys.
- In many Indigenous communities, girls have higher dropout rates because they are responsible for caring for younger siblings, helping with chores, and fetching water and firewood.[479]

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[473] This narrative received contributions from William Talley, Denisse Córdova Montes, Gabriela Valentín Díaz, Mary Miller, Abril Montero Dokser, Alicia Limtiaco, Ellen Bangoa, Igdalia Rojas, Maria Manuela Sequeira, Natalia Caruso, and Tapio Keihäs..

[474] Comm. on the Elimination of All Forms of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 36: On the Right of Girls and Women to Education, ¶41 U.N. Doc. CEDAW/C/GC/36 (Nov. 27, 2017).

[475] United Nations, Department of Economic and Social Affairs, *permanent forum on Indigenous Peoples*, https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/education.html.

[476] U.N. Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the U.N. Permanent F. on Indigenous Issues, Briefing Note No. 3: Gender and Indigenous Peoples' Education, 1 (Feb. 2010), https://www.un.org/esa/socdev/unpfii/documents/BriefingNote3_GREY.pdf; *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020), ("[T]hey still experience higher gender disparities and lower educational attainment compared to non-Indigenous women.").

[477] U.N. Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the U.N. Permanent F. on Indigenous Issues, Briefing Note No. 3: Gender and Indigenous Peoples' Education, 1 (Feb. 2010), https://www.un.org/esa/socdev/unpfii/documents/BriefingNote3_GREY.pdf.

[478] U.N. Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the U.N. Permanent F. on Indigenous Issues, Briefing Note No. 3: Gender and Indigenous Peoples' Education, 1 (Feb. 2010), https://www.un.org/esa/socdev/unpfii/documents/BriefingNote3_GREY.pdf.

[479] United Nations, Department of Economic and Social Affairs, *State of the World's Indigenous Peoples*, 81 (2017), https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2017/12/State-of-Worlds-Indigenous-Peoples_III_WEB2018.pdf; *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020), ("Some indigenous communities prefer to prioritize male children's education while girls are kept home to carry out housework.").

- Indigenous girls also face geographical obstacles to obtain an education. Communities often do not have schools and girls must travel far to attend school, exposing them to discrimination and violent attacks.[480]
- Hunger, bullying, illness, and corporal punishment result in discrimination against Indigenous girls in education systems.[481] Indigenous children who have access to education are at risk of having their identities erased by curricula that do not incorporate Indigenous histories, cultures, languages and that do not make visible and value Indigenous Peoples' and Indigenous women's contributions, knowledge, and technologies.[482]
- States often fail to address the barriers to education in as systematic and holistic manner by failing to provide communal or cooperative education, depending instead on individualism and competition, leaving Indigenous children unprepared to participate in Indigenous economies.[483] As a result, Indigenous children that have completed schooling often leave their communities to join the national labor force, resulting in an exodus of Indigenous community members that's damaging to both the children and their communities.[484]
- Despite all the human rights instruments declaring a right to equal education and freedom of discrimination, a quality gap, particularly in relation to the shortage of teachers with training in intercultural education, between Indigenous and non-Indigenous education persists, even in States where the level of schooling among Indigenous children has increased.[485]
- Violence towards Indigenous girls, perpetrated both by teachers and family members, have "psychological and physical consequences which affect learning and education retention."[486] Indigenous girls also face the issue of early pregnancy, which can hinder their studies as they try to parent their children at a young age.[487]

b. The Impact of the Climate Crisis and Environmental Violence

- The climate crisis and environmental violence have led Indigenous women to have to migrate to urban and other areas, where they face a more severe lack of culturally relevant teaching in the education system.[488]

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[480] U.N. Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the U.N. Permanent F. on Indigenous Issues, Briefing Note No. 3: Gender and Indigenous Peoples' Education, 2 (Feb. 2010), https://www.un.org/esa/socdev/unpfii/documents/BriefingNote3_GREY.pdf.
[481] United Nations, Department of Economic and Social Affairs, *permanent forum on Indigenous Peoples*, https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/education.html.
[482] United Nations, Department of Economic and Social Affairs, *permanent forum on Indigenous Peoples*, https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/education.html.
[483] United Nations, Department of Economic and Social Affairs, *permanent forum on Indigenous Peoples*, https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/education.html.
[484] United Nations, Department of Economic and Social Affairs, *permanent forum on Indigenous Peoples*, https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/education.html.
[485] United Nations, Department of Economic and Social Affairs, *permanent forum on Indigenous Peoples*, https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/education.html.
[486] United Nations, Department of Economic and Social Affairs, *State of the World's Indigenous Peoples* (2017), https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2017/12/State-of-Worlds-Indigenous-Peoples_III_WEB2018.pdf.
[487] United Nations, Department of Economic and Social Affairs, *State of the World's Indigenous Peoples* (2017), https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2017/12/State-of-Worlds-Indigenous-Peoples_III_WEB2018.pdf.
[488] *Indigenous Peoples and Climate Change*, ILO 17 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.

- This environmentally-induced migration leads to discriminatory practices and the exclusion of Indigenous women from education.[489]
- For Indigenous Peoples, poverty, land dispossession, climate change and disasters, and "lack of access to quality education are all inextricably linked."[490]
- Indigenous women and girls are the ones expected to care for the young and the sick in times of "disaster and environmental stress," which limits the time they have for education.[491]
- Due to water scarcity, Indigenous women and girls must travel long distances to search for and collect water, leading to less available time for education.[492]

II. Current Protections in International Law

a. Current Protections in CEDAW

- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) addresses many different forms of discrimination against women, but it specifically explores the right to education in Articles 10 and 14.[493]
    - In Article 10, the Convention requires States to ensure equality of "career and vocational guidance" for men and women, both rural and urban, at all levels of education and equal access to curricula with teaching staff "with qualifications of the same standard and school premises . . . of the same quality."[494]
    - It also demands that States eliminate stereotypes of women through "revision of textbooks and school programs and the adaptation of teaching methods," and it provides that States must reduce drop-out rates for women and girls and give equal opportunities in sports and physical education.[495]
    - Finally, Article 10 requires equal access to "specific educational information to help to ensure the health and well-being of families[.]"[496]
    - Later in the Convention, Article 14 emphasizes the rights of rural women in particular. It places on States a duty to ensure that rural women have access to "all types of training and education, formal and non-formal, including that relating to functional literacy[.]"[497] The advancement and protection of rural women's rights plays an important role in CEDAW as a whole, especially those suffering from poverty.

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[489] *Indigenous Peoples and Climate Change*, ILO 17 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.
[490] United Nations, Department of Economic and Social Affairs, *State of the World's Indigenous Peoples*, 96 (2017), https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2017/12/State-of-Worlds-Indigenous-Peoples_III_WEB2018.pdf.
[491] World Health Organization ("WHO"), Gender, Climate Change and Health, pg. 17 (2014).
[492] World Health Organization ("WHO"), Gender, Climate Change and Health, pg. 18 (2014).
[493] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 10 & 14, adopted Dec. 18, 1979, 1249 U.N.T.S. 13.
[494] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 10, adopted Dec. 18, 1979, 1249 U.N.T.S. 13.
[495] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 10, adopted Dec. 18, 1979, 1249 U.N.T.S. 13.
[496] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 10, adopted Dec. 18, 1979, 1249 U.N.T.S. 13.
[497] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 14, adopted Dec. 18, 1979, 1249 U.N.T.S. 13.

- General Recommendation 36 protects the right of girls and women to education.[498] It focuses on the right of access to education, rights within education, and the "instrumentalization of education for the enjoyment of all human rights through education."[499]
    - The Committee urges States to "respect, protect, and fulfill the rights of girls and women to, within and through education." This includes enacting legislation and policies to end gender-discrimination in education and addressing gender stereotypes.[500]
    - General Recommendation 36 ensures women's and girls' rights to "accessibility, availability, acceptability and adaptability" in education.[501]
- Article 16 of CEDAW briefly mentions access to education in regard to family planning.[502]
- CEDAW's Article 2 prohibits discrimination against women in all forms and ensures that States use policies, legislation, laws, regulations, and customs to protect the "rights of women on an equal basis with men."[503]
- CEDAW's Article 5 seeks to modify "social and cultural patterns of conduct" to eliminate prejudices and practices that are stereotypes or support the inferiority or superiority of the sexes.[504]

b. Current Protections in Other International Treaties

- The right to education appears in Article 26 of the 1949 Universal Declaration of Human Rights (UDHR), which plainly states that "[everyone] has the right to education."[505] Article 26 of the UDHR adds that all people should have an elementary education, technical education should be "generally available," and higher education should be accessible to everyone on the basis of merit.[506]
- The 1960 Convention Against Discrimination in Education (CADE), adopted by the United Nations Education, Scientific, and Cultural Organization (UNESCO), aims to prevent any

[498] Comm. on the Elimination of All Forms of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 36: On the Right of Girls and Women to Education, U.N. Doc. CEDAW/C/GC/36 (Nov. 27, 2017).
[499] Comm. on the Elimination of All Forms of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 36: On the Right of Girls and Women to Education, ¶14 U.N. Doc. CEDAW/C/GC/36 (Nov. 27, 2017).
[500] Comm. on the Elimination of All Forms of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 36: On the Right of Girls and Women to Education, U.N. Doc. CEDAW/C/GC/36 (Nov. 27, 2017).
[501] Comm. on the Elimination of All Forms of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 36: On the Right of Girls and Women to Education, ¶14 U.N. Doc. CEDAW/C/GC/36 (Nov. 27, 2017).
[502] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 16, adopted Dec. 18, 1979, 1249 U.N.T.S. 13.
[503] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 2, adopted Dec. 18, 1979, 1249 U.N.T.S. 13.
[504] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 5, adopted Dec. 18, 1979, 1249 U.N.T.S. 13.
[505] Universal Declaration of Human Rights ("UDHR") art. 26, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948).
[506] Universal Declaration of Human Rights ("UDHR") art. 26, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948).

form of discrimination in education and to promote equality of opportunity among all people.[507]

- The Convention defines discrimination as "any distinction, exclusion, limitation, or preference [based on] race, color, sex, language, religion, political or other opinion, national or social origin, [or] economic condition or birth" that deprives anyone of access to acceptable education or inflicts conditions that are "incompatible with the dignity of [humankind]."[508]
- Article 5 of CADE states that "members of national minorities" should be able to maintain their own schools and teach their own languages, provided that they are not prevented from "understanding the culture and language of the community as a whole" and that the standard of education is not lower for Indigenous Peoples than for others.[509]

- The International Covenant on Economic, Social, and Cultural Rights (ICESCR) was adopted in 1966.[510] ICESCR addresses many different rights, but Article 13 of the Covenant expands on the right to education, stating that "education shall enable all persons to participate effectively in a free society, promote understanding, tolerance, and friendship among all nations[.]"[511]
  - The Covenant goes on to list five major components of the right to education.
    - First, elementary education should be mandatory and free for everyone;
    - secondary education should be "generally available and accessible to all by every appropriate means";
    - higher education should be accessible to all on the basis of merit;
    - fundamental education should be "encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education";
    - and all schools and school systems should be actively developed, an "adequate fellowship system" should be created, and conditions of teaching staff should be "continuously improved."[512]
  - The Convention on the Rights of the Child (CRC) echoes ICESCR's statement on the right to education.[513] It emphasizes the right to free primary education and merit-based higher education and requires States to take aim at reducing illiteracy and improving access to education by all children.[514]
- Article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) states that "States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and

[507] Joint Expert Group UNESCO on the Monitoring of the Right to Education, *UNESCO Convention Against Discrimination in Education (1960) and Articles 13 and 14 of the International Covenant on Economic, Social, and Cultural Rights: A Comparative Analysis* (2006), unesdoc.unesco.org/ark:/48223/pf0000145922.
[508] Convention Against Discrimination in Education ("CADE"), UNESCO Doc. ED/2003/CONV/H/1 (Dec. 14, 1960).
[509] Convention Against Discrimination in Education ("CADE"), UNESCO Doc. ED/2003/CONV/H/1 (Dec. 14, 1960).
[510] United Nations Office of the High Commissioner for Human Rights, *U.N. Treaty Body Database*, tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=5&Lang=EN.
[511] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 13, *signed* Mar. 03, 1969, 993 U.N.T.S. 3.
[512] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 13, *signed* Mar. 03, 1969, 993 U.N.T.S. 3.
[513] Convention on the Rights of the Child ("CRC") art. 28, adopted Nov. 20, 1989, 1577 U.N.T.S. 3.
[514] Convention on the Rights of the Child ("CRC") art. 28, adopted Nov. 20, 1989, 1577 U.N.T.S. 3.

information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention."[515]

- The 1989 International Labor Organization (ILO) Indigenous and Tribal Peoples Convention No. 169 emphasizes access to education for Indigenous Peoples.[516] Part VI of the Convention, "Education and Means of Communication," provides that States should develop and implement education programs in coordination with Indigenous Peoples, and it gives special attention to the education of Indigenous children.[517] Education should aim to give Indigenous Peoples an equal footing in the national community, according to the Convention, and should also aim to eliminate prejudices in society and in educational materials.[518]

c. Current Protections in Non-Binding International Human Rights Instruments

- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)[519] explicitly states that Indigenous Peoples have the right to "establish and control their educational systems and institutions providing education in their own languages," to access all levels of education in their State without discrimination, and to have access "when possible, to an education in their own culture[.]"[520]
- The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP)[521] stresses "the promotion of quality education and health."[522] UNDROP also echoes the language of CEDAW Article 14 when it emphasizes the right of rural and [I]ndigenous girls to receive "all types of training and education, whether formal or non-formal, including training and education relating to functional literacy[.]"[523]
- Article 15 of the American Declaration on the Rights of Indigenous Peoples (ADRIP)[524] states that Indigenous Peoples have the right to "all levels and forms of education without discrimination" and to "establish and control their own educational systems and

[515] Convention on the Elimination of All Forms of Discrimination ("CERD") art. 7, adopted Dec. 21, 1965, 660 U.N.T.S. 195.
[516] Int'l Labour Organization [ILO], Indigenous and Tribal Peoples Convention (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.
[517] Int'l Labour Organization [ILO], Indigenous and Tribal Peoples Convention (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.
[518] Int'l Labour Organization [ILO], Indigenous and Tribal Peoples Convention (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.
[519] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).
[520] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).
[521] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP"), G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).
[522] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP"), G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).
[523] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP"), G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).
[524] American Declaration on the Rights of Indigenous Peoples, AG/RES. 288 (XLVI-O/16), *adopted* June 15, 2016.

institutions."[525] The Declaration requires States to promote intercultural relations and to adopt measures to "ensure the exercise and observance of [the right to education]."[526]

d. Current Normative Content

- In 1999, the Committee on Economic, Social and Cultural Rights adopted General Comment 13, "The Right to Education."[527] The General Comment explained that the right to education has four fundamental features: availability, accessibility, acceptability, and adaptability.[528] It also specifies that the adoption of temporary special measures to ensure "de facto equality for men and women" does not violate the non-discrimination aspect of accessibility.[529] Of Indigenous Peoples, the General Comment requires States to take "positive measures to ensure that education is culturally appropriate for minorities and [I]ndigenous [P]eoples, and of good quality for all[.]"[530]
- ICESCR Article 13 provides a robust definition of State obligations for the right to education, requiring States to develop primary and secondary education for all their peoples and to provide higher education on the basis of merit.[531] General Comment 13 of ICESCR lays out the dimensions of the right to education:
    - *Availability*—States must make available educational institutions for their people.
    - *Accessibility*—Institutions cannot discriminate and must be physically and economically reachable.
    - *Acceptability*—Education must meet certain minimum standards of quality.
    - *Adaptability*—Education must adapt to the cultural realities of the different communities that exist within the State.[532]
- But these dimensions have little meaning if States do not work to realize them. General Comment 13 describes the three obligations of States in realizing the right to education:
    - *Respect*—States must avoid measures that "hinder or prevent the enjoyment of the right to education."[533] This means that States cannot actively deny the right of education to their people.
    - *Protect*— State parties must "take measures that prevent third parties from interfering with the enjoyment of the right to education."[534]
    - *Fulfill*—This obligation has two aspects. First, States must *facilitate* the right to education by enabling communities that already have some educational

[525] American Declaration on the Rights of Indigenous Peoples, AG/RES. 288 (XLVI-O/16), *adopted* June 15, 2016.
[526] American Declaration on the Rights of Indigenous Peoples, AG/RES. 288 (XLVI-O/16), *adopted* June 15, 2016.
[527] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 13: The Right to Education, U.N. Doc. CESCR/C/13 (Dec. 1999).
[528] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 13: The Right to Education, U.N. Doc. CESCR/C/13 (Dec. 1999).
[529] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 13: The Right to Education, ¶ 32, U.N. Doc. CESCR/C/13 (Dec. 1999).
[530] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 13: The Right to Education, U.N. Doc. CESCR/C/13 (Dec. 1999).
[531] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 13, *signed* Mar. 03, 1969, 993 U.N.T.S. 3.
[532] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 13: The Right to Education, U.N. Doc. CESCR/C/13 (Dec. 1999).
[533] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 13: The Right to Education, U.N. Doc. CESCR/C/13 (Dec. 1999).
[534] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 13: The Right to Education, U.N. Doc. CESCR/C/13 (Dec. 1999).

infrastructure to enjoy the right to its fullest extent; second, States must *provide* the right to education to communities and individuals who are unable to "realize the right themselves by the means at their disposal."[535]

III. State Actions Needed in New CEDAW General Recommendation on Indigenous Women and Girls

- CEDAW's General Recommendation 34 hones in on the unique challenges faced by rural women and girls, which in the context of this instrument includes Indigenous women and girls, regarding literacy, education, and training.[536] It recommends that States must fully realize the right to education of Indigenous women and girls by ensuring that:
    - Quality education "is accessible and affordable for all [Indigenous] girls and women, including those with disabilities[.]"
    - School staff and curricula are "reviewed to eliminate discriminatory stereotypes[.]"
    - States support scholarships and financial aid for Indigenous women and girls.
    - States create programs to reduce Indigenous girls' involvement with unpaid care work, child marriage, gender-based violence, and labor exploitation.
    - Educational institutions and infrastructures are protected from police and military use and occupation.
    - Indigenous women and girls are encouraged to pursue "non-traditional fields of study and careers, such as mathematics, informatics, and [science] and technology[.]"
    - Pregnant girls in rural schools are retained and allowed re-entry after childbirth and provided social support while continuing their education.
    - Schools have adequate food, water, and hygiene.
    - States provide adult literacy programs and mobile school programs for children in rural areas.
    - On-the-job training adequately addresses Indigenous women's professional needs.
    - Indigenous women have access to technical knowledge on "food harvesting techniques, preservation, storage, processing, packaging, marketing and entrepreneurship."[537]
- States must adopt measures so that Indigenous women and girls can exercise their right to education and access technology considering the challenges brought by the pandemic. They should ensure services for easy access to computers and the Internet in rural areas and expand quality internet network in those areas.[538]

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[535] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 13: The Right to Education, U.N. Doc. CESCR/C/13 (Dec. 1999).
[536] Comm. on the Elimination of All Forms of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: On the Rights of Rural Women, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[537] Comm. on the Elimination of All Forms of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: On the Rights of Rural Women, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[538] Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("Se debe solicitar a los Estados que adopten medidas para que las mujeres indígenas ejerzan su derecho a la educación y acceso a nuevas tecnologías de la información y las comunicaciones. Hay un gran porcentaje de nuestras hermanas jóvenes que son analfabetas digitales; Deben garantizar servicios para acceder a las computadoras e internet de fácil acceso en zonas rurales y ampliar las redes de internet de calidad en dichas zonas. Las mujeres indígenas de los sectores urbanos en condiciones de pobreza tampoco acceder tienen garantizados estos derechos.").

- States must support and expand primary and secondary education for Indigenous women and girls and allocate resources "consistent with the share of the target population."[539] In the process of expanding these resources, States should provide more Indigenous and multilingual teachers by providing enabling support for Indigenous youth to become teachers to ensure a culturally appropriate education.
- States must put in place systems that increase awareness and sensitivity of educational institutions to the identities and culture of Indigenous Peoples, including through ensuring that Indigenous norms, values, skills, history, customary practices, activists, institutions, lands, and territories are the subject matters of the curriculum.
- States must provide the resources and promote local economies necessary for Indigenous women and girls to remain in their communities.[540]
- States must also prevent the dangerous migration of unaccompanied minors in pursuit of education by fulfilling the right of education in Indigenous Peoples.[541]
- States must create mechanisms for protecting Indigenous girls from violence and abuse in education, and these mechanisms should be local and rooted in the surrounding community.[542]
- States must ensure that schools are responsive to the needs of Indigenous women and girls with disabilities through adequate infrastructure, learning and teaching to enable Indigenous girls with disabilities continue their education.
- To prevent the erosion of Indigenous culture, States must work with Indigenous Peoples to design education systems and curricula that acknowledge and uplift Indigenous identities.[543] School materials with outdated information or prejudiced perspectives should be updated with appropriate and truthful information rectified in respect to Indigenous Peoples. To prevent language death, Indigenous languages should not be shunned away from classrooms but encouraged and used alongside other dominant languages.[544]

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[539] United Nations, Department of Economic and Social Affairs, *State of the World's Indigenous Peoples* (2017), https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2017/12/State-of-Worlds-Indigenous-Peoples_III_WEB2018.pdf; *Toolkit for Effective Advocacy, From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions*, Indigenous Women's organizations, ("States should eliminate barriers to education . . . for Indigenous Women. These services must be designed considering Indigenous Women's perspective..").

[540] United Nations, Department of Economic and Social Affairs, *State of the World's Indigenous Peoples* (2017), https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2017/12/State-of-Worlds-Indigenous-Peoples_III_WEB2018.pdf.

[541] United Nations, Department of Economic and Social Affairs, *State of the World's Indigenous Peoples* (2017), https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2017/12/State-of-Worlds-Indigenous-Peoples_III_WEB2018.pdf.

[542] United Nations, Department of Economic and Social Affairs, *State of the World's Indigenous Peoples* (2017), https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2017/12/State-of-Worlds-Indigenous-Peoples_III_WEB2018.pdf.

[543] *Toolkit for Effective Advocacy, From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions*, Indigenous Women's organizations, ("States should ensure access to quality education . . . that are culturally and linguistically appropriate."); Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("Sobre la educación, se ha planteado a nivel nacional e internacional la necesidad de incorporar en los currículos la historia, la cultura, el idioma y todo lo que es relevante para los pueblos indígenas en la educación.").

[544] *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020), ("The language barrier is also an important aspect, since the school curriculum is designed without consideration for Indigenous languages. This impacts negatively on the culture and the disappearance of the indigenous languages.").

- States must "guarantee the right of Indigenous [P]eoples to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures."[545] Indigenous texts or scripts should also be documented and become part of the basic writing skills taught to Indigenous children in schools. Traditional knowledge, innovations and technologies are to be part of the curricula in schools to arrest the loss of traditional knowledge of Indigenous Peoples.
- States must eliminate gender disparities in education and ensure equal access to all levels of education for Indigenous women and girls affected by migration, conflict and the climate crisis.[546]

IV. Comparison to CEDAW General Recommendation 34

- General Recommendation 34 acknowledges that rural women and girls, including Indigenous women and girls, have lower rates of literacy and that school attendance is affected by child and forced marriage, sexual harassment and violence, chores, childcare, farm work, lack of transportation, and lack of sanitation and water.[547]
- It promotes accessible, non-discriminatory education for all Indigenous women and girls and takes local languages and culture into account.[548]
- General Recommendation 34 mentions that States should ensure that Indigenous girls' "direct and indirect costs" of education are offset.[549]
- There is a provision ensuring access to water facilities and latrines, and addressing hygiene and menstrual education, with an emphasis on girls with disabilities.[550]
- Aside from protecting traditional school education, General Recommendation 34 also promotes Indigenous women's access to technical knowledge on "food harvesting techniques, preservation, storage, processing, packaging, marketing and entrepreneurship."[551]

[545] *Toolkit for Effective Advocacy, From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions*, Indigenous Women's organizations.
[546] *Indigenous Peoples and Climate Change*, ILO 36 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.
[547] Comm. on the Elimination of All Forms of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: On the Rights of Rural Women, ¶42, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[548] Comm. on the Elimination of All Forms of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: On the Rights of Rural Women, ¶43, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[549] Comm. on the Elimination of All Forms of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: On the Rights of Rural Women, ¶43, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[550] Comm. on the Elimination of All Forms of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: On the Rights of Rural Women, ¶43, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[551] Comm. on the Elimination of All Forms of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: On the Rights of Rural Women, ¶47, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

The Right to Work of Indigenous Women and Girls[552]

I. The Problem

a. General Overview

- Indigenous Peoples often face wage discrimination and exploitation in the workforce.[553]
- Indigenous women and girls are directly affected by poverty and weaknesses in programs designed to tackle it, as well as by unemployment trends and wage-related discrimination.[554]
- The overall poverty experienced by Indigenous Peoples, caused by centuries of oppression, exploitation, and discrimination, tends to have a disproportionate impact on women and girls, due to their role as caregivers and managers of resources.[555]
- Despite their valuable contributions to the economy and workforce, Indigenous women and girls face inequality in a number of areas, such as inheritance of land and other property, access to credit, capital markets and other social and economic resources, such as affordable and safe transport and effective communications technologies.[556]
- The productive input of non-market domestic and care giver's work performed by Indigenous women including girls, who form a large part of the workforce, is hardly recognized.[557]
- States often fail to acknowledge the role of Indigenous women and girls in unpaid work, their contribution to the Gross Domestic Product (GDP), and, therefore, to sustainable development.[558]
- Regardless of income level or social status, violence affects women and girls of all ages and impacts their full and equal participation in society and the economy. Violence and harassment against women in the world of work is present in all jobs, occupations and

[552] This narrative received contributions from Mary Miller, Denisse Córdova Montes, Gabriela Valentín Díaz, Abril Montero Dokser, Alicia Limtiaco, Ellen Bangoa, Igdalia Rojas, Maria Manuela Sequeira, and Natalia Caruso.

[553] Hum. Rts. Council, *Report of the Special Rapporteur on the rights of Indigenous peoples*, ¶ 19, U/N. Doc. A/HRC/30/41 (2015).

[554] Hum. Rts. Council, *Report of the Special Rapporteur on the rights of Indigenous peoples*, ¶ 21, U/N. Doc. A/HRC/30/41 (2015); Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("Es necesario igualar las brechas salariales entre hombres y mujeres y entre mujeres indígenas y no indígenas, realizando el mismo trabajo.").

[555] Hum. Rts. Council, *Report of the Special Rapporteur on the rights of Indigenous peoples*, ¶ 21, U/N. Doc. A/HRC/30/41 (2015).

[556] United Nations Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the U.N. Permanent F. on Indigenous Issues, Briefing Note No. 2: Gender and Indigenous Peoples' Economic and Social Development, 7 (Feb. 2010), https://www.un.org/esa/socdev/unpfii/documents/Briefing%20Notes%20Gender%20and%20Indigenous%20Women.pdf

[557] United Nations Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the U.N. Permanent F. on Indigenous Issues, Briefing Note No. 2: Gender and Indigenous Peoples' Economic and Social Development, 7 (Feb. 2010), https://www.un.org/esa/socdev/unpfii/documents/Briefing%20Notes%20Gender%20and%20Indigenous%20Women.pdf

[558] Comm. on the Elimination of Discrimination Against Women ("CEDAW" Comm."), General Recommendation No. 34: on the rights of rural women, ¶ 10, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

sectors of the economy in all countries across the world.[559] Nevertheless, poor Indigenous women are the most affected.

- Large numbers of Indigenous women and girls work as domestic workers as a result of poverty-driven displacement and migration to urban areas. Domestic work is outside of the regulatory framework for employers, which leaves women and girls isolated and at risk of rape and abuse by employers.[560] In addition, States often do a poor job of communicating migration risks to Indigenous women in sending countries.
    - All around the world, there are cases where young Indigenous women have migrated abroad to work in the service sector as caretakers or housemaids. Indigenous female migration to other countries is a well-known and growing phenomenon in Asia and Latin America, but the circumstances of this migration for Indigenous women are especially devastating, given their disproportionate vulnerability to human trafficking, prostitution, and detention.[561]
    - Indigenous women who become trafficking victims are often lured by false promises of decent jobs.[562]
- Indigenous women are at risk of violence due to patriarchal attitudes regarding the subordinate role of women that persist in many rural communities.[563]
- Girls from rural communities are at special risk of violence, sexual exploitation and harassment when they leave the rural community to seek employment in towns.[564]
- Indigenous women human rights defenders are often at risk of violence when working, for example, to protect survivors, transform local customs, or secure natural resource rights.[565]
- Additionally, rural and Indigenous women and girls are confronted with racist prejudice from members of the dominant, non-Indigenous groups, including co-workers and employers.[566]

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[559] UN Women, *Handbook: Addressing violence and harassment against women in the world of work*, International Labour Organization, 2 (2019) https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2019/addressing-violence-and-harassment-against-women-in-the-world-of-work-en.pdf?la=en&vs=4050

[560] Hum. Rts. Council, *Report of the Special Rapporteur on the rights of Indigenous peoples*, ¶ 47, U.N. Doc. A/HRC/30/41 (2015).

[561] Diana Vinding and Ellen-Rose Kampbel, *Indigenous Women workers with case studies from Bangladesh, Nepal and the Americas*, International Labour Office (2012) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_173293.pdf; Shannon Speed, *Incarcerated Stories* (2019) https://uncpress.org/book/9781469653129/incarcerated-stories/ ("This vulnerability to individual and state violence is not rooted in a failure to exercise agency. Rather, it is a structural condition, created and reinforced by settler colonialism, which consistently deploys racial and gender ideologies to manage the ongoing business of occupation and capitalist exploitation.")

[562] ACLU, *Human Trafficking: Modern Enslavement of Immigrant Women in the U.S.*, https://www.aclu.org/other/human-trafficking-modern-enslavement-immigrant-women-united-states

[563] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 24, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[564] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 24, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[565] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 24, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016); *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020).

[566] Diana Vinding and Ellen-Rose Kampbel, *Indigenous Women Workers with Case Studies from Bangladesh, Nepal and the Americas*, ILO's International Labour Standards Department, 2 (2012), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_173293.pdf; *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("Available information shows that IW experience higher rates of GBV compared to

- For example, Indigenous women wearing their native dress are ridiculed and subject to verbal and physical harassment in the workplace.[567]

b. The Impact of the Climate Crisis and Environmental Violence

- The climate crisis, natural disasters, and capitalist-induced environmental violence, often provoked by unsustainable use of natural resources, as well as poor management practices, have detrimental impacts on the wellbeing of Indigenous women and girls.[568]
- The climate crisis can force Indigenous communities to migrate, which can lead to the loss of their traditional economic, social and cultural activities.[569]
  - Indigenous women "face problems with adaptation and lacking awareness of possible forms of work other than the traditional ones in their community."[570] This exposes them to jobs involving poor working conditions and to exploitation.[571]
- Indigenous women have higher rates of unemployment in urban areas.[572]
- Moreover, Indigenous women find employment in the informal economy and engage in a range of activities such as casual and seasonal wage work on plantations and farms or as street vendors and domestic workers.[573]
  - Work in informal settings tends to be precarious or hazardous and is often marked by wage discrimination, limited social protection, weak contractual arrangements, and health and safety risks.[574]
    - Gender-based violence (GBV) causes individual pain and suffering which can include unwanted pregnancies, physical and mental illness, and

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non-Indigenous women, lower reporting rates, limited or no access to quality and culturally and linguistically relevant services, racist, policing, limited to no access to justice and insufficient relevant public policies to prevent and protect them from violence.")

[567] Diana Vinding and Ellen-Rose Kampbel, *Indigenous Women Workers with Case Studies from Bangladesh, Nepal and the Americas*, ILO's International Labour Standards Department, 2 (2012), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_173293.pdf

[568] Comm. on the Elimination of Discrimination Against Women ("CEDAW" Comm."), General Recommendation No. 34: on the rights of rural women, ¶ 11, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[569] International Labour Office, Geneva, *Indigenous Peoples and Climate Change*, 17 (2017), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf; Concept note for a general recommendation on the rights of Indigenous women ("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.")

[570] Concept note for a general recommendation on the rights of Indigenous women at 12.

[571] Concept note for a general recommendation on the rights of Indigenous women at 12, ("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.")

[572] International Labour Office, Geneva, *Indigenous Peoples and Climate Change*, 17 (2017), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf

[573] International Labour Office, Geneva, *Indigenous Peoples and Climate Change*, 17 (2017), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf

[574] International Labour Office, Geneva, *Indigenous Peoples and Climate Change*, 17 (2017), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf; Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("Es sabido que un porcentaje importante de [las mujeres de pueblos indígenas] trabaja en el sistema informal. [L]as organizaciones de mujeres han manifestado su preocupación debido a la precariedad laboral en materia de contratos laborales, higiene, salud y seguridad social.").

negative impacts on families and communities,[575] It is a major barrier to decent work, diminishes business profits, negatively affects GDP, and stalls development.[576]

- Additionally, rural and Indigenous women are "disproportionately represented in the informal sector, uncovered by social protection."[577]

II. Current Protections in International Law

a. Current Protection in CEDAW

- Article 2 of CEDAW establishes that the overarching obligations of States parties is to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, including gender-based violence against women.[578]
- CEDAW General Recommendation 35 on gender-based violence against women provides that States should address workplace entitlements for women survivors of gender-based violence that might occur in the workplace.[579]
- CEDAW General Recommendation 19 on violence against women recognizes that "equality in employment can be seriously impaired when women are subjected to GBV, such as sexual harassment in the workplace."[580]
- CEDAW's Article 11 protects against the discrimination of women in the field of employment by ensuring equality of rights in regard to work, employment, job security, renumeration, treatment, social security, and working conditions.[581]
  - Article 11 also addresses that States shall protect women's right to work by providing maternity leave and prohibiting job dismissal due to pregnancy or marital status. [582]
- Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) addresses the right of rural women to participate in and benefit from rural development.[583]

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[575] UN Forum on Business and Human Rights, *Gender Discussion Group: Sexual Violence and Harassment Against Women*, https://www.ohchr.org/Documents/Issues/Business/Gender/GenderRoundtableSexualViolence.pdf

[576] UN Forum on Business and Human Rights, *Gender Discussion Group: Sexual Violence and Harassment Against Women*, https://www.ohchr.org/Documents/Issues/Business/Gender/GenderRoundtableSexualViolence.pdf

[577] Comm. on the Elimination of Discrimination Against Women ("CEDAW" Comm."), General Recommendation No. 34: on the rights of rural women, ¶ 48, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[578] *See* Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 1, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 3.

[579] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 35: on gender-based violence against women, ¶ 39, U.N. Doc. CEDAW/C/GC/35 (July 14, 2017).

[580] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 19: violence against women, ¶ 17, U.N. Doc. (1992).

[581] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 11, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 3.

[582] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 11, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 3.

[583] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 14, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 3.

- CEDAW General Recommendation 34 provides States should "strengthen local rural economies . . . and create local employment opportunities and livelihoods for rural women in the context of sustainable development."[584]
- CEDAW General Recommendation 13 affirms that States should "support, as far as practicable, the creation of implementation machinery and encourage the efforts of the parties to collective agreements, where they apply, to ensure the application of the principle of equal remuneration for work of equal value."[585]

b. Current Protections in Other International Treaties

- The right of everyone to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment is affirmed in Article 23 of the UDHR.[586]
- Article 7 of the ICESCR recognizes the right of everyone to enjoyment of just and favorable conditions of work which includes "women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work."[587]
- As far as the rights of rural and Indigenous girls go, the only international instrument recognizing the right for children is the Convention on the Rights of the Child. The treaty body charged with overseeing implementation of the CRC is the Committee on the Rights of the Child. The CRC Committee issued General Comment 11, which highlights Indigenous children and their rights under the convention.[588]
- General Comment 11 provides that all children should be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.[589]
- Additionally, General Comment 11 sets parameters for distinguishing child labor that needs abolition, on the one hand, and acceptable work done by children, including such activities that allow Indigenous children to acquire livelihood skills, identity and culture, on the other.[590]
- The principle of the best interests of the child is conceived both as a collective and individual right; the application of this right to Indigenous children as a group requires consideration of how the right relates to collective cultural rights.[591]

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[584] Comm. on the Elimination of Discrimination Against Women ("CEDAW" Comm."), General Recommendation No. 34: on the rights of rural women, ¶ 51, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[585] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 13: equal remuneration for work of equal value, ¶ 3, U.N. Doc. 1989.

[586] Universal Declaration of Human Rights ("UDHR") art. 23, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948).

[587] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 7, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3.

[588] Comm. on the Rts. of the Child ("CRC Comm.") General Comment No. 11: Indigenous Children and their rights under the Convention, U.N. Doc. CRC/C/GC/11 (Feb. 12, 2009).

[589] Comm. on the Rts. of the Child ("CRC Comm.") General Comment No. 11: Indigenous Children and their rights under the Convention, ¶ 69, U.N. Doc. CRC/C/GC/11 (Feb. 12, 2009).

[590] Comm. on the Rts. of the Child ("CRC Comm.") General Comment No. 11: Indigenous Children and their rights under the Convention, ¶ 69, U.N. Doc. CRC/C/GC/11 (Feb. 12, 2009).

[591] Comm. on the Rts. of the Child ("CRC Comm.") General Comment No. 11: Indigenous Children and their rights under the Convention, ¶ 30, U.N. Doc. CRC/C/GC/11 (Feb. 12, 2009).

- The International Labour Organization Convention 169 on Indigenous and Tribal Peoples states that governments should do everything possible to prevent any discrimination between workers belonging to Indigenous communities and other workers, in particular as regards to equal remuneration for work of equal value.[592]
    - Other ILO standards address certain elements or forms of violence and harassment against women, particularly where this affects specific groups. The ILO Convention No. 169 requires Governments to take measures to ensure that "workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment."[593]
- ILO Convention No. 111 on Discrimination (Employment and Occupation) is an essential treaty providing a framework to address sexual harassment.[594] Sexual harassment is considered a form of sex discrimination covered by the ILO Convention.[595]
- ILO Convention No. 190 on Violence and Harassment recognizes the right of everyone to a world of work free from violence and harassment, including gender-based violence and harassment.[596]
- ILO C190 defines "violence and harassment" in the world of work as "a range of unacceptable behaviors and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm."[597]
- Additionally, ILO C190 defines "gender-based violence and harassment" as "violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment."[598]
- ILO Recommendation 206 on Violence and Harassment establishes that Members should "address violence and harassment in the world of work in labour and employment, occupational safety and health, equality and non-discrimination law, and in criminal law, where appropriate."[599]

c. Current Protections in Non-Binding International Human Rights Instruments

- Article 17 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states that Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labor law.[600]
- UNDRIP also recognizes that Indigenous individuals have the right not to be subjected to any discriminatory conditions of labor and, *inter alia*, employment or salary.[601]

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[592] Int'l Labour Organization [ILO], *Indigenous and Tribal Peoples Convention*, art. 20 (1989).

[593] Int'l Labour Organization [ILO], *Indigenous and Tribal Peoples Convention*, art. 20 (1989).

[594] Int'l Labour Organization [ILO], *Discrimination (Employment and Occupation*), (1958).

[595] Int'l Labour Organization [ILO], *Discrimination (Employment and Occupation*), (1958).

[596] Int'l Labour Organization [ILO], *Violence and Harassment*, art. 2 (2019).

[597] Int'l Labour Organization [ILO], *Violence and Harassment*, art. 1 (2019).

[598] Int'l Labour Organization [ILO], *Violence and Harassment*, art. 1 (2019).

[599] Int'l Labour Organization [ILO], *Violence and Harassment Recommendation*, art. 1 (2019).

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

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

- Article 27 of the American Declaration on the Rights of Indigenous Peoples (ADRIP) provides that Indigenous Peoples have the rights and guarantees recognized in national and international labor law.[602]
- Both male and female Indigenous workers have the right to enjoy equal opportunities and treatment in all terms, conditions, and benefits of employment, including training and capacity building.[603]
- Article 27 of the American Declaration on the Rights of Indigenous Peoples (ADRIP) establishes labor rights of Indigenous Peoples.[604]
- Both male and female Indigenous workers should be protected against discrimination or harassment "on the basis of, *inter alia*, race, sex, origin or Indigenous identity."[605]

d. Current Normative Content

- The right to work is an individual right that belongs to each person and is at the same time a collective right.[606]
- It includes the right of every human being to decide freely to accept or choose work.[607]
- Work must be *decent* work, meaning work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration.[608]
- This includes respect for the physical and mental integrity of the worker in the exercise of his or her employment.[609]
- The exercise of work requires the existence of the following interdependent and essential elements:
    - *Availability*. States parties must have specialized services to assist and support individuals in order to enable them to identify and find available employment.[610]
    - *Accessibility*. The labor market must be open to everyone under the jurisdiction of States parties.[611]
    - *Acceptability and quality*. Protection of the right to work has several components, notably the right of the worker to just and favorable conditions of work, in particular

[602] American Declaration on the Rights of Indigenous Peoples, AG/RES. 288 (XLVI-O/16), *adopted* June 15, 2016.
[603] American Declaration on the Rights of Indigenous Peoples, AG/RES. 288 (XLVI-O/16), *adopted* June 15, 2016.
[604] American Declaration on the Rights of Indigenous Peoples, AG/RES.288 (XLVI-O/16), *adopted* June 15, 2016.
[605] American Declaration on the Rights of Indigenous Peoples, AG/RES.288 (XLVI-O/16), *adopted* June 15, 2016.
[606] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 18: The Right to Work, ¶6, U.N. Doc. E/C.12/GC/18 (Feb. 6, 2006).
[607] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 6, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3.
[608] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 7, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3.
[609] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 18: The Right to Work, ¶7, U.N. Doc. E/C.12/GC/18 (Feb. 6, 2006).
[610] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 18: The Right to Work, ¶12, U.N. Doc. E/C.12/GC/18 (Feb. 6, 2006).
[611] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 18: The Right to Work, ¶12, U.N. Doc. E/C.12/GC/18 (Feb. 6, 2006).

to safe working conditions, the right to form trade unions and the right freely to choose and accept work.[612]

III. State Actions Needed in New CEDAW General Recommendation on Indigenous Women and Girls

- States parties must consider the needs of Indigenous girls who may face multiple facets of discrimination and also take into account the different situation of Indigenous girls in rural and urban situations.[613] Particular attention must be given to Indigenous girls in order to ensure that they enjoy their rights on an equal basis as Indigenous boys.[614]
- States must protect girls from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the girl's education, or to be harmful to the girl's health or physical, mental, spiritual, moral or social development.[615]
- States must distinguish between child labor that needs abolition and acceptable work done by children, including such activities that allow Indigenous children to acquire livelihood skills, identity and culture.[616]
- States must ensure opportunities to access vocational, trade and technical areas at post-secondary and tertiary levels by Indigenous girls are not undermined by schools' gender-stereotyped curricula and learning pathways.[617]
- The Beijing Declaration & Platform for Action highlights two strategic objectives relating to women and girls and the economy.[618]
    - Strategic objective F.1. promotes women's [including Indigenous] economic rights and independence, including access to employment, appropriate working conditions and control over economic resources.[619]
    - Strategic objective L.6. stresses eliminating the economic exploitation of child labor and protecting young [including Indigenous] girls at work.[620]
    - State parties must work with Indigenous women and girls to strengthen analysis of both collective and individual Indigenous rights within the monitoring of the Beijing Platform of Action.[621]

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[612] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 18: The Right to Work, ¶12, U.N. Doc. E/C.12/GC/18 (Feb. 6, 2006).

[613] Comm. on the Rts. of the Child ("CRC Comm.") General Comment No. 11: Indigenous Children and their rights under the Convention, ¶ 29, U.N. Doc. CRC/C/GC/11 (Feb. 12, 2009).

[614] Comm. on the Rts. of the Child ("CRC Comm.") General Comment No. 11: Indigenous Children and their rights under the Convention, ¶ 29, U.N. Doc. CRC/C/GC/11 (Feb. 12, 2009).

[615] Comm. on the Rts. of the Child ("CRC Comm.") General Comment No. 11: Indigenous Children and their rights under the Convention, ¶ 69, U.N. Doc. CRC/C/GC/11 (Feb. 12, 2009).

[616] Comm. on the Rts. of the Child ("CRC Comm.") General Comment No. 11: Indigenous Children and their rights under the Convention, ¶ 69, U.N. Doc. CRC/C/GC/11 (Feb. 12, 2009).

[617] Secretariat of the Pacific Community (SPC), February 2015.

[618] United Nations, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women*, 27 October 1995, available at: https://www.refworld.org/docid/3dde04324.html

[619] United Nations, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women*, 27 October 1995, available at: https://www.refworld.org/docid/3dde04324.html

[620] United Nations, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women*, 27 October 1995, available at: https://www.refworld.org/docid/3dde04324.html

[621] Hum. Rts. Council, *Report of the Special Rapporteur on the rights of Indigenous peoples*, ¶ 85, U/N. Doc. A/HRC/30/41 (2015).

- States parties must protect the rights of Indigenous women workers to bargain collectively to ensure decent working conditions.[622]
- States parties must review relevant laws, regulations and policies that limit Indigenous women's access to decent employment and eliminate practices that discriminate against Indigenous women in rural labor markets, such as not hiring Indigenous women for certain jobs.[623]
- States parties, in conjunction with Indigenous Peoples, must adopt immediate and effective measures to eliminate exploitative labor practices with regard to Indigenous Peoples, but more specifically, Indigenous children and women.[624]
- States parties must facilitate and emphasize the transition of Indigenous women from the informal to the formal economy, ensuring opportunities for income security and improved livelihoods.[625]
- States must take legislative, administrative and other appropriate steps to achieve progressively the full realization of the rights set forth in the UNDRIP.[626]
- States parties must further ensure Indigenous women's rights to employment by improving working conditions, including taking steps to prevent sexual harassment, exploitation and other forms of abuse in the workplace.[627]
- States must value and promote Indigenous Women's work and guarantee their access to technical, economic and financial resources, including access to credit.[628]
- States must create proper work opportunities for Indigenous women corresponding to their skills and traditional knowledge, facilitate capacity building in business training and education and support the creation of enterprises and cooperatives led by Indigenous Women to boost local economies.[629]

IV. Comparison with State Actions in CEDAW General Recommendation 34

- CEDAW General Recommendation 34 recognizes that rural women, which is inclusive of Indigenous women, have limited paid opportunities and tend to work long hours in "low-

[622] Comm. on the Elimination of Discrimination Against Women ("CEDAW" Comm."), General Recommendation No. 34: on the rights of rural women, ¶ 52, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[623] Comm. on the Elimination of Discrimination Against Women ("CEDAW" Comm."), General Recommendation No. 34: on the rights of rural women, ¶ 51, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[624] American Declaration on the Rights of Indigenous Peoples, AG/RES. 288 (XLVI-O/16), *adopted* June 15, 2016.
[625] Comm. on the Elimination of Discrimination Against Women ("CEDAW" Comm."), General Recommendation No. 34: on the rights of rural women, ¶ 52, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[626] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[627] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 52, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016); Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("Las mujeres de pueblos indígenas necesitan que se respeten sus derechos laborales.").
[628] *Toolkit for Effective Advocacy, From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions*, Indigenous Women's organizations.
[629] *Toolkit for Effective Advocacy, From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions*, Indigenous Women's organizations.

skilled, part-time, seasonal, low-paid or unpaid jobs, home- based activities and subsistence farming."[630]

- CEDAW General Recommendation 34 recommends that States parties ensure Indigenous women's rights to employment by:
    - Expanding opportunities for rural women to run businesses;
    - Facilitating the transition from the informal to formal economy;
    - Improving rural working conditions;
    - Protecting the right to bargain collectively;
    - Protecting the occupational health and safety of rural women;
    - Providing social security;
    - Providing childcare and other services;
    - Promoting rural women's active and effective engagement as producers, entrepreneurs, suppliers, workers and consumers in local and global value chains and markets.[631]
- Moreover, CEDAW General Recommendation 34 provides that States parties should "fully incorporate the right to decent conditions of work and the principle of equal pay for work of equal value in their legal and policy frameworks, paying special attention to the situation and labour force representation of Indigenous women."[632]
- States parties should also review laws, regulations and policies which limit Indigenous women's "access to decent employment and eliminate practices which discriminate against [Indigenous] women in rural labour markets."[633]
- CEDAW General Recommendation 34 recommends that programs are in place "reducing rural girls' engagement in unpaid care work . . . and protecting rural girls from labor exploitation . . . both within and outside of the school system."[634]
    - This is mainly within the context of education, there is no mention of Indigenous girls' right to work under the section on employment.[635]
    - Light work that is in line with being a member of the community is not mentioned.[636]
- CEDAW General Recommendation 34 has one subsection that mentions sexual harassment in the workplace.[637]

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[630] Comm. on the Elimination of Discrimination Against Women ("CEDAW" Comm."), General Recommendation No. 34: on the rights of rural women, ¶ 48, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[631] Comm. on the Elimination of Discrimination Against Women ("CEDAW" Comm."), General Recommendation No. 34: on the rights of rural women, ¶ 52, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[632] Comm. on the Elimination of Discrimination Against Women ("CEDAW" Comm."), General Recommendation No. 34: on the rights of rural women, ¶ 50, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[633] Comm. on the Elimination of Discrimination Against Women ("CEDAW" Comm."), General Recommendation No. 34: on the rights of rural women, ¶ 51, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[634] Comm. on the Elimination of Discrimination Against Women ("CEDAW" Comm."), General Recommendation No. 34: on the rights of rural women, ¶ 43, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[635] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW" Comm."), General Recommendation No. 34: on the rights of rural women, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[636] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW" Comm."), General Recommendation No. 34: on the rights of rural women, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[637] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 52, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

- CEDAW General Recommendation 34 recognizes that Indigenous girls are at a special risk of violence and harassment when they leave the rural community to seek employment.[638]
    - However, the right to be free from harassment in the workplace is not mentioned when it comes to rural and Indigenous girls.[639]
- Overall, CEDAW General Recommendation 34 recognizes that women and girls face harassment in the workplace but doesn't delve into the State actions that are needed to ensure this right to be free from this violence.[640]
    - For example, CEDAW General Recommendation 35 mentions protocols and procedures addressing all forms of gender-based violence that may occur in the workplace or affect women workers, "including effective and accessible internal complaints procedures that do not exclude recourse to law enforcement authorities."[641]
    - This, General Recommendation 35 states, should also address workplace entitlements for Indigenous women and girls survivors of such workplace harassment.[642]

Right to Health of Indigenous Women and Girls[643]

I. The Problem

a. General Overview

- Indigenous Peoples in general experience disproportionately high levels of maternal and infant mortality, malnutrition, cardiovascular illnesses, diabetes, cancer, HIV/AIDS and other infectious diseases such as malaria and tuberculosis.[644]
- Indigenous women acutely experience poor levels of health, as they are disproportionately affected by natural disasters and armed conflicts, and are often denied access to education, land, property and other economic resources.[645] Interestingly though, women are the ones that play a primary role in overseeing the health and well-being of their families and communities.[646]

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[638] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 24, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[639] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[640] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[641] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 35: on gender-based violence against women, ¶ 39, U.N. Doc. CEDAW/C/GC/35 (July 14, 2017).
[642] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 35: on gender-based violence against women, ¶ 39, U.N. Doc. CEDAW/C/GC/35 (July 14, 2017).

[643] This narrative received contributions from Yilian Pimienta, Denisse Córdova Montes, Tamar Ezer, Gabriela Valentín Díaz, Mary Miller, Abril Montero Dokser, Alicia Limtiaco, Ellen Bangoa, Igdalia Rojas, Maria Manuela Sequeira, Mariam Wallet Aboubakrine, and Natalia Caruso.
[644] United Nations, Department of Economic and Social Affairs, permanent forum on Indigenous Peoples' (https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/health.html).
[645] United Nations, Department of Economic and Social Affairs, permanent forum on Indigenous Peoples' (https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/health.html).
[646] United Nations, Department of Economic and Social Affairs, permanent forum on Indigenous Peoples' (https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/health.html).

- Indigenous women and girls in both rural and urban areas are also denied access to their right to health because of historic discrimination in the health systems. This includes services that do not take into account culture, travel distance, accessibility, and language.[647]
- In addition, as the incidence of other public health issues such as drug abuse, alcoholism, depression and suicide increases, urgent and concerted efforts are needed to improve the mental health situation of Indigenous Peoples.[648]
- The Special Rapporteur on the Rights of Indigenous Peoples notes that "non-[I]ndigenous health systems often do not take into account the [I]ndigenous concept of health." [649]
- Additionally, the systems in place are typically not suitable to Indigenous women and girls' specific needs and cultural preferences. This means the healthcare available to Indigenous women and girls is typically not culturally appropriate;[650] for example, Indigenous Peoples' beliefs and attitudes about behavioral and mental health—such as the connection between mental health and environmental violence, loss of land, and the lack of sovereignty—are not sufficiently integrated into the development of health programs.[651]
- This is shown through the "[as a] lack of culturally appropriate sexual and reproductive health advice" faced by Indigenous women and girls.[652]
- Furthermore, the ongoing attacks on Indigenous Peoples' cultural practices will continue to have adverse effects on the right to health of Indigenous women and girls by further limiting access to resources like plants that have been traditionally used by Indigenous peoples as medication.[653]
- Another issue is the lack of representation of Indigenous individuals in medical research. "Epidemiological data often fails to capture information on [I]ndigenous communities and the socioeconomic determinants of health, thereby making them 'invisible.' If data is included, it is generally not disaggregated, so that the specific needs of [I]ndigenous women are not understood in the context of national healthcare policy and planning."[654]
- Appropriate measures should be taken to abolish harmful traditional practices that affect mostly girls' health, such as female genital mutilation, early marriage, and preferential feeding and care of boys.[655]
- These harmful practices disproportionately impact Indigenous girls and affect access to other rights like their right to freedom from gender-based violence and forced sterilization.

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[647] *State of the World's Indigenous Peoples, Indigenous Peoples Access to Health Services*, U.N. DEP'T OF ECON. AND SOC. AFF. 1, 12, 16 (2018).
[648] United Nations, Department of Economic and Social Affairs, permanent forum on Indigenous Peoples' (https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/health.html).
[649] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Women and Girls*, ¶ 31, U.N. Doc. A/HRC/30/41 (2015).
[650] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Women and Girls*, ¶ 31, U.N. Doc. A/HRC/30/41 (2015).
[651] Cohen, A. (1999). The Mental Health of Indigenous Peoples; an International Overview. Geneva, World Health Organization, Department of Mental Health.
[652] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Women and Girls*, ¶ 33, U.N. Doc. A/HRC/30/41 (2015).
[653] *See Backgrounder – Traditional Knowledge*, U.N. PERMANENT F. ON INDIGENOUS ISSUES (2019) https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/04/Traditional-Knowledge-backgrounder-FINAL.pdf.
[654] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Women and Girls*, ¶ 31, U.N. Doc. A/HRC/30/41 (2015).
[655] UN Office of the High Commissioner for Human Rights (OHCHR), Fact Sheet No. 31, The Right to Health, pg. 14 (June 2008).

b. The Impact of the Climate Crisis and Environmental Violence

- The climate crisis and environmental violence especially impacts the right to health of Indigenous women and girls because these are forcing Indigenous communities to change their ways of living, eating, and their relationship with the environment.[656]
- For example, the adequacy dimension of the right to food of Indigenous women is often affected by the climate crisis and environmental violence because the ability to grow certain crops is diminished by the impacts of environmental destruction.[657] This leads to worse health outcomes for Indigenous women.
- Furthermore, traditional foods are no longer accessible and not as nutritious because the depletion of natural resources affects access to the sustainable food sources Indigenous women and girls have historically relied on.[658]
- Forced migration as a result of the destruction of the territory and environment leaves Indigenous Peoples more at risk to the effects of the climate crisis, including natural disasters.[659]
- Additionally, lack of access to food and other natural resources as well as hunger also affect health.[660]

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[656] *See The effects of climate change on indigenous peoples*, UN.ORG https://www.un.org/development/desa/indigenouspeoples/climate-change.html (last visited Nov. 5, 2020); electronic correspondence with Indigenous woman leader Mariam Wallet Aboubakrine, https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2/chairs-of-pfii.html ("The interrelationship between health and the environment for Indigenous Peoples is exemplified by the Tuareg community, who say *aman iman,* which means "water is life." Essentially, there is no plant, animal or human life without water. Similarly, the Taureg say *akh isoudar*, which means "milk is life-sustaining." In other words, milk provides essential nutrients in a state of health").

[657] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm.") General Recommendation 37: *General recommendation on the gender-related dimensions of disaster risk reduction in the context of climate change*, ¶ 1, U.N. Doc. CEDAW/C/GC/37 (Mar. 13, 2018).

[658] The Effects of Climate Change on Indigenous Peoples, UN Department of Economic and Social Affairs (Sept. 24, 2007), https://www.un.org/development/desa/indigenouspeoples/climate-change.html; *Indigenous Peoples and Climate Change*, ILO 1, 12 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf; electronic correspondence with Indigenous woman leader Mariam Wallet Aboubakrine, https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2/chairs-of-pfii.html ("Indeed, all living things need minimum nutrients, water and air to ensure the primary biological reactions (anabolism and catabolism) continue to live. Where do they come from? From mother nature. For some living beings, including humans, the sun is also indispensable, it too is a grace of mother nature.")

[659] *Indigenous Peoples and Climate Change*, ILO 1, 15 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.

[660] *See* Hum. Rts. Counci, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶ 8 U.N. Doc. A/HRC/30/41 (Aug. 6, 2015); electronic correspondence with Indigenous woman leader Mariam Wallet Aboubakrine, https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2/chairs-of-pfii.html ("There are many links between health, food, water, and culture. From an Indigenous perspective, all of these come from mother nature. The health of the earth highly depends in part on the people, natives, and animals. But also, the health of animals and of humans is highly dependent on mother nature, all food including water, the healthy air it provides us.")

II. Current Protections in International Law

a. Current Protections in CEDAW

- The right to health is set out in CEDAW's Article 12.[661]
    - Article 12 states "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.[662]
    - Article 12 further states that "[n]otwithstanding the provisions [above], States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation."[663]
- Article 14 also recognizes the right to health and states that States Parties should ensure rural women the right to "have access to adequate health care facilities, including information, counselling and services in family planning."[664]
- CEDAW's Article 2 prohibits discrimination against women in all forms and ensures that States use policies, legislation, laws, regulations, and customs to protect the "rights of women on an equal basis with men."[665]
- Article 10 of CEDAW mentions women's right to access "educational information to help to ensure the health and well-being of families."[666]
- Article 11 ensures the right to health and safety in working conditions.[667]

b. Current Protections in Other International Treaties

- The Universal Declaration of Human Rights article 25 states "[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." These same protections apply to children, whether they are born in or out of wedlock.
- The right to health can also be found in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). It sets out "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."[668]

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[661] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 12, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.
[662] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 12, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.
[663] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 12, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.
[664] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 14, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.
[665] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 2, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.
[666] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 10, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.
[667] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 11, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.
[668] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 12, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3.

- The right to health is mentioned in Article 5, subsection (e), in the Convention on the Elimination of All Forms of Racial Discrimination. This article guarantees "[t]he right to public health, medical care, social security and social services." [669]
- The Convention on the Rights of the Child establishes special protections on the right to health of a child in Article 24.[670]
- Article 24 of the CRC states "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services."[671]

c. Current Protections in Non-Binding International Human Rights Instruments

- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states in Article 21 that "Indigenous [P]eoples have the right, without discrimination, to the improvement of their economic and social conditions, including inter-alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, **health** and social security."[672]
- Article 23 of UNDRIP provides that "Indigenous [P]eoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, [I]ndigenous [P]eoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions." [673]
- Pointing to a collective dimension on the right to health, UNDRIP also mentions, in Article 24, that "Indigenous [P]eoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services."[674]
- The American Declaration on the Rights of Indigenous Peoples (ADRIP) similarly presents the collective Indigenous right to health in Article 18. On top of the typical language found in ICESR, they, like UNDRIP, establish that "Indigenous [P]eoples have the right to their own health systems and practices, as well as to the use and protection of their vital medicinal plants, animals and minerals, and other natural resources for medicinal use in their ancestral lands and territories."[675]
- Article 6 of ADRIP lays out the concept of Collective rights.
    - "Indigenous [P]eoples have collective rights that are indispensable for their existence, well-being, and integral development as peoples. In that regard, States recognize and respect the right of Indigenous [P]eoples to their collective action; to

[669] International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD") art. 5(e)(iv), 660 U.N.T.S. 195, 212.
[670] Convention on the Rights of the Child ("CRC") art.24 , *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3.
[671] Convention on the Rights of the Child ("CRC") art.24 , *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3.
[672] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), art. 21, *adopted* Sept. 13, 2007.
[673] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), art. 23, *adopted* Sept. 13, 2007.
[674] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), art. 24, *adopted* Sept. 13, 2007.
[675] American Declaration on the Rights of Indigenous Peoples, ("ADRIP") AG/RES. 288 (XLVI-O/16), art. 18 adopted June 15, 2016.

their juridical, social, political, and economic systems or institutions; to their own cultures; to profess and practice their spiritual beliefs; to use their own tongues and languages; and to their lands, territories and resources. States shall promote, with the full and effective participation of Indigenous [P]eoples, the harmonious coexistence of the rights and systems of different population groups and cultures."[676]

- The International Labor Organization's Indigenous and Tribal People's Convention (ILO 169) sets forth the Right to Health from Indigenous individuals in Article 25 and also emphasizes the importance of respecting traditional medicinal practices: "Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines."[677]
- The Committee on Economic, Social and Cultural Rights has stated that "health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity."[678]

d. Current Normative Content

- In setting out an elaboration of the right to health in General Comment 14 by the Committee on Economic, Social and Cultural Rights (CESCR), it states that "the right to 'the highest attainable standard of physical and mental health' is not confined to the right to healthcare."[679]
    - "[T]he right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment."[680]
    - "More determinants of health are being taken into consideration, such as resource distribution and gender differences. A wider definition of health also takes into account such socially-related concerns as violence and armed conflict. Moreover, formerly unknown diseases…have become...widespread… [and the] rapid growth of the world population...[has] created new obstacles for the realization of the right to health which need to be taken into account when interpreting article 12."[681]

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[676] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health:, ¶ 4, U.N. Doc. CESCR/E/C.12/2000/4 (August 11, 2000).
[677] Int'l Labour Organization [ILO], *Indigenous and Tribal People's Convention*, art. 25 (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169 .
[678] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health:, ¶ 1, U.N. Doc. CESCR/E/C.12/2000/4 (August 11, 2000).
[679] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health:, ¶ 4, U.N. Doc. CESCR/E/C.12/2000/4 (August 11, 2000).
[680] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health:, ¶ 4, U.N. Doc. CESCR/E/C.12/2000/4 (August 11, 2000).
[681] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health:, ¶ 10, U.N. Doc. CESCR/E/C.12/2000/4 (August 11, 2000).

- The Committee then identifies certain elements in General Comment 14 that need to be present for the right to health to be met. These are (a) availability, (b) accessibility, (c) acceptability, and (d) quality. [682]
    - "*Availability.* Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party…depending on numerous factors… will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities hospitals, clinics and other health-related buildings, trained medical and professional personnel…"[683]
    - "*Accessibility.* Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions: (1) non-discrimination, (2) physical accessibility, (3) economic accessibility, and (4) Information accessibility.[684]
        - On the point of non-discrimination, "health facilities, goods, and services have to be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited ground."
    - *"Acceptability.* All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned."[685]
    - *"Quality.* As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation."[686]
- States have an obligation to provide access to adequate health care facilities, including to information, counseling and family planning services.[687]
- The Committee mandates that States and the Committee themselves consider elements specific to the right to health of Indigenous individuals and also point to a collective right to health of Indigenous communities.
    - "…The Committee considers that [I]ndigenous [P]eoples have the right to specific measures to improve their access to health services and care. These health services should be culturally appropriate, taking into account traditional preventive care, healing practices and medicines. States should provide resources for [I]ndigenous [P]eoples to design, deliver and control such services so that they may enjoy the highest attainable standard of physical and mental health. The vital medicinal

[682] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health:, ¶ 12, U.N. Doc. CESCR/E/C.12/2000/4 (August 11, 2000).
[683] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health:, ¶ 12(a), U.N. Doc. CESCR/E/C.12/2000/4 (August 11, 2000).
[684] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health:, ¶ 12(b), U.N. Doc. CESCR/E/C.12/2000/4 (August 11, 2000).
[685] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health:, ¶ 12(c), U.N. Doc. CESCR/E/C.12/2000/4 (August 11, 2000).
[686] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health:, ¶ 12(d), U.N. Doc. CESCR/E/C.12/2000/4 (August 11, 2000).
[687] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 14(2)(b), adopted Dec. 18, 1979, 1249 U.N.T.S. 13.

plants, animals and minerals necessary to the full enjoyment of health of [I]ndigenous [P]eoples should also be protected. The Committee notes that, in [I]ndigenous communities, the health of the individual is often linked to the health of the society as a whole and has a **collective dimension.** In this respect, the Committee considers that development-related activities that lead to the displacement of [I]ndigenous [P]eoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health."[688]

III. State Actions Needed in New CEDAW General Recommendation on Indigenous Women and Girls

- The Committee on Economic, Social, and Cultural Rights states in its General Comment 14 that "[t]he right to health, like all human rights, imposes three types or levels of obligations on States parties: the obligations to *respect, protect* and *fulfil*. In turn, the obligation to fulfil contains obligations to *facilitate*, *provide* and *promote*. The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health. The obligation to protect requires States to take measures that prevent third parties from interfering with article 12 guarantees. Finally, the obligation to fulfil requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health." [689]
    - Specifically, "[s]tates are under the obligation to ***respect*** the right to health by, inter alia, refraining from denying or limiting equal access for all persons… abstaining from enforcing discriminatory practices as a State policy; and abstaining from imposing discriminatory practices relating to women's health status and needs." [690]
    - The Obligations to ***protect*** includes a duty to adopt adequate legislation "or to take other measures ensuring equal access to health care… to ensure that privatization of the health sector does not constitute a threat to the availability, accessibility, acceptability and quality of health…services; to control the marketing of medical equipment and medicines by third parties; and to ensure that medical practitioners and other health professionals meet appropriate standards of education, skill and ethical codes of conduct." [691]
    - In order to meet the obligation to ***fulfil,*** **"**States need to give sufficient recognition to the right to health in the national political and legal systems, preferably by way of legislative implementation, and to adopt a national health policy with a detailed plan for realizing the right to health."[692]

[688] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health:, ¶27, U.N. Doc. CESCR/E/C.12/2000/4 (August 11, 2000).
[689] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health:, ¶33, U.N. Doc. CESCR/ E/C.12/2000/4 (August 11, 2000).
[690] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health:, ¶34, U.N. Doc. CESCR/ E/C.12/2000/4 (August 11, 2000).
[691] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health:, ¶35, U.N. Doc. CESCR/ E/C.12/2000/4 (August 11, 2000).
[692] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health:, ¶36, U.N. Doc. CESCR/ E/C.12/2000/4 (August 11, 2000).

        - The Committee notes that this obligation to fulfil mandates states "take positive measures to enable and assists individuals and communities to enjoy the right to health."[693]
- Paragraph 43 of General Comment 14 details the minimum core obligations State parties are to adhere to, regardless of resources. The minimum core, includes:
    - Non-discriminatory access to health care.
    - Equitable distribution of health facilities, goods, and services.
    - Essential medicines, as defined by the WHO; this encompasses access to palliative care and harm reduction medications.
    - Minimum essential food, potable water, basic shelter, and sanitation.
    - National public health strategies and plans of actions adopted and implemented through a participatory process. National strategies and plans must give particular attention to Indigenous women and girls in both their process and content.[694]
- Paragraph 44 of General Comment 14 details the obligations of comparative priority. These obligations include:
    - Ensuring reproductive, maternal, and child health care.
    - Providing immunization against major infectious diseases.
    - Taking measures to prevent, treat, and control epidemics.
    - Providing education and information in their mother tongue on major health problems.
    - Appropriately training health personnel, including education on health, human, and collective rights.[695]
- The Committee puts focus on the measurability of the progressive realization in the area of the right to health. Paragraphs 57 and 58 on right to health indicators and benchmarks detail the specific process states must undergo to implement benchmarks.
    - "Having identified appropriate right to health indicators, States parties are invited to set appropriate national benchmarks in relation to each indicator. During the periodic reporting procedure the Committee will engage in a process of scoping …[which]… involves the joint consideration by the State party and the Committee of the indicators … benchmarks which will then provide the targets to be achieved during the next reporting period. In the following five years, the State party will use these national benchmarks to help monitor its implementation of article 12… in the subsequent reporting process, the State party and the Committee will consider whether or not the benchmarks have been achieved, and the reasons for any difficulties that may have been encountered."[696]
- The Office of the UN High Commissioner and World Health Organization state that "Governments and health professionals should treat all children and adolescents in a non-discriminatory manner." [697] This requires "particular attention to the needs and rights of

[693] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health:, ¶37, U.N. Doc. CESCR/ E/C.12/2000/4 (August 11, 2000).
[694] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health:, ¶43, U.N. Doc. CESCR/ E/C.12/2000/4 (August 11, 2000).
[695] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health:, ¶44, U.N. Doc. CESCR/ E/C.12/2000/4 (August 11, 2000).
[696] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health:, ¶57, 58, U.N. Doc. CESCR/ E/C.12/2000/4 (August 11, 2000).
[697] UN Office of the High Commissioner for Human Rights (OHCHR), Fact Sheet No. 31, The Right to Health, pg. 14 (June 2008); Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la

specific groups, such as children belonging to minorities or [I]ndigenous [Peoples], intersex children and, generally, young girls and adolescent girls, who in many contexts are prevented from accessing a wide range of services, including health care. More specifically, [Indigenous women and] girls should have equal access to adequate nutrition, safe environments, and physical and mental health services." [698]

- States must also address the climate crisis, pandemic, disasters, and armed conflict, which have a disproportionate impact on Indigenous women and girls and limits access to other rights like the right to health and forces the migration of Indigenous women and girls.[699]
- The right to health must be guaranteed to Indigenous women and girls with autonomy over their own health systems, ancestral knowledge and intersectional approach for women.[700]
- Health facilities, goods and services must be within safe physical reach for all sections of the population, especially Indigenous populations, women, children, adolescents, older persons, persons with disabilities, LGBTQI individuals, and persons living with HIV/AIDS. [701]
- These should also be culturally appropriate, responding to the Indigenous understanding of health.[702] Not only should the right to health be culturally appropriate, but it should allow the space for Indigenous women, who are integral to the Indigenous understanding of health and healing, have access and control over the natural resources they have used for medicinal and spiritual purposes for centuries.[703]

Discriminación contra la Mujer (2020) ("Con la pandemia se ha ahondado la discriminación diaria. Se ha incrementado la violencia de género antes, durante y luego de conflictos sociales, ecoterritoriales y armados. Hay discriminación en el ejercicio del derecho a la salud, educación, trabajo y justicia dentro y fuera de las comunidades. Se ha profundizado la pobreza de las mujeres indígenas.").

[698] UN Office of the High Commissioner for Human Rights (OHCHR), Fact Sheet No. 31, The Right to Health, pg. 14 (June 2008).

[699] *See Indigenous Peoples and Climate Change*, ILO (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.

[700] Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("Derecho a la salud ancestral garantizando que los Estados partes incluyan en sus programas de salud, la libre autonomía de sanación y espacios de interseccionalidad entre mujeres indígenas y centros de atención y servicios de salubridad.").

[701] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health ¶ 12(b), U.N. Doc. CESCR/ E/C.12/2000/4 (August 11, 2000); *From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions* (2020) ("Eliminate barriers to education and sexual and reproductive health services for Indigenous Women. These services must be designed considering Indigenous Women's perspective. It is crucial that decisive action be taken on issues of maternal mortality, teenage pregnancy, abortion, female genital mutilation, discrimination and the prevention and treatment of sexually transmitted diseases, especially HIV/AIDS.").

[702] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Women and Girls*, ¶ 31, U.N. Doc. A/HRC/30/41 (2015); *World Conference of Indigenous Women Progress and Challenges Regarding the Future We Want*, MUJER INDIGENA, CHIRAPAQ, ECMIA (Oct. 28, 2013) ("As Indigenous women, we recognize the importance of sexual and reproductive health and education for all ages. This includes our associated rights to culturally appropriate health and education services in our communities, and the right to exercise, maintain, and control our own health knowledge and practices.").

[703] (Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) "Los pueblos indígenas tienen su propia visión de salud y es ejercida especialmente por mujeres ya que tienen una mirada integral estrechamente vinculada con la naturaleza de donde se obtienen la medicina para curar las enfermedades. Sin embargo, esta práctica se ve seriamente amenazada por la política extractivista de deterioro de los recursos naturales . . . . El acceso a salud de calidad tiene que ser masivo. El derecho a la salud de los pueblos y mujeres indígenas no solo tiene que ver con el reconocer y proteger los

- Because Indigenous women have both higher morbidity and mortality rates as a result of lack of access to health care, discrimination and marginalization, the role of Indigenous midwives is crucial to maternal and child health. Criminalization of this role, still pervasive today, must be unacceptable. [704]
- Indigenous midwives work tirelessly to improve maternal and infant health throughout a person's reproductive life cycle and, in particular, during pregnancy, birth and the post-partum period. States must further respect and promote the clinical knowledge of traditional Indigenous midwives and their contributions into national healthcare systems.[705]
- States must ensure that responses to pandemics such as basic preventative, protection, and treatment services are available and accessible to Indigenous women and girls at the community level.

IV. Comparison with State Actions in CEDAW General Recommendation 34

- CEDAW General Recommendation 34 recognizes that health care, including sexual and reproductive health care, is extremely limited for rural women and girls, which includes Indigenous women and girls.[706]
- General Recommendation 34 highlights the need for States parties to ensure that quality health care services and facilities are affordable and physically accessible for Indigenous women and girls, staffed with medical personnel, and culturally accessible to them.[707]
    - These services should provide: "primary health care, including family planning; access to contraception, including emergency contraception, and to safe abortion and quality post-abortion care, regardless of whether or not abortion is legal; pre-, peri- and post-natal and obstetric services; HIV prevention and treatment services including emergency intervention following rape; mental health services; counselling on nutrition, feeding of infants and young children; mammography and other gynecological examinations services; prevention and treatment of non-communicable diseases, such as cancer; access to essential medicines, including pain relief; and palliative care."[708]
        - General Recommendation 34 does not mention this, but these should be provided with Indigenous women's and girl's free, prior and informed consent.[709]
- General Recommendation 34 does not touch on culturally sensitive health-care services.[710]

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conocimientos tradicionales y hacerlos accesibles, si no con cómo hacer para que no se pierdan estos conocimientos.").

[704] U.N. Department of Economic and Social Affairs, Permanent Forum on Indigenous Peoples, *Recommendations on Indigenous Women*, ¶43 18th edition (2019).

[705] U.N. Department of Economic and Social Affairs, Permanent Forum on Indigenous Peoples, *Recommendations on Indigenous Women*, ¶49, 17th edition (2018).

[706] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: on the rights of rural women, ¶ 37, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

[707] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: on the rights of rural women, ¶ 39, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

[708] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: on the rights of rural women, ¶ 39, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

[709] Hum. Rts. Council, *Report of the Special Rapporteur on the rights of Indigenous peoples*, ¶ 77, U.N. Doc. A/HRC/30/41 (2015).

[710] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: on the rights of rural women, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

- States should support reinforcement of traditional healing and health practices of Indigenous women and girls and Indigenous women with disabilities that have been proven to be effective.[711]

The Right to Culture of Indigenous Women and Girls (including Preservation and Generational Transmission of Identity, Art, Language, Stories, Traditions, Spiritual Practices, Intellectual Property, Knowledge)[712]

I. The Problem

a. General Overview

- There has been a shift in how gender and cultural rights intersect, with an increasing recognition that gender and cultural identity cannot be abstracted from one another, nor set in opposition.[713]
  - As Yakin Ertürk, the former UN Special Rapporteur on violence against women states, "Human rights standards are not in contradiction with culture. They are in contradiction with patriarchal and misogynist interpretations of culture."[714]
  - For example, violence against women committed under the guise of "culture", "tradition" or "custom" continues to be prevalent.[715] Moreover, the very notion of gender inequality is contested when established interpretations of culture are used to justify and excuse acts of violence and discrimination against women, thus undermining the compliance of States with their international human rights obligations.[716]
- Indigenous women and girls are keepers of Indigenous knowledge.[717] Indigenous Peoples' cultures encompass deep and rich knowledge "about the natural world, health, technologies and techniques, rites and rituals and other cultural expressions," curated and developed

[711] Hum. Rts. Council, *Report of the Special Rapporteur on the rights of Indigenous peoples*, ¶ 77, U.N. Doc. A/HRC/30/41 (2015).
[712] This narrative received contributions from Gabriela Valentín Díaz, Denisse Córdova Montes, Mary Miller, Abril Montero Dokser, Alicia Limtiaco, Ellen Bangoa, Igdalia Rojas, Natalia Caruso, and Tapio Keihäs.
[713] Nicole Girard, *Minority and Indigenous Women's right to culture: identity, gender and opportunities for empowerment* , https://minorityrights.org/wp-content/uploads/2016/07/Minority-and-indigenous-womens-right-to-culture.pdf (2016) at 39.
[714] Nicole Girard, *Minority and Indigenous Women's right to culture: identity, gender and opportunities for empowerment* , https://minorityrights.org/wp-content/uploads/2016/07/Minority-and-indigenous-womens-right-to-culture.pdf (2016) at 39.
[715] Hum. Rts. Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, ¶ 19, U.N. Doc. A/HRC/4/34 (2007).
[716] Hum. Rts. Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, ¶ 19, U.N. Doc. A/HRC/4/34 (2007).
[717] *Culture, Department of Economic and Social Affairs*, UN.ORG (last visited Oct. 20, 2020); Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("Uno de los elementos importantes que se debe rescatar es que las mujeres Indígenas son trasmisoras de conocimientos tradicionales a los niñas y niñas, de los idiomas, de la identidad y cultura. Por tanto, de la continuidad de la vida y la cosmovisión de nuestros pueblos indígenas.").

over generations.[718] The Indigenous cosmovision is passed down from generation to generation through songs, paintings, stories, dances and performances.[719]

- Indigenous Peoples' cultures are facing a purposeful threat of extinction or cultural genocide that particularly affects Indigenous women and girls.[720] This is partly due to persistent discriminatory policies, capitalism, racism, and new forms of colonialism that result in the continued denial of access to lands and natural resources and the militarization and desecration of sacred lands and burial sites, which play critical roles in Indigenous cultures.[721]
- The denial of the exercise of full sovereignty over Indigenous lands, territories, and natural resources inhibits Indigenous Peoples' ability to freely profess and practice their spiritual beliefs.[722]
- Although some states have given some measure of protection to collective rights to lands, the right is not fully realized.[723] Even in those States where there are some protections to the collective right to lands, the right is often violated through further violations to other rights like access to justice.[724] Without the full realization of the collective right to land, Indigenous Peoples cannot fully engage in their spiritual practices.[725]

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[718] *Culture, Department of Economic and Social Affairs*, UN.ORG (last visited Oct. 20, 2020).
[719] U.N. Permanent Forum on Indigenous Issues (UNPFII), Indigenous People's Traditional Knowledge Must Be Preserved, Valued Globally, Speakers Stress as Permanent Forum Opens Annual Session, HR/5431 (Apr. 22, 2019).
[720] *Culture, Department of Economic and Social Affairs*, UN.ORG (last visited Oct. 20, 2020); Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("El conjunto de discriminaciones está establecido estructuralmente como un sistema anti indígena que busca anular y/o extinguir la existencia de nuestras culturas."); UN Office of the High Commissioner for Human Rights, Human Rights Council, *End-of-visit statement by United Nations Special Rapporteur on human rights and hazardous substance and wastes, Baskut Tuncak on his visit to Canada, 24 May to 6 June 2019*, https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24678&LangID=E ("Many interlocutors spoke positively about the importance of the Truth and Reconciliation Commission and the National Inquiry into Missing and Murdered Indigenous Women and Girls that recommended to move forward from what both determined to be a sad history of cultural genocide and assimilation through honest engagement and shared commitment to the resulting calls to action.").
[721] *Culture, Department of Economic and Social Affairs*, UN.ORG (last visited Oct. 20, 2020); *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("[Poverty and barriers to the full enjoyment of human rights are] the consequence of persistent discriminatory policies and of an economic growth development model based on capitalism, as well as on new forms of colonialism. Poverty is also deeply related to land dispossession, migration, armed conflicts, climate changes, forced displacement and loss of livelihood assets.")
[722] *See Voice*, U.N. DEP'T OF ECON. AND SOC. AFF. 1, 1-2 (Apr. 2018) https://www.un.org/development/desa/undesavoice/wp-content/uploads/sites/49/2018/03/DESAVoiceApril2018.pdf
[723] *Voice*, U.N. DEP'T OF ECON. AND SOC. AFF. 1, 1-2 (Apr. 2018) https://www.un.org/development/desa/undesavoice/wp-content/uploads/sites/49/2018/03/DESAVoiceApril2018.pdf.
[724] *Voice*, U.N. DEP'T OF ECON. AND SOC. AFF. 1, 1-2 (Apr. 2018) https://www.un.org/development/desa/undesavoice/wp-content/uploads/sites/49/2018/03/DESAVoiceApril2018.pdf; United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 8(2), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[725] *See* Press Release, U.N. Econ. and Soc. Council, Lands, Natural Resources Represent Life for Indigenous Peoples, Not Mere Commodities, Speakers Stress as Permanent Forum begins Session (Apr. 16, 2018) (on file on https://www.un.org/press/en/2018/hr5387.doc.htm).

- Indigenous women serve as custodians of biodiversity and spiritual traditions. Dispossessing them of land devalues their roles as teachers and, by extension, their status within the community.[726]
- The loss of cultures can also be attributed to colonization, which has imposed outside systems of spirituality, laws, languages and knowledge on Indigenous Peoples.[727] The imposition of the beliefs and customs of colonizers has undermined the importance of traditional knowledge and cultures.[728] Because of this, "knowledge accumulated over thousands of years on medicine, meteorology, agriculture and other areas is at risk of forever disappearing."[729]
- Centuries of forced assimilation, dispossession of lands, violence and discrimination have caused severe erosion to Indigenous cultures and traditional knowledge.[730]
- The United Nations predicts 95 percent of languages will be lost in the next 100 years.[731] Languages are no longer being passed from generation to generation and governments are only funding the recording of languages.[732] Because language is fundamentally a part of individual and collective cultural identity, when a language dies the community suffers.[733]
- Women's roles and responsibilities are frequently tied to their experience of childbirth and child-rearing, as well as their designation as culture-bearers and keepers of traditional knowledge.[734] Women play a distinct role in language transmission as the primary caregivers during infancy.[735] When this language transmission is interrupted, women's crucial cultural role is compromised.[736] With fewer Indigenous community members who

[726] Nicole Girard, *Minority and Indigenous Women's right to culture: identity, gender and opportunities for empowerment* , https://minorityrights.org/wp-content/uploads/2016/07/Minority-and-indigenous-womens-right-to-culture.pdf (2016) at 41.
[727] *Backgrounder – Traditional Knowledge*, U.N. PERMANENT F. ON INDIGENOUS ISSUES 1, 1 (2019) https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/04/Traditional-Knowledge-backgrounder-FINAL.pdf.
[728] *Backgrounder – Traditional Knowledge*, U.N. PERMANENT F. ON INDIGENOUS ISSUES 1, 1 (2019) https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/04/Traditional-Knowledge-backgrounder-FINAL.pdf.
[729] U.N. Permanent Forum on Indigenous Issues (UNPFII), Indigenous People's Traditional Knowledge Must Be Preserved, Valued Globally, Speakers Stress as Permanent Forum Opens Annual Session, HR/5431 (Apr. 22, 2019).
[730] *Backgrounder, Indigenous Languages*, U.N. PERMANENT F. ON INDIGENOUS ISSUES 1, 1 (2019) https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/04/Indigenous-Languages.pdf.
[731] *Backgrounder, Indigenous Languages*, U.N. PERMANENT F. ON INDIGENOUS ISSUES 1, 1 (2019) https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/04/Indigenous-Languages.pdf.
[732] *Backgrounder, Indigenous Languages*, U.N. PERMANENT F. ON INDIGENOUS ISSUES 1, 1 (2019) https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/04/Indigenous-Languages.pdf.
[733] *Culture, Department of Economic and Social Affairs*, UN.ORG (last visited Oct. 20, 2020).
[734] Nicole Girard, *Minority and Indigenous Women's right to culture: identity, gender and opportunities for empowerment* , https://minorityrights.org/wp-content/uploads/2016/07/Minority-and-indigenous-womens-right-to-culture.pdf (2016) at 40.
[735] Nicole Girard, *Minority and Indigenous Women's right to culture: identity, gender and opportunities for empowerment* , https://minorityrights.org/wp-content/uploads/2016/07/Minority-and-indigenous-womens-right-to-culture.pdf (2016) at 40.
[736] Nicole Girard, *Minority and Indigenous Women's right to culture: identity, gender and opportunities for empowerment* , https://minorityrights.org/wp-content/uploads/2016/07/Minority-and-indigenous-womens-right-to-culture.pdf (2016) at 40.

have this key cultural knowledge, the generational transmission of this knowledge is also hampered.[737]

- The right to preserve and practice Indigenous spiritual traditions is further hampered by the lack of protection to sacred Indigenous sites and plants that are used for ceremonies.[738] These sacred sites and plants are often exploited by governments and businesses, further damaging the preservation and practice of Indigenous spiritual practices, including for medicine and healing.[739]
- Indigenous spiritual practices are passed down generation to generation. Thus, the right to culture implicates Indigenous girls' right to education and the right to preserve Indigenous cultures generally. [740]
- Indigenous cultures are also facing appropriation from outsiders.[741]
- Cultural appropriation reinforces harmful stereotypes and offensive depictions of Indigenous cultures to the masses.[742] Cultural appropriation is more than depictions, it is also the active use of traditional knowledge, intellectual property, cultural expressions and artifacts without permission.[743]
- In addition to reinforcing stereotypes and disrespecting Indigenous cultures, appropriation is often employed to make a profit off of Indigenous cultures.
    - While tourism can provide a sustainable income, it is at the expense of control over Indigenous women's cultural traditions, products and dress.[744] Moreover, the benefits typically depend on whether the women themselves are in charge of marketing, producing and selling their products.[745] Oftentimes, tourism marketing uses representations of Indigenous women's bodies that are objectified for commercial exploitation.[746]
    - This is an important example of how the right to culture must also include the right to refuse to engage in certain cultural practices. Many Indigenous women have to

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[737] *Culture, Department of Economic and Social Affairs*, UN.ORG (last visited Oct. 20, 2020).
[738] Kayla E. General, *Securing Rights to Sacred Places with the UN Declaration*, INDIAN L. RESOURCE CTR. https://indianlaw.org/content/securing-indigenous-rights-sacred-places-un-declaration.
[739] Kayla E. General, *Securing Rights to Sacred Places with the UN Declaration*, INDIAN L. RESOURCE CTR. https://indianlaw.org/content/securing-indigenous-rights-sacred-places-un-declaration.
[740] Press Release, U.N. Econ. and Soc. Council, Anchoring Education for Indigenous Youth in Context of Time-tested Customs Better than Assimilating Them into Mainstream System, Permanent Forum Told (May 21, 2013) (On file on https://www.un.org/press/en/2013/hr5132.doc.htm).
[741] *Indigenous Forum: Native Cultural Appropriation*, BIONEERS.ORG (Oct. 18, 2014) https://bioneers.org/indigenous-forum-native-cultural-appropriation/.
[742] *Indigenous Forum: Native Cultural Appropriation*, BIONEERS.ORG (Oct. 18, 2014) https://bioneers.org/indigenous-forum-native-cultural-appropriation/.
[743] https://opentextbc.ca/indigenizationcurriculumdevelopers/chapter/appropriate-use-of-indigenous-content/
[744] Nicole Girard, *Minority and Indigenous Women's right to culture: identity, gender and opportunities for empowerment* , *https://minorityrights.org/wp-content/uploads/2016/07/Minority-and-indigenous-womens-right-to-culture.pdf* (2016) at 41.
[745] Nicole Girard, *Minority and Indigenous Women's right to culture: identity, gender and opportunities for empowerment* , *https://minorityrights.org/wp-content/uploads/2016/07/Minority-and-indigenous-womens-right-to-culture.pdf* (2016) at 41.
[746] Nicole Girard, *Minority and Indigenous Women's right to culture: identity, gender and opportunities for empowerment* , *https://minorityrights.org/wp-content/uploads/2016/07/Minority-and-indigenous-womens-right-to-culture.pdf* (2016) at 41.

find ways to retain their identity while challenging the constraints imposed by patriarchies within their communities.[747]

- Indigenous women are not afforded equal participation and decision-making power in regard to their cultural rights. Farida Shaheed, the former Special Rapporteur in the field of cultural rights stated, "To enjoy equal cultural rights, women must become equal participants and decision-makers in all the cultural affairs of their own specific communities and in the wider 'general' society . . . In this sense, cultural rights are empowering, for they provide individuals with control over the course of their lives, facilitating the enjoyment of other rights. A large part of the transformative aspect of cultural rights is being able to overturn presumed female and male characteristics and capabilities."
    - Men, as makers of culture, often impose rigid codes of conduct on women who are regarded as transmitters and bearers of culture.[748]
- Furthermore, when certain interpretations of culture are legitimized and imposed on a community, the assertions of dominant interpretations of culture "presuppose a static and homogenous set of values and norms that govern the lives of a collective entity" and "reflect and reinforce hegemonic and patriarchal power relations."[749] These cultural discourses are at odds with the legally binding human rights principle that "no custom, tradition or religious consideration can be invoked to justify violence against women."[750]

b. The Impact of the Climate Crisis and Environmental Violence

- Indigenous Peoples share a physical, spiritual, and cultural connection with their lands and natural resources—their territory. [751]
- Nature is part of Indigenous Peoples—these cannot be separated from one another.[752] Indigenous women have a uniquely intimate relationship with Mother Earth, with implications for their lives and safety as they take on the role of environmental defenders and defend their territories with their own lives.[753]

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[747] Nicole Girard, *Minority and Indigenous Women's right to culture: identity, gender and opportunities for empowerment* , https://minorityrights.org/wp-content/uploads/2016/07/Minority-and-indigenous-womens-right-to-culture.pdf (2016) at 41.
[748] Hum. Rts. Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, ¶ 65, U.N. Doc. A/HRC/4/34 (2007).
[749] Hum. Rts. Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, ¶ 51, U.N. Doc. A/HRC/4/34 (2007).
[750] Hum. Rts. Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, ¶ 51, U.N. Doc. A/HRC/4/34 (2007).
[751] Press Release, U.N. Econ. and Soc. Council, Lands, Natural Resources Represent Life for Indigenous Peoples, Not Mere Commodities, Speakers Stress as Permanent Forum begins Session (Apr. 16, 2018) (on file on https://www.un.org/press/en/2018/hr5387.doc.htm).
[752] Press Release, U.N. Econ. and Soc. Council, Lands, Natural Resources Represent Life for Indigenous Peoples, Not Mere Commodities, Speakers Stress as Permanent Forum begins Session (Apr. 16, 2018) (on file on https://www.un.org/press/en/2018/hr5387.doc.htm).
[753] *Lima Declaration: The Indigenous Women Towards Inclusion and Visibility!*, World Conference of Indigenous Women Progress and Challenges Regarding the Future We Want, (Lima, 28-30 October 2013) ("We, Indigenous women, affirm our responsibility to protect the Earth, our Mother. Indigenous women experience the same pain and impacts from the physical abuse and excessive exploitation of the natural world, of which we are an integral part. We will defend our lands, waters, territories and resources, which are the source of our survival with our lives.").

- As such, the effects of the climate crisis and environmental violence are felt in all areas of Indigenous life, but especially so in cultural life, which also includes a particular way of life associated with the use of land resources and subsistence activities.[754]
- The destruction and exploitation of habitats, natural resources, and the environment specifically impede Indigenous Peoples' ability to preserve and practice their cultures and traditional activities, such as fishing or hunting and the right to live in reserves.[755]
- In many Indigenous communities, women are primarily responsible for retaining and transmitting knowledge, so when access to land is compromised through land grabbing, misplaced State conservation or development, women's rights to their traditional knowledge are threatened.[756]
- Without addressing the climate crisis and environmental violence, which includes land grabbing, traditional knowledge and cultures will not be properly preserved. Without preservation, the transmission of Indigenous cultures, identity and knowledge will not be possible.
- Indigenous cultures, and languages specifically, offer insight related to conservation and the preservation of biodiversity. [757] With the climate crisis and environmental violence, this knowledge could be more useful than ever to preserve Indigenous cultures and mitigate the damages of the climate crisis.[758]

II. Current Protections in International Law

a. Current Protections in CEDAW

- The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in article 14 protects the right of women "[t]o obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency[.]"[759]
- Article 3 mentions that States Parties should "take in all fields, in particular in the . . . cultural field, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the

[754] *Backgrounder, Climate change and indigenous peoples,* U.N. INDIGENOUS PEOPLE INDIGENOUS VOICES 1, 1 (2008) https://www.un.org/en/events/indigenousday/pdf/Backgrounder_ClimateChange_FINAL.pdf; Hum. Rts. Comm. ("HRC"), General Comment No. 23: the rights of minorities, ¶ 7, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (Aug. 4, 1994).
[755] Hum. Rts. Comm. ("HRC"), General Comment No. 23: the rights of minorities, ¶ 7, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (Aug. 4, 1994).
[756] Nicole Girard, *Minority and Indigenous Women's right to culture: identity, gender and opportunities for empowerment* , *https://minorityrights.org/wp-content/uploads/2016/07/Minority-and-indigenous-womens-right-to-culture.pdf*
[757] *Backgrounder – Traditional Knowledge*, U.N. PERMANENT F. ON INDIGENOUS ISSUES 1, 1 (2019) https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/04/Traditional-Knowledge-backgrounder-FINAL.pdf.
[758] U.N. Permanent Forum on Indigenous Issues (UNPFII), Indigenous People's Traditional Knowledge Must Be Preserved, Valued Globally, Speakers Stress as Permanent Forum Opens Annual Session, HR/5431 (Apr. 22, 2019).
[759] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 14, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.

exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."[760]

- The Convention addresses linkages between culture and gender discrimination requiring States not only to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women, but also Article 5 stipulates that States "shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women" that are linked to inequality between the sexes and gender stereotypes.[761]
- Article 13 of CEDAW recognizes the right to take part in cultural life and activities.[762]
- CEDAW's Article 2 prohibits discrimination against women in all forms and ensures that States use policies, legislation, laws, regulations, and customs to protect the "rights of women on an equal basis with men."[763]

b. Current Protections in Other International Treaties

- Article 27 of the Universal Declaration of Human Rights provides "[e]veryone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits."[764]
- Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right to take part in cultural life and activities.[765]
- Article 15 of ICESCR recognizes the right of everyone to "take part in cultural life . . . enjoy the benefits of scientific progress and its applications . . . [and] benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."[766]
- Article 27 of the International Covenant on Civil and Political Rights (ICCPR) states "[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."[767]

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[760] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 3, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.

[761] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 5, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13; Hum. Rts. Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, ¶ 19, U.N. Doc. A/HRC/4/34 (2007).

[762] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 15, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3; Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 13, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.

[763] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 2, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.

[764] Universal Declaration of Human Rights ("UDHR") art. 27, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948).

[765] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 15, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3; Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 13, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.

[766] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 15, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3

[767] International Covenant on Civil and Political Rights ("ICCPR") art. 27, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171.

- For children, articles 30 and 31 of the Convention on the Rights of the Child (CRC) protect children's right to engage in different aspects of cultural life.[768]
- Article 30 of the CRC states "[i]n those States in which ethnic, religious or linguistic minorities or persons of [I]ndigenous origin exist, a child belonging to such a minority or who is [I]ndigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."[769]
- Article 31 of the CRC continues "States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts."[770]
- Article 13 of the CRC also protects the rights of children stating, "[t]he child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice."[771]

c. Current Protections in Non-Binding International Human Rights Instruments

- Article 8 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states "Indigenous [P]eoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture."[772] This includes a call for the provision of efficient mechanisms for the prevention and redress of actions that aim or have the effect of depriving Indigenous Peoples of "cultural values or ethnic identities."[773]
- Article 31 of UNDRIP reads "Indigenous [P]eoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts."[774]
- UNDRIP provides for additional protection in article 31, stating "[t]hey also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions."[775] This includes "right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions"[776]
- Specifically protecting religious and spiritual practices, article 12 of the UNDRIP also states "Indigenous [P]eoples have the right to manifest, practise, develop and teach their

[768] Convention on the Rights of the Child ("CRC") art. 30 and 31, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3.
[769] Convention on the Rights of the Child ("CRC") art. 30, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3.
[770] Convention on the Rights of the Child ("CRC") art. 31, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3.
[771] Convention on the Rights of the Child ("CRC") art. 13, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3.
[772] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 8, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[773] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 8, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[774] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 31, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[775] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 31, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[776] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 31, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.

spiritual and religious traditions, customs and ceremonies."[777] This includes "the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains."[778]

- The United Nations Declaration on the Rights of Peasants (UNDROP), which is inclusive of Indigenous Peoples, states in article 26 "Peasants and other people working in rural areas have the right to enjoy their own culture and to pursue freely their cultural development, without interference or any form of discrimination. They also have the right to maintain, express, control, protect and develop their traditional and local knowledge, such as ways of life, methods of production or technology, or customs and tradition. No one may invoke cultural rights to infringe upon the human rights guaranteed by international law or to limit their scope."[779]
- It continues, "Peasants and other people working in rural areas [including Indigenous Peoples] have the right, individually and/or collectively, in association with others or as a community, to express their local customs, languages, culture[s], religions, literature and art, in conformity with international human rights standards."[780]
- Article 28 of the American Declaration on the Rights of Indigenous Peoples (ADRIP) states "Indigenous [P]eoples have the right to full recognition and respect for the ownership, dominion, possession, control, development, and protection of their tangible and intangible cultural heritage and intellectual property, including its collective nature, transmitted over millennia from generation to generation."[781]

d. Current normative content

- Culture has an expansive definition and encompasses "all manifestations of human existence."[782]
- Culture constitutes a "primary source of diverse and sometimes contradictory normative systems that provide the rationale for varied patterns of gender roles and identities, which signify relations of power."[783]
- Culture constitutes "language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their

[777] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 12, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[778] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 12, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[779] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP") art. 26, G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).
[780] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP") art. 26, G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).
[781] American Declaration on the Rights of Indigenous Peoples art. 28, AG/RES. 288 (XLVI- O/16), *adopted* June 15, 2016
[782] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 21: Right of everyone to take part in cultural life, ¶ 11, U.N. Doc. CESCR/C/12/GC/21 (Dec. 21, 2009).
[783] Hum. Rts. Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, ¶ 17, U.N. Doc. A/HRC/4/34 (2007).

existence, and build their world view representing their encounter with the external forces affecting their lives." However, this is not an exhaustive list.[784]

- The right to participate in cultural life has three dimensions: participation, access and contribution to cultural life.[785]
- Participation entails the right "to act freely, to choose his or her own identity, to identify or not with one or several communities or to change that choice, to take part in the political life of society, to engage in one's own cultural practices and to express oneself in the language of one's choice."[786]
- Access guarantees an individual's or group's right "to know and understand his or her own culture and that of others through education and information, and to receive quality education and training with due regard for cultural identity. Everyone has also the right to learn about forms of expression and dissemination through any technical medium of information or communication, to follow a way of life associated with the use of cultural goods and resources such as land, water, biodiversity, language or specific institutions, and to benefit from the cultural heritage and the creation of other individuals and communities . . . ."[787]
- Contribution is "the right of everyone to be involved in creating the spiritual, material, intellectual and emotional expressions of the community."[788]
- The right to take part in cultural life is intimately related to a multitude of other cultural rights, including "the preservation and right to benefit from scientific discoveries, art, and literature, the right to self-determination and the right to education, through which individuals and communities pass on their values, religion, customs, language and other cultural references . . . ."[789]
- For religious practices specifically, the preservation of Indigenous spiritual practices enjoys protections as both a cultural right and a civil and political right.[790]
- A core obligation of the respect and protection of cultural life is "respecting freedom of thought, belief and religion."[791]
- The right encompasses the rights of persons to "profess and practice their own religion," both privately and publicly.[792]

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[784] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 21: Right of everyone to take part in cultural life, ¶ 13, U.N. Doc. CESCR/C/12/GC/21 (Dec. 21, 2009).
[785] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 21: Right of everyone to take part in cultural life, ¶ 15, U.N. Doc. CESCR/C/12/GC/21 (Dec. 21, 2009).
[786] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 21: Right of everyone to take part in cultural life, ¶ 15(a), U.N. Doc. CESCR/C/12/GC/21 (Dec. 21, 2009).
[787] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 21: Right of everyone to take part in cultural life, ¶ 15(b), U.N. Doc. CESCR/C/12/GC/21 (Dec. 21, 2009).
[788] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 21: Right of everyone to take part in cultural life, ¶ 15(c), U.N. Doc. CESCR/C/12/GC/21 (Dec. 21, 2009).
[789] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 21: Right of everyone to take part in cultural life, ¶ 2, U.N. Doc. CESCR/C/12/GC/21 (Dec. 21, 2009).
[790] International Covenant on Civil and Political Rights ("ICCPR") art. 27, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 15, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3; Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 13, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.
[791] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 21: Right of everyone to take part in cultural life, ¶ 55(c), U.N. Doc. CESCR/C/12/GC/21 (Dec. 21, 2009).
[792] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 21: Right of everyone to take part in cultural life, ¶ 3, U.N. Doc. CESCR/C/12/GC/21 (Dec. 21, 2009); Hum. Rts. Comm. ("HRC"), General Comment No. 23: Article 27 (Rights of Minorities) of General Comment, ¶ 1, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (Apr. 8, 1994).

- This right is also inclusive of knowledge like traditional knowledge related to food sovereignty. Indigenous Peoples have "[I]ndigenous agricultural practices that care for the earth, without depleting the resources."[793]
- This traditional knowledge related to food sovereignty includes knowledge about land, species conservation and management, as well as the revitalization of biological resources.[794]
- The right to preserve Indigenous cultures is both individual and collective. This means the right can be exercised by an individual, in association with others, or within a community or group.[795]
- When discussed in terms of civil and political rights, "the [rights] depend in turn on the ability of the minority group to maintain its culture, language or religion."[796]
- Furthermore, the right is meant to protect those who belong to a group that shares a common culture, religion, and/or language.[797]
- Finally, "Indigenous [P]eoples have the right to act collectively to ensure respect for their right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literature, designs, sports and traditional games, and visual and performing arts."[798]

III. State Actions Needed in New CEDAW General Recommendation on Indigenous Women and Girls

- In order to respect, protect, and fulfill the right to the preservation and intergenerational transmission of Indigenous cultures, identity and knowledge, States must ensure full access to all other rights related to Indigenous traditions.[799]
- The dominant culture-based paradigms that justify or explain the violations of Indigenous women's rights, reducing violence against women to a cultural problem, must be addressed.[800]

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[793] *Backgrounder – Traditional Knowledge*, U.N. PERMANENT F. ON INDIGENOUS ISSUES 1, 1 (2019) https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/04/Traditional-Knowledge-backgrounder-FINAL.pdf.
[794] *Backgrounder – Traditional Knowledge*, U.N. PERMANENT F. ON INDIGENOUS ISSUES 1, 2 (2019) https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/04/Traditional-Knowledge-backgrounder-FINAL.pdf.
[795] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 21: Right of everyone to take part in cultural life, ¶ 9, U.N. Doc. CESCR/C/12/GC/21 (Dec. 21, 2009).
[796] Hum. Rts. Comm. ("HRC"), General Comment No. 23: Article 27 (Rights of Minorities) of General Comment, ¶ 6.2, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (Apr. 8, 1994).
[797] Hum. Rts. Comm. ("HRC"), General Comment No. 23: Article 27 (Rights of Minorities) of General Comment, ¶ 5.1, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (Apr. 8, 1994).
[798] Int'l Labour Organization [ILO], *Indigenous and Tribal Peoples Convention*, art. 5, 31 (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169; United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 11, 13, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[799] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 21: Right of everyone to take part in cultural life, ¶ 7, U.N. Doc. CESCR/C/12/GC/21 (Dec. 21, 2009).
[800] *See* Hum. Rts. Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, U.N. Doc. A/HRC/4/34 (2007).

    - States must not invoke any cultural discourse, including notions of custom, tradition or religion, to justify or condone any act of violence.[801] Rather, States must condemn such violence, which entails denouncing any cultural discourse put forward to justify it.[802]
- The realization of the rights to land, natural resources, traditional skills and practices, knowledge, technology and education specifically are key in ensuring the preservation of Indigenous Peoples' cultures.[803]
- States must address and eliminate biases in climate and environmental policies and projects that prioritize Western measures of gender equity and scientific knowledge over traditional knowledge. State actions must ensure Indigenous women and girls can participate in and represent effectively and meaningfully the decisions which affect them and their right to the preservation and practice of Indigenous spiritual traditions.[804]
    - States must recognize the right of Indigenous women and girls to participate in or reject any cultural practice or belief of their choosing.[805]
- States must take active measures to eradicate violence against Indigenous women and girls committed with reference to culture that go beyond criminalizing and prosecuting the violence itself.[806]
    - States, in collaboration with Indigenous women and girls, must identify those aspects of a given culture which are linked to the violent practice and develop a comprehensive strategy to transform those aspects.[807]
- States must uproot discrimination that persists against Indigenous [P]eoples because this discrimination hampers the enjoyment of all cultural rights, including the right to revitalize and practice cultural traditions and customs, including spiritual practices.[808]

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[801] *See* Hum. Rts. Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, U.N. Doc. A/HRC/4/34 (2007).
[802] *See* Hum. Rts. Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, U.N. Doc. A/HRC/4/34 (2007).
[803] Hum. Rts. Comm. ("HRC"), General Comment No. 23: Article 27 (Rights of Minorities) of General Comment, ¶ 7, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (Apr. 8, 1994); United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 8, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007; Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("Reconocer y garantizar los derechos de propiedad intelectual sobre los conocimientos y expresiones culturales tradicionales y los recursos genéticos que han creado, conservado, mantenido y mejorado dentro de las culturas y territorios indígenas."); Statement on behalf of Indigenous Women Delegation MADRE and Rosa Luxemburg Stiftung, 17TH SESSION OF THE U.N, PERMANENT FORUM ON INDIGENOUS ISSUES (Apr. 18, 2020) ("In addition, Indigenous women and girls remain discriminated against because of traditional cultural practices that do not allow them to own any productive resources like land.").
[804] Hum. Rts. Comm. ("HRC"), General Comment No. 23: Article 27 (Rights of Minorities) of General Comment, ¶ 7, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (Apr. 8, 1994).
[805] *See* Hum. Rts. Council, *Report of the independent expert in the field of cultural rights, Ms. Farida Shaheed*, U.N. Doc. A/HRC/14/36 (2010).
[806] Hum. Rts. Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, ¶ 31, U.N. Doc. A/HRC/4/34 (2007).
[807] Hum. Rts. Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, ¶ 31, U.N. Doc. A/HRC/4/34 (2007).
[808] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 21: Right of everyone to take part in cultural life, ¶ 23, 44, U.N. Doc. CESCR/C/12/GC/21 (Dec. 21, 2009); Memorandum from Rebecca Pendleton on Notes from CEDAW Expert Meeting on Indigenous Women Rights (MADRE, FIMI, CWGL, WHRI) (Mar. 15, 2019) (on file with author) ("There needs to be more positive cultural rights. States need to understand traditional birthing with midwives and indigenous traditional medicines, because as of today there is a lot discrimination around these practices.").

- States must also utilize positive measures to ensure Indigenous women and girls are collectively able to maintain their spiritual identity and cultures.[809] This must include Indigenous women's participation in the development of policies that support gender and climate equity accounting for Indigenous cultural values.[810]
- States must take into account the particular history of colonialism and forced assimilation when safeguarding the Indigenous [P]eoples' right to preserve and transmit their cultures.[811]
- States must provide support in maximizing the evolving technological landscape which can be a useful tool in the preservation and promotion of Indigenous cultures and can facilitate intergenerational transmission of cultures and knowledge. Digital tools in education and the workplace should be available in Indigenous languages and accessible to Indigenous women and girls.[812]
- States must allocate resources for language revitalization programs—and not just the recording of languages—as part of a holistic approach that simultaneously seeks to address systemic racism through education, intercultural dialogue, and other measures aimed at changing the power relations that result in violations of Indigenous women's and girls' rights.[813]
- States must address cultural appropriation and take steps to eliminate it.[814] Not only mustStates address cultural appropriation, but it should reevaluate policies that legalize such theft of Indigenous cultures.[815]
- States must work with Indigenous Peoples in developing culturally appropriate education programs and curricula that includes Indigenous knowledge systems and practices and provide opportunities for intergenerational learning. [816]

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[809] Hum. Rts. Comm. ("HRC"), General Comment No. 23: Article 27 (Rights of Minorities) of General Comment, ¶ 6.2, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (Apr. 8, 1994).

[810] *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("States should . . . [e]xpand engagement from non-Western cultures to develop and shape policies in support of gender equity and climate adaptation that include women's traditional leadership roles and cultural values.").

[811] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 21: Right of everyone to take part in cultural life, ¶ 18, U.N. Doc. CESCR/C/12/GC/21 (Dec. 21, 2009).

[812] U.N. Permanent Forum on Indigenous Issues (UNPFII), Indigenous People's Traditional Knowledge Must Be Preserved, Valued Globally, Speakers Stress as Permanent Forum Opens Annual Session, HR/5431 (Apr. 22, 2019).

[813] *Backgrounder, Indigenous Languages*, U.N. PERMANENT F. ON INDIGENOUS ISSUES 1, 1 (2019) https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/04/Indigenous-Languages.pdf.

[814] Hannah Ongley, *the united nations may finally make cultural appropriation illegal*, I-D (June 15, 2017, 12:33 PM) https://i-d.vice.com/en_us/article/ywvv5w/the-united-nations-may-finally-make-cultural-appropriation-illegal.

[815] Andrea Bear Nicholas, *Who owns Indigenous cultural and intellectual property?*, POL'Y OPTIONS POLITIQUES (June 27, 2017) https://policyoptions.irpp.org/magazines/june-2017/who-owns-indigenous-cultural-and-intellectual-property/.; Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("Se debe respetar la propiedad intelectual colectiva e individual de los íconos y diseños hechos por las mujeres indígenas. Evitar la apropiación de estas expresiones culturales sin reconocimiento y lucrando a costa de nuestras culturas.").

[816] *Backgrounder – Traditional Knowledge*, U.N. PERMANENT F. ON INDIGENOUS ISSUES 1, 1 (2019) https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/04/Traditional-Knowledge-backgrounder-FINAL.pdf; Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("Es importante que los Estados reconozcan la capacidad de los pueblos indígenas en la formación de sus jóvenes y donde las mujeres han desarrollado un rol fundamental, como formadoras en los ámbitos culturales y de cosmovisión indígena. Que los Estados faciliten la

- States must support establishment of culturally appropriate programs that provide equal learning opportunities including cultural, artistic, recreational and leisure activities for Indigenous girls to fully develop their potentials.[817] Moreover, because children play such a vital role in the transfer of cultural values, including spiritual practices, from generation to generation, States must ensure that Indigenous girls' cultural rights are fully respected, protected and fulfilled.[818]

IV. Comparison with State Actions in CEDAW General Recommendation 34

- The General Recommendation acknowledges rural women, which includes Indigenous women and girls, often face discrimination based on their traditional way of life and language.[819]
- However, it does not elaborate on the traditional ways of life that lead to this discrimination, nor does it address the preservation of traditions and cultures through art, language, stories, dance, intellectual property (musical instruments, ornaments, religious discourse, spiritual values), or other manifestations of culture.[820]
- General Recommendation 34 does state, however, that agricultural programs should support women farmers and promote women's traditional farming practices.[821]
- Furthermore, it says States should respect and protect Indigenous women and girls' traditional and eco-friendly agricultural knowledge.[822]
- The General Recommendation also provides that states should offer culturally appropriate education. This directly impacts Indigenous girls and the ability to preserve cultural traditions and knowledge.[823]
- Healthcare should also be culturally appropriate.[824] States should ensure training of community health workers and traditional birth attendants and enhanced health education in their mother tongue for Indigenous Peoples, including education on sexual and reproductive health.[825]

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implementación y control de la educación indígena. Educación intercultural bilingüe, no en el marco para crear otros racismos, sino para que se nos pueda incluir en todos los espacios.").

[817] Convention on the Rights of the Child ("CRC") art. 31, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3.

[818] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 21: Right of everyone to take part in cultural life, ¶ 26, U.N. Doc. CESCR/C/12/GC/21 (Dec. 21, 2009); *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) (The language barrier is also an important aspect, since the school curriculum is designed without consideration for Indigenous languages (United Nations, 2017). This impacts negatively on the culture and the disappearance of the indigenous languages.").

[819] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 14, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[820] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[821] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 91, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[822] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 62, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[823] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 14, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[824] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 39, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[825] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 39, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

- General Recommendation 34 does not address the tensions between women's rights and the right to culture.[826]
- These protections are insufficient in light of the threat of extinction faced by traditional Indigenous cultures.

The Right to Land of Indigenous Women and Girls[827]

I. The Problem

a. General Overview

- Appropriation of Indigenous territory affects women disproportionately "as it often strips women of their source of income and can lead women to greater vulnerability to abuse and violence."[828]
- Due to their role as caregivers and managers of resources, poverty in Indigenous communities disproportionately impacts women.[829]
- Prohibiting women from independently entering into contracts or having access to credit constitutes a denial of legal autonomy.[830] Depriving women of the right to contract without their husbands has a "serious impact on a woman's practical ability to divorce her husband, to support herself or her family and to live in dignity as an independent person."[831]
    - Even in countries that acknowledge the right of women to own an equal share of the property with her husband upon divorce, the husband may manage the property.[832] In many countries with a community-property regime, the law does not require that a woman be consulted when property owned by the parties during marriage is sold.[833] This impedes on a woman's ability to control her property and the income she may derive from it.[834]

[826] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).
[827] This narrative received contributions from Alejandra de la Camara, Denisse Córdova Montes, Tamar Ezer, Gabriela Valentín Díaz, Mary Miller, Abril Montero Dokser, Alicia Limtiaco, Ellen Bangoa, Igdalia Rojas, Natalia Caruso, Sengwer Winnie, Tapio Keihäs.
[828] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples: On Indigenous Women and Girls*, ¶6, U.N. Doc. A/HRC/30/41 (2015).
[829] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples: On Indigenous Women and Girls*, ¶7, U.N. Doc. A/HRC/30/41 (2015).
[830] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 21: Equality in Marriage and Family Relations, ¶ 7, U.N. Doc. CEDAW A/49/38 at 1.
[831] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 21: Equality in Marriage and Family Relations, ¶ 28, U.N. Doc. CEDAW A/49/38 at 1.
[832] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 21: Equality in Marriage and Family Relations, ¶ 30-31, U.N. Doc. CEDAW A/49/38 at 1.
[833] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 21: Equality in Marriage and Family Relations, ¶ 31, U.N. Doc. CEDAW A/49/38 at 1.
[834] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 21: Equality in Marriage and Family Relations, ¶ 31, U.N. Doc. CEDAW A/49/38 at 1.

- When women are forced to depend on their husbands for economic survival, they are particularly affected at their husband's death.[835] Women and girls in many states are denied inheritance upon the death of a spouse, parent, or relative.[836] This is especially concerning "as inheritance is a primary means by which wealth and resources are transferred within societies, as well as within families."[837]

- Discriminatory practices within Tribal communities may also impede rural women's rights to land and natural resources.[838]
- For Indigenous girls, use of ancestral lands is important for their development and enjoyment of culture.[839]
- "Indigenous [P]eoples' experience weak protection of their land and property rights, which exposes them to risks of displacement, expropriation and exploitation."[840][841]
- Land titling procedures are often slow and complex, and even in cases where titles are awarded to Indigenous communities, they are not respected in practice.[842]
- Indigenous women have a uniquely intimate relationship with Mother Earth, with implications for their lives and safety as they take on the role of environmental defenders and defend their land, natural resources, and territories with their own lives.[843] As a result, Indigenous women are often "criminalized, persecuted and killed for defending their land."[844]
- Displacement of Indigenous Peoples from their ancestral lands against their will denies them of their sources of nutrition and symbiotic relationship with that land, both of which have a detrimental effect on their health.[845]

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[835] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 29: General recommendation on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, ¶ 49, U.N. Doc. CEDAW/C/GC/29 (Oct. 30, 2013).

[836] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 29: General recommendation on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, ¶ 49, U.N. Doc. CEDAW/C/GC/29 (Oct. 30, 2013).

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

[838] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶ 57, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

[839] Comm. on the Rts. of the Child ("CRC Comm."), General Comment No. 11: Indigenous children and their rights under the Convention, ¶ 35, U.N. Doc.
CRC/C/GC/11, (Feb. 12, 2009).

[840] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶5, U.N. Doc. A/HRC/30/41 (2015).

[841] *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("Many [I]ndigenous women are displaced due to the fact that their ancestral land is taken by the state or the state converting Indigenous Peoples land into conserved areas.").

[842] Hum. Rts. Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous People, ¶14, U.N. Doc. A/HRC/4/32 (2007).

[843] *Lima Declaration: The Indigenous Women Towards Inclusion and Visibility!*, World Conference of Indigenous Women Progress and Challenges Regarding the Future We Want, (Lima, 28-30 October 2013) ("We, Indigenous women, affirm our responsibility to protect the Earth, our Mother. Indigenous women experience the same pain and impacts from the physical abuse and excessive exploitation of the natural world, of which we are an integral part. We will defend our lands, waters, territories and resources, which are the source of our survival with our lives.").

[844] *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020).

[845]Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health, ¶ 27, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000).

- Degradation of the relationship between Indigenous Peoples and their traditional lands also implicates loss of their means of subsistence, the loss of their natural resources, and, ultimately, their cultural identity.[846]

b. The Impact of the Climate Crisis and Environmental Violence

- Indigenous women are the most likely to experience the consequences of "climate change globally, including natural disasters and emergencies, food insecurity, forced migration and limited access to natural resources and conflicts."[847]
- Using the land to find food is a way for Indigenous Peoples to reflect their ties to the land of their ancestors and is important to their cultural identity. But the climate crisis is changing the land and environment causing their "traditional sources of sustenance" to disappear.[848]
- The climate crisis is negatively affecting the ability of Indigenous communities to spend time safely on land and engage in teaching about land-based traditional systems.[849]
  - The Vuntut Gwichin, an Indigenous community in Yukon, Canada, has seen landslides, riverbank erosion, ground instability, drained lakes, permafrost degradation, and forest fires on their land. One member noted that the land he lived on as a child is now mainly uninhabited.[850]
  - "Located on the southwestern part of the Pacific Rim of Fire and close to the equator, the Pacific region is among the most vulnerable in the world to the effects of climate change, extreme weather events, and natural disasters. Consequently, humanitarian and development assistance are interconnected. As coastal dwellers, Pacific Islanders are highly susceptible to sea level rise, threatening the existence of atoll nations – Kiribati, RMI, Tokelau, and Tuvalu. The region experiences an average of three major disasters each year and eight of the fourteen PICTs are among the 20 countries in the world with the highest average annual disaster losses in terms of gross domestic product. Evidence shows that due to pre-existing inequalities, women and marginalised and vulnerable groups are disproportionately impacted by the impacts of climate change and disasters

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[846] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 21: Right of Everyone to Take Part in Cultural Life, ¶ 36, U.N. Doc. E/C.12/GC/21 (Dec. 21, 2009); Kenya: 'There has been no life for us since we were moved out of the forest*," https://minorityrights.org/trends2019/kenya-2/* ("The Indigenous Sengwer people, like other hunter-gatherer populations in Kenya, are living in constant threat of eviction from their ancestral lands in Embobut Forest. Classified as protected public forest by the colonial government in 1954, the community is now regarded by Kenyan authorities as illegal squatters, despite the fact that Sengwer have resided there for centuries and continue to depend on its resources for its food, livelihoods and cultural traditions.")

[847] *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020).

[848] Human Rights Watch ("HRW"), "My Fear is Losing Everything" The Climate Crisis and First Nations' Right to Food in Canada (Oct. 21, 2020), https://www.hrw.org/report/2020/10/21/my-fear-losing-everything/climate-crisis-and-first-nations-right-food-canada.

[849] Human Rights Watch ("HRW"), "My Fear is Losing Everything" The Climate Crisis and First Nations' Right to Food in Canada (Oct. 21, 2020), https://www.hrw.org/report/2020/10/21/my-fear-losing-everything/climate-crisis-and-first-nations-right-food-canada.

[850] Human Rights Watch ("HRW"), "My Fear is Losing Everything" The Climate Crisis and First Nations' Right to Food in Canada (Oct. 21, 2020), https://www.hrw.org/report/2020/10/21/my-fear-losing-everything/climate-crisis-and-first-nations-right-food-canada.

and are also less capable of responding and adapting to, preparing for, and recovering from disasters."[851]

- Land security is a problem as few countries recognize Indigenous Peoples' right to land. Even if Indigenous land is recognized, "their land . . . degraded around them" because of the climate crisis.[852]
- The climate crisis, as well as natural disasters, can increase inequality because it contributes to greater poverty disparity.[853]
- The climate crisis affects Indigenous communities by causing extreme temperatures, floods or droughts, crop failure, and population migration due to resource scarcity.[854]
- The adverse effects of the climate crisis can exacerbate these issues when women become widowed due to an extreme weather event.[855]
- About "70 million [I]ndigenous [P]eople[s] [depend] on forests for their livelihoods." Deforestation threatens that.[856]
- Because many Indigenous Peoples lack recognition of their right to land, they face "land alienation and restrictions to their access to natural resources or territories that they have traditionally occupied" and are not considered when environmental conservation policies are made.[857]
- "Lack of respect for Indigenous [P]eoples' collective land rights and the failure to provide [I]ndigenous communities with secure land tenure" as well as violations of their collective right to free, prior, and informed consent undermine their ability to protect their lands and resources from environmental violence and the damage of large-scale projects.[858][859]
    - Some planning regimes allow bidding processes and grant licenses for resource exploration before any consultations with Indigenous groups.[860] Most often, communities are not granted any of the profits from these projects.[861]

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[851] United Nations Pacific Strategy 2018-2022: A Multi-Country Sustainable Development Framework in the Pacific Region, United Nations in the Pacific, 23 (2017) https://reliefweb.int/sites/reliefweb.int/files/resources/UNDP_WS_FINAL_UNPS_2018-2022.pdf.

[852] Press Release, U.N. Econ. and Soc. Council, Lands, Natural Resources Represent Life for Indigenous Peoples, Not Mere Commodities, Speakers Stress as Permanent Forum begins Session (Apr. 16, 2018), https://www.un.org/press/en/2018/hr5387.doc.htm.

[853] *Indigenous Peoples and Climate Change*, ILO, 8 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.

[854] *Indigenous Peoples and Climate Change*, ILO, 8 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.

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

[856] *Indigenous Peoples and Climate Change*, ILO, 9 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.

[857] *Indigenous Peoples and Climate Change*, ILO, 10 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.

[858] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples: On Human Right Defenders*, ¶31, U.N. Doc. A/HRC/39/17 (2018).

[859] *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("Lack of recognition of Indigenous Peoples in national legislation . . . as well as land dispossession and insufficient protection of [Indigenous Peoples'] land rights, are key human rights issues that affect [their] collective and individual rights, with particular consequences for Indigenous Women.").

[860] Hum. Rts. Council, *Report of the Special Rapporteur on the rights of Indigenous peoples: Extractive industries and indigenous peoples*, ¶ 50, U.N. Doc. A/HRC/24/41 (2013).

[861] Hum. Rts. Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, ¶17, U.N. Doc. A/HRC/4/32 (2007).

- Extractive activities have caused widespread pollution and environmental damage, the effects of this environmental violence have had a disproportionate impact on Indigenous Peoples.[862] The climate crisis and environmental violence have effectively forced eviction and increased levels of poverty and disease in Indigenous communities.[863]
- Subsoil extraction such as "Gold-mining in San Miguel Ixtahuacán and Sipakapa in Guatemala, nickel extraction in the Goro and Prony deposits in New Caledonia, the Chad-Cameroon oil pipeline, and the gas pipeline in Camisea in the Peruvian Amazon have had devastating effects on the [I]ndigenous [P]eoples."[864] The highly polluting technologies involved destroy Indigenous lands and have detrimental health effects especially among women such as necessary abortions, cases of cancer, and other diseases.[865]

II. Current Protections in International Law

a. Current Protections in CEDAW

- CEDAW's article 14 ensures the right of women in rural areas to have access to equal treatment in land and agrarian reform and in land resettlement schemes along with access to "agricultural credit and loans, marketing facilities, [and] appropriate technology." It also mentions the right to enjoy living conditions in terms of housing.[866]
- CEDAW's article 15(2) provides States must "accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals."[867]
- In article 16(1)h, CEDAW further states that states must ensure "[t]he same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration."[868]
- CEDAW's Article 2 prohibits discrimination against women in all forms and ensures that States use policies, legislation, laws, regulations, and customs to protect the "rights of women on an equal basis with men."[869]

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[862] Hum. Rts. Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, ¶49, U.N. Doc. A/HRC/4/32 (2007).

[863] Hum. Rts. Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, ¶49, U.N. Doc. A/HRC/4/32 (2007).

[864] Hum. Rts. Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people, ¶52, U.N. Doc. A/HRC/4/32 (2007).

[865] Hum. Rts. Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people, ¶52, U.N. Doc. A/HRC/4/32 (2007).

[866] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 14, adopted Dec. 18, 1979, 1249 U.N.T.S. 13.

[867] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 15(2), adopted Dec. 18, 1979, 1249 U.N.T.S. 13.

[868] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 16(1)(h), adopted Dec. 18, 1979, 1249 U.N.T.S. 13.

[869] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 2, adopted Dec. 18, 1979, 1249 U.N.T.S. 13.

b. Current Protections in Other International Treaties

- The UDHR's article 17 stipulates: "Everyone has the right to own property, alone as well as in association with others."[870]
- ICERD clarifies that everyone has the right to "own property alone as well as in association with others" and to inherit in articles 5(d) v and vi respectively.[871]
- The ILO Convention 169 article 14(1) holds that "The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities."[872]
    - Moreover, paragraph two of the same article goes on to state that "Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession."[873]
- ICESCR's article 11 pertains to the right to an adequate standard of living, including food and housing. This article also recognizes the right to be free from hunger and holds that States must "improve methods of production . . . of food" by developing agrarian systems.[874]
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, also known as the Maputo Protocol, has various provisions protecting women's right to land and resources:
    - Article 6(j) states that "during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely."[875]
    - In Article 7(d), the Maputo Protocol further states that "in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage."[876]
    - Article 19 (c) holds that States must take measures to "promote women's access to and control over productive resources such as land and guarantee their right to property."[877]
    - Article 21 on the right to inheritance states: (1) "A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall

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[870] Universal Declaration of Human Rights ("UDHR") art. 17, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948).

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[872] Int'l Labour Organization [ILO] Indigenous & Tribal Peoples Convention, art. 14(1), ¶ 1(a) (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.

[873] Int'l Labour Organization [ILO] Indigenous & Tribal Peoples Convention, art. 14(2), ¶ 1(a) (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.

[874] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 11, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3

[875] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ("Maputo Protocol") art. 6(j), adopted July 11, 2003.

[876] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ("Maputo Protocol") art. 7(d), adopted July 11, 2003.

[877] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ("Maputo Protocol") art. 19(c), adopted July 11, 2003.

retain this right if the house belongs to her or she has inherited it."[878] (2) "Women and men shall have the right to inherit, in equitable shares, their parents' properties."[879]

c. Current Protections in Non-Binding International Human Rights Instruments

- Various UNDRIP articles set out a right to land and resources:
  - Article 26 acknowledges "Indigenous [P]eoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired."[880]
  - Article 25, stating "Indigenous [P]eoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard."[881]
  - Article 32(1) of UNDRIP recognizes "Indigenous [P]eoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources."[882]
  - Moreover, article 29 holds **"**Indigenous [P]eoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for [I]ndigenous [P]eoples for such conservation and protection, without discrimination."[883]
  - Article 10 protects against displacement from their lands, stating *"*Indigenous [P]eoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the [I]ndigenous [P]eoples concerned and after agreement on just and fair compensation and, where possible, with the option of return."[884]
- ADRIP's article 25 lays out the right to land, territory, and resources, stating:
  - (1) "Indigenous [P]eoples have the right to maintain and strengthen their distinctive spiritual, cultural, and material relationship with their lands, territories, and resources and to uphold their responsibilities to pre- serve them for themselves and for future generations."
  - (2) "Indigenous [P]eoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired."

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[878] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ("Maputo Protocol") art. 21(1), adopted July 11, 2003.

[879] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ("Maputo Protocol") art. 21(2), adopted July 11, 2003.

[880] United Nations Declaration on the Rights of Indigenous Peoples, art. 26, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Oct. 2, 2007.

[881] United Nations Declaration on the Rights of Indigenous Peoples, art. 25, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Oct. 2, 2007.

[882] United Nations Declaration on the Rights of Indigenous Peoples, art. 32(1), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Oct. 2, 2007.

[883] United Nations Declaration on the Rights of Indigenous Peoples, art. 29, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Oct. 2, 2007.

[884] United Nations Declaration on the Rights of Indigenous Peoples, art. 10, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Oct. 2, 2007; *See also* United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP") art. 17(4), G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

- (3) "Indigenous [P]eoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired." [885]

- In its article 4, the UN Declaration on the Rights of Peasants (UNDROP) stipulates that peasant women and women in rural areas must be granted "equal access to, use of and management of land and natural resources, and to equal or priority treatment in land and agrarian reform and in land resettlement schemes."[886]
- UNDROP's article 17(1) declares "[p]easants and other people living in rural areas have the right to land, individually and/or collectively. . . including the right to have access to, sustainably use and manage land and the water bodies, coastal seas, fisheries, pastures and forests therein, to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures."[887]
  - Paragraph 3 of article 17 states "Appropriate measures but be taken to "provide legal recognition for land tenure rights, including customary land tenure rights not currently protected by law, recognizing the existence of different models and systems."[888]
  - Paragraph 5 of article 17 provides that "[p]easants and other people working in rural areas who have been arbitrarily or unlawfully deprived of their lands have the right, individually and/or collectively, in association with others or as a community, to return to their land of which they were arbitrarily or unlawfully deprived, including in cases of natural disasters and/or armed conflict and to have restored their access to the natural resources used in their activities and necessary for the enjoyment of adequate living conditions, whenever possible, or to receive just, fair and lawful compensation when their return is not possible."[889]
- The FAO Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security provide a soft law framework to guide governments in the governance of tenure and include:
  - 7.1: States should establish safeguards to protect women who hold "subsidiary tenure rights."[890]
  - 7.3: Indigenous Peoples with customary tenure systems should be included in the consultation process of recognizing or allocating tenure rights.[891]

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[885] American Declaration on the Rights of Indigenous Peoples, art. 7,AG/RES. 288 (XLVI-O/16), adopted June 15, 2016.

[886] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP") art. 4, G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

[887] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP") art. 17, G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

[888] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP") art. 17(3), G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

[889] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP") art. 17(5), G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

[890] UN Food and Agriculture Organization ("FAO"), Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, ¶7.1 (2012), http://www.fao.org/3/a-i2801e.pdf.

[891] UN Food and Agriculture Organization ("FAO"), Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, ¶7.3 (2012), http://www.fao.org/3/a-i2801e.pdf.

- 7.4: States should ensure that men and women enjoy the same tenure rights and that the rights are recorded.[892]
- 9.1: "State and non-state actors should acknowledge that land, fisheries and forests have social, cultural, spiritual, economic, environmental and political value to [I]ndigenous [P]eoples . . . with customary tenure systems."[893]
- 9.2: Indigenous Peoples with customary tenure systems should give special attention to the equitable access of resources to women and the participation of women in tenure systems decisions.[894]
- 9.5: States should recognize and protect tenure rights to Indigenous ancestral lands and should not forcibly evict Indigenous Peoples from those lands.[895]

- The Permanent Forum on Indigenous Issues (UNPFII) has also made several recommendations on the topic of land, territory, and natural resources over the years.[896]
- The above articles reference the right of "peoples" signaling that the right is held and enjoyed by the group. Indigenous Peoples have the right to land as a collective and as individuals within that group as well.[897]

d. Current Normative Content

- Indigenous Peoples' territories include "lands that are in some form titled or reserved to them by the State, lands that they traditionally own or possess under customary tenure (whether officially titled or not), or other areas that are of cultural or religious significance to them or in which they traditionally have access to resources that are important to their physical well-being or cultural practices."[898]
- Indigenous Peoples' survival depends on the survival of their communal cultural life, which necessarily implicates "the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired." For Indigenous Peoples, a way of life relying on the use of land and resources is a manifestation of culture.

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[892] UN Food and Agriculture Organization ("FAO"), Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, ¶7.4 (2012), http://www.fao.org/3/a-i2801e.pdf.

[893] UN Food and Agriculture Organization ("FAO"), Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, ¶9.1 (2012), http://www.fao.org/3/a-i2801e.pdf.

[894] UN Food and Agriculture Organization ("FAO"), Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, ¶9.2 (2012), http://www.fao.org/3/a-i2801e.pdf.

[895] UN Food and Agriculture Organization ("FAO"), Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, ¶9.5 (2012), http://www.fao.org/3/a-i2801e.pdf.

[896] United Nations Department of Economic and Social Affairs Indigenous Peoples, Permanent Forum on Indigenous Issues (UNPFII), https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2.html; Yanapaq, Recommendations on the topic: Land, territory and natural resources by the Permanent Forum on Indigenous Issues (UNPFII), https://yanapaq.info/search/cluster-en.htm?type=topic&id=6.

[897] *See* United Nations Declaration on the Rights of Indigenous Peoples, art. 26, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Oct. 2, 2007.; American Declaration on the Rights of Indigenous Peoples, art. 25,AG/RES. 288 (XLVI-O/16), adopted June 15, 2016; United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP") art. 4, G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

[898] Hum. Rts. Council, Report of the Special Rapporteur on the rights of indigenous peoples: Extractive industries and indigenous peoples, ¶ 27, U.N. Doc. A/HRC/24/41 (2013).

Access to cultural life "includes the right to follow a way of life associated with the use of cultural goods and resources such as land, water, (and) biodiversity."[899]

- Indigenous Peoples have been stewards of their lands for generations past. Indigenous Peoples lay claim to the resources within those territories, regardless of State laws holding otherwise, these claims are often not adequately resolved.[900]
  - In some cases, States have asserted rights to expropriate Indigenous lands or surface resources to gain access to the subsurface resources the State claims ownership over, without compensation or valid public purpose.[901]
  - States must give Indigenous Peoples assistance in granting licenses or permits for extraction and should give them preference for resource extraction within their territory over any third parties.[902]
- Substantive equality of rural women hinges on women's relation to land and natural resources.[903] Indigenous women in rural areas must have equal access with Indigenous men to ownership and control of land and other resources.[904]
- A woman's right to ownership or inheritance cannot depend on her marital status.[905]
  - Upon the death of a spouse, women must have the right to property that corresponds to her as inheritance.[906] Women cannot be forced off of their land by relatives of a deceased husband, or forced to marry a relative to remain on the land.[907]
  - Grounds for divorce or annulment must be equal between men and women as well as decisions in regard to property distribution.[908]

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[899] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 21: Right of Everyone to Take Part in Cultural Life, ¶ 15(b), U.N. Doc. E/C.12/GC/21 (Dec. 21, 2009).

[900] Hum. Rts. Council, *Report of the Special Rapporteur on the rights of Indigenous Peoples: Extractive industries and Indigenous Peoples*, ¶ 16, U.N. Doc. A/HRC/24/41 (2013).

[901] Hum. Rts. Council, *Report of the Special Rapporteur on the rights of Indigenous Peoples: Extractive industries and Indigenous Peoples*, ¶ 35, U.N. Doc. A/HRC/24/41 (2013).

[902] Hum. Rts. Council, *Report of the Special Rapporteur on the rights of Indigenous Peoples: Extractive industries and Indigenous Peoples*, ¶ 15, U.N. Doc. A/HRC/24/41 (2013).

[903] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶ 57, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

[904] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶ 57, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

[905] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶ 33, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

[906] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 29: General recommendation on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, ¶ 49, U.N. Doc. CEDAW/C/GC/29 (Oct. 30, 2013); *See also* Hum. Rts. Comm. ("HRC"), General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women), ¶ 26, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000).

[907] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 29: General recommendation on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, ¶ 50, U.N. Doc. CEDAW/C/GC/29 (Oct. 30, 2013); *See also* Hum. Rts. Comm. ("HRC"), General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women), ¶ 19, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000).

[908] Hum. Rts. Comm. ("HRC"), General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women), ¶ 26, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000).

- In determining the division of property upon divorce, courts must consider not only financial contribution, but women's non-financial contributions, such as caring for children and elderly relatives and taking care of the land and property.[909]

- States must "organise sustained public sensitisation, information and education campaigns for community and religious leaders in order to transform socio-cultural patterns of conduct that deprive women of their security of enjoyment of and equal access to property, land and adequate housing."[910]
- Women must have access to free legal assistance to ensure restitution and compensation for violations of their right to land and property.[911]
- States must ensure access to "fair, independent, impartial, open and transparent processes to acknowledge, advance and adjudicate the rights of Indigenous [P]eoples pertaining to lands, territories and resources."[912]

III. State Actions Needed in New CEDAW General Recommendation on Indigenous Women and Girls

- State parties must recognize, respect, protect, and fulfill the right of Indigenous Peoples to collective ownership and use of their traditional lands and lands they've since acquired.[913]
  - To fulfill this requirement, States must not allow the right to land to be hindered by issues relating to land titles. They must reformulate to make it more direct and stronger by adding the name of places in their mother tongue. I.e. Mt. Everest has its original name in Sherpa language.
  - To protect Indigenous Peoples' right over their lands and resources, States are obliged to respect, protects, and ensure free, prior and informed consent of Indigenous Peoples and particularly Indigenous Women (consult) on any project affecting their land. Indigenous Peoples must be included from the beginning planning stages to have a meaningful say in the process. [914] States must work to address power imbalances between the multinational corporations and Indigenous Peoples in order to reach sustainable and equitable agreements.[915]
  - States must be critical of and protect Indigenous Peoples from aggressive development initiatives causing land grabbing, environmental destruction, eviction, etc.

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[909] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 21: Equality in Marriage and Family Relations, ¶ 32, U.N. Doc. CEDAW **A/49/38 at 1.**

[910] Afr. Comm'm. on Hum. and Peoples' Rights, Resolution on Women's Right to Land and Productive Resources, ¶14 (Nov. 5, 2013).

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

[912] G.A. Res. 69/2, World Conference on Indigenous Peoples, ¶ 21 (Sept. 25, 2014).

[913] United Nations Declaration on the Rights of Indigenous Peoples, art. 26, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Oct. 2, 2007; American Declaration on the Rights of Indigenous Peoples, art. 7(2), AG/RES. 288 (XLVI-O/16), adopted June 15, 2016; Int'l Labour Organization [ILO] Indigenous & Tribal Peoples Convention, art. 14(1), ¶ 1(a) (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169; United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP") art. 17, G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

[914] Hum. Rts. Council, *Report of the Special Rapporteur on the rights of Indigenous peoples: Extractive industries and Indigenous peoples*, ¶ 51, U.N. Doc. A/HRC/24/41 (2013).

[915] Hum. Rts. Council, *Report of the Special Rapporteur on the rights of Indigenous peoples: Extractive industries and Indigenous peoples*, ¶ 63, U.N. Doc. A/HRC/24/41 (2013).

- States must ensure the equal right of women to enter into contracts for the acquisition of land and to own and manage their land independently. Further, States must ensure the right of women to equal distribution of lands upon divorce, or to inheritance upon death of a husband or relative.[916]
    - States must condemn — enact laws and implement — any community practices or cultural values that undermine women's ability to acquire, own, manage, or inherit land independently.[917]
    - In cases where women do not have the financial means to do so, the state should provide legal aid free of cost in order to establish their rights to land.[918]
    - "The division of roles and functions during the spouses' life together should not result in detrimental economic consequences for either party."[919]
- States must create mechanisms with adequate resources where women must be included in the "financial benefit sharing [i.e. compensation] of the land."[920]
- States must focus on addressing the impact of the climate crisis on Indigenous lands, ensuring that Indigenous women's participation and "ancestral knowledge of ecological protection" is ensured.[921]
    - Any effort regarding land and resource development and protection (efforts of conservation) should be inclusive of and respect Indigenous Peoples' rights.[922]
- States must include Indigenous women and girls in decision making focused on "securing, protecting and demarcating Indigenous [P]eoples' land."[923]
- States must respect Indigenous Peoples' rights to "free, prior and informed consent."[924]

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[916] Universal Declaration of Human Rights ("UDHR") art. 17, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948); International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD") art. 5 (d), 660 U.N.T.S. 195, 212; Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 15(2), adopted Dec. 18, 1979, 1249 U.N.T.S. 13; Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 16(1)(h), adopted Dec. 18, 1979, 1249 U.N.T.S. 13; United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP") art. 4, G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

[917] *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("In most of the indigenous communities, women are not allowed to inherit land or any property.").

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

[919] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 29: General recommendation on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, ¶45, U.N. Doc. CEDAW/C/GC/29 (Oct. 30, 2013

[920] Cassandra Smithies, *Notes from CEDAW Expert Meeting on Indigenous Women Rights*, MADRE, FIMI, CWGL, WHRI (Mar. 15, 2019).

[921] *Toolkit for Effective Advocacy, From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions*, Indigenous Women's organizations.

[922] MADRE and Rosa Luxemburg Stiftung, *Statement on behalf of Indigenous Women Delegation: 17th Session of the UN Permanent Forum on Indigenous Issues* (Apr. 18, 2018) ("It is of crucial importance that the process recognize and respect customary and community land rights while acknowledging the important role Indigenous women play in maintaining and conserving biodiversity and other natural resources.").

[923] MADRE and Rosa Luxemburg Stiftung, *Statement on behalf of Indigenous Women Delegation: 17th Session of the UN Permanent Forum on Indigenous Issues* (Apr. 18, 2018).

[924] *Toolkit for Effective Advocacy, From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions*, Indigenous Women's organizations.

- States must hold businesses accountable for "not involving Indigenous Peoples in a free, prior, informed consent mechanism prior to engaging in any development projects [on their lands]." [925]

IV. State Actions in CEDAW General Recommendation 34

- General Recommendation 34 promotes the equality of rural women, which includes Indigenous women, in relation to land and natural resources.[926]
- It urges States to ensure customary land systems are not discriminatory and to raise awareness about Indigenous women's rights to land and resources.[927]
- General Recommendation 34 mentions legislation should ensure Indigenous women's rights to land, water, and natural resources on an "equal basis" regardless of status and ensures their "full legal capacity."[928]
    - This includes States promoting women's participation in agricultural cooperatives, enhancing their role in fisheries and forest resources, and strengthening "customary and statutory institutions" for protecting women's rights.[929]
- This general recommendation protects Indigenous women from land acquisitions, forced evictions, and development projects. Free, prior, and informed consent must be obtained for the approval of land projects and women should be compensated if they do occur. Law should limit the amount of rural land sold to companies.[930]
- It also mentions States should prioritize Indigenous women in land and agrarian reform by integrating gender goals into reform programs, recognizing rural women's rights and titling, recognizing traditions and customs, and implementing measures that benefit Indigenous women in the allocation of land.[931]
- There is no explicit mention of land as a collective right; however, General Recommendation 34 does recognize it implicitly through the recognition of States' obligation to protect the natural commons.[932]
- Land is not referenced in regard to girls' rights in General Recommendation 34.[933]

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[925] MADRE and Rosa Luxemburg Stiftung, *Statement on behalf of Indigenous Women Delegation: 17th Session of the UN Permanent Forum on Indigenous Issues* (Apr. 18, 2018).

[926] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶ 57, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

[927] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶ 58, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

[928] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶ 59, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

[929] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶ 59, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

[930] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶ 62, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

[931] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶ 78, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

[932] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶ 62, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

[933] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

The Right to Food of Indigenous Women and Girls[934]

I. The Problem

a. General Overview

- Fundamental root of hunger in Indigenous communities is not a lack of food "but lack of access to available food"[935] and a lack of food sovereignty, defined as the right to determine their own food and agriculture systems.[936] Economic access to food is also often limited for Indigenous women due to large levels of poverty within their segment of the population.[937] Key drivers of these poverty rates are "loss of culture, land and insecure access to lands, [and] territories and natural resources."[938]
- There is an emerging trend of Indigenous' lands "being grabbed by political and business actors who want to set up industrial food production farms."[939] This threatens Indigenous Peoples' livelihoods from their "agriculture, pastoralism, hunting and gathering which have ensured food security for them" in the past.[940] This practice is destroying Indigenous women's livelihoods that are "land based."[941]
    - Hunter-gatherer communities, including the Ogiek and Sengwer peoples, have continued to lose forest land to logging and clearing for agriculture.[942]
- When Indigenous women lose their traditional livelihoods and food sovereignty, they are unable to grow or gather food, which can lead to violence, exploitation, and ill health.[943]
- The increased sale of lands to local and foreign industries that use genetically modified crops have put rural and Indigenous women at risk of eviction, increased poverty, and diminished access to resources.[944][945]

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[934] This narrative received contributions from Samantha Johnson, Denisse Córdova Montes, Tamar Ezer, Gabriela Valentín Díaz, Mary Miller, Abril Montero Dokser, Alicia Limtiaco, Ellen Bangoa, Igdalia Rojas, Maria Manuela Sequeira, Natalia Caruso, Sengwer Winnie, and Tapio Keihäs.

[935] Comm. On the Elimination of Discrimination Against Women ("CEDAW Comm."), General Comment No. 34: *Rights of Rural Women*, ¶ 5, CEDAW/C/GC/34 (Mar. 7, 2016).

[936] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP") art. 15, G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

[937] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 12: The Right to Adequate Food, ¶ 5, U.N. Doc. CESCR/C/12/Rev.12/Add12 (May 12, 1999).

[938] Hum. Rts. Counci, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶ 22 U.N. Doc. A/HRC/30/41 (Aug. 6, 2015).

[939] Hum. Rts. Counci, *Report of the Special Rapporteur on the Rights of Indigenous* Peoples ¶ 23 U.N. Doc. A/HRC/30/41 (Aug. 6, 2015).

[940] Hum. Rts. Counci, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶ 23 U.N. Doc. A/HRC/30/41 (Aug. 6, 2015).

[941] Hum. Rts. Counci, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶ 23 U.N. Doc. A/HRC/30/41 (Aug. 6, 2015); electronic correspondence with Indigenous Youth, Sengwer Winnie, from Kenya ("Right to food and right to land always go together. They are intertwined because food security starts with ownership of land because access to land ensures food security and therefore food sovereignty.")

[942] Minority Rights Group International, "World Directory of Minorities and Indigenous Peoples," https://minorityrights.org/minorities/hunter-gatherers/.

[943] Hum. Rts. Counci, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶ 16 U.N. Doc. A/HRC/30/41 (Aug. 6, 2015).

[944] Comm. On the Elimination of Discrimination Against Women ("CEDAW Comm."), General Comment No. 34: *Rights of Rural Women*, ¶ 61, CEDAW/C/GC/34 (Mar. 7, 2016).

[945] Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la

- Indigenous women often see little return on food production, despite their crucial role in preserving food security and sovereignty for the community.[946]
- Violations on the right to food disproportionately impact Indigenous women because of their roles as providers, caregivers, and resource managers.[947] "Women assume greater responsibility for subsistence production activities to counter the adverse consequences of export-oriented cash crop production. Although women frequently produce the majority of food for subsistence, they have much less access to agricultural training and infrastructure support than men who frequently control more lucrative cash crop production. Women's participation in cash crop agriculture is often limited to labor-intensive and time-consuming activities that receive limited payment. The lack of gender-disaggregated data on agricultural labor conveys that women's contributions are overlooked and reinforces attitudes that men's labor is more valuable and challenging than women's labor."[948]
- International attention has failed to address how the "intersecting forms of discrimination and vulnerability contribute to the ongoing abuses of Indigenous women's rights."[949]
    - "Tuna caught in the Pacific represents approximately 35% of the world's tuna catch and contributes significantly to government revenue. Women in the tuna industry are more involved in domestic processing and marketing, compared to men who work in the more profitable export-oriented tuna capture and commercial marketing. In addition to the unevenly distributed benefits of tuna production, women are made more vulnerable because of increased domestic responsibilities and poor working conditions."[950]
- Indigenous girls face similar issues as those faced by Indigenous women. A lack of food can affect their education.[951]

b. The Impact of the Climate Crisis and Environmental Violence

- "Indigenous women are most likely to experience the first and worst consequences of climate change globally, including natural disasters and emergencies, food insecurity . . . and limited access to natural resources."[952]

Discriminación contra la Mujer (2020) ("Las mujeres indígenas debemos concientizarnos contra las semillas transgénicas (alimento) que están matando la madre tierra.").

[946] Universal Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP") ¶ 7-9, G.A. Res. 73/16 U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

[947] Hum. Rts. Counci, Report of the Special Rapporteur on the Rights of Indigenous Peoples ¶ 22 U.N. Doc. A/HRC/30/41 (Aug. 6, 2015).

[948] Pacific Women Shaping Pacific Development, March 2017.

[949] Hum. Rts. Counci, Report of the Special Rapporteur on the Rights of Indigenous Peoples ¶ 8 U.N. Doc. A/HRC/30/41 (Aug. 6, 2015).

[950] Pacific Women Shaping Pacific Development, March 2017.

[951] Nutrition Programs, National Education Association, https://www.nea.org/student-success/smart-just-policies/funding-public-schools/nutrition-programs (last visited Oct. 5, 2020); electronic correspondence with Indigenous Youth, Sengwer Winnie, from Kenya ("Most of the time Indigenous girls will be forced to drop out of school to help their mothers take care of their young siblings as she goes to look for food and sometimes they are forced to help their mothers to look for food and walk long distances in the case of pastoral Indigenous communities. Most Indigenous men feel that educating a girl is a waste of money as she will eventually be married.")

[952] *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020).

- The climate crisis has furthered this problem because Indigenous women's roles have been "eroded" due to the loss of natural resources and from the degradation of their ecosystems.[953]
- A "majority of the world's subsistence farmers are rural Indigenous women, tending to land more prone to adverse climatic events than their male counterparts. Thus, environmental erosion and disaster disparately impact the livelihood and food security of Indigenous women."[954]
- Indigenous Peoples' dependence on the land and natural resources for their needs and livelihoods means that impacts from climate change can substantially affect their access to food.[955]
- Severe climate change impacts and scarcity of water can cause forced migration with which travel entails a higher danger to Indigenous women.[956][957]
- The climate crisis negatively affects Indigenous cultures. As access to traditional food sources and land is lessened, Indigenous Peoples are unable to engage in cultural practices and maintain their identities.[958]
- The passing down of traditional agriculture knowledge and techniques to Indigenous girls is challenged.[959]
- The climate crisis affects access to Indigenous lands and as a result, traditional sources of sustenance could disappear.[960]
    - In Canada, the Koostachins, part of the Peawanuck community, face a radical change to their right to food, health, and culture. As global temperatures rise, there are fewer migrating livestock, the ice is unstable for travel, and they are unable to harvest food.[961]

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[953] Gender and Indigenous Peoples, THE SECRETARIAT OF THE PERMANENT FORUM ON INDIGENOUS ISSUES, Pg. 1 (2010), https://www.un.org/esa/socdev/unpfii/documents/Briefing%20Notes%20Gender%20and%20Indigenous%20Women.pdf

[954] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm.") General Recommendation 37: *General recommendation on the gender-related dimensions of disaster risk reduction in the context of climate change*, ¶ 1, U.N. Doc. CEDAW/C/GC/37 (Mar. 13, 2018).

[955] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶ 7 U.N. Doc. A/HRC/36/46 (Nov. 1, 2017).

[956] Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples* ¶ 11 U.N. Doc. A/HRC/36/46 (Nov. 1, 2017).

[957] *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("Poverty [and migration] is . . . deeply related to climate change, loss of livelihood assets, and food insecurity, among other factors.").

[958] Human Rights Watch ("HRW"), "My Fear is Losing Everything" The Climate Crisis and First Nations' Right to Food in Canada (Oct. 21, 2020), https://www.hrw.org/report/2020/10/21/my-fear-losing-everything/climate-crisis-and-first-nations-right-food-canada.

[959] Human Rights Watch ("HRW"), "My Fear is Losing Everything" The Climate Crisis and First Nations' Right to Food in Canada (Oct. 21, 2020), https://www.hrw.org/report/2020/10/21/my-fear-losing-everything/climate-crisis-and-first-nations-right-food-canada.

[960] Human Rights Watch ("HRW"), "My Fear is Losing Everything" The Climate Crisis and First Nations' Right to Food in Canada (Oct. 21, 2020), https://www.hrw.org/report/2020/10/21/my-fear-losing-everything/climate-crisis-and-first-nations-right-food-canada.

[961] Human Rights Watch ("HRW"), "My Fear is Losing Everything" The Climate Crisis and First Nations' Right to Food in Canada (Oct. 21, 2020), https://www.hrw.org/report/2020/10/21/my-fear-losing-everything/climate-crisis-and-first-nations-right-food-canada.

    - Since not enough food is harvested from the land, they must buy imported food which is sometimes 30% more compared to families in larger cities.[962]
    - The Endorois and Samburu are distinct pastoralist communities in Kenya who have suffered from a series of rapidly accelerating droughts, leaving them more and more vulnerable and forced to struggle with risks associated with the climate crisis.[963]
- Imported food and resources are becoming more expensive as a result of climate impacts on transportation costs.[964]
- Unpredictable weather due to the climate crisis makes it difficult for Indigenous Peoples to rely on their traditional knowledge of local plants, animals, and harvest techniques.[965]
- The climate crisis causes permanent depletion of natural resources that affect long-term access to sustainable food sources.[966]

II. Current Protections in International Law

a. Current Protections in CEDAW

- Although the right to food is not explicitly mentioned in CEDAW, Article 14(2) ensures the right of rural women to participate in "development planning," "equal treatment in land and agrarian reform," and "enjoy adequate living conditions."[967]
- Article 12 briefly mentions the right of women to "adequate nutrition" when pregnant and lactating.[968]
- CEDAW's Article 2 prohibits discrimination against women in all forms and ensures that States protect the "rights of women on an equal basis with men."[969]

b. Current Protections in Other International Treaties

- Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the "right of everyone to an adequate standard of living for himself and his family, including adequate food." It goes on to protect the right to be "free from hunger" and mentions that States must take measures to realize this right. [970]

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[962] Human Rights Watch ("HRW"), "My Fear is Losing Everything" The Climate Crisis and First Nations' Right to Food in Canada (Oct. 21, 2020), https://www.hrw.org/report/2020/10/21/my-fear-losing-everything/climate-crisis-and-first-nations-right-food-canada.
[963] Minority Right Group International, "World Directory of Minorities and Indigenous Peoples," https://minorityrights.org/minorities/pastoralists/.
[964] Human Rights Watch ("HRW"), "My Fear is Losing Everything" The Climate Crisis and First Nations' Right to Food in Canada (Oct. 21, 2020), https://www.hrw.org/report/2020/10/21/my-fear-losing-everything/climate-crisis-and-first-nations-right-food-canada.
[965] Human Rights Watch ("HRW"), "My Fear is Losing Everything" The Climate Crisis and First Nations' Right to Food in Canada (Oct. 21, 2020), https://www.hrw.org/report/2020/10/21/my-fear-losing-everything/climate-crisis-and-first-nations-right-food-canada.
[966] The Effects of Climate Change on Indigenous Peoples, UN Department of Economic and Social Affairs (Sept. 24, 2007), https://www.un.org/development/desa/indigenouspeoples/climate-change.html.
[967] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 14, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.
[968] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 12, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.
[969] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 2, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.
[970] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 11, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3.

- The UDHR's Article 25 stipulates that everyone has the right to an adequate standard of living, including food.[971]
- The Convention on the Rights of Persons with Disabilities (CRPD) mentions an adequate standard of living . . . including adequate food in Article 28.[972]
- The Convention on the Rights of the Child's (CRC) Article 24(2)(c)) ensures that States "combat disease and malnutrition . . . through the provision of adequate nutritious foods."[973]
    - Additionally, CRC mentions the provision of adequate food and "tak[es] into consideration the dangers and risks of environmental pollution."[974]
- In Article 27, CRC recognizes the right of children to a "standard of living adequate for [their] physical . . . development." States must take measures to implement this right and provide assistance, especially with nutrition.[975]
- In Article 14(1), ILO Convention 169 stipulates that Indigenous Peoples have the "rights of ownership and possession . . . over the lands which they traditionally occupy" and that measures must be taken to safeguard their lands which they have "traditionally had access for their subsistence."[976]

c. Current Protections in Non-Binding International Human Rights Instruments

- UNDRIP refers to Indigenous Peoples' right to "be secure in the enjoyment of their own means of subsistence and development."[977]
    - UNDRIP further states that "Indigenous Peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which thy have otherwise acquired."[978]
- Similarly, ADRIP protects Indigenous Peoples' right to the "enjoyment of their own means of subsistence and development."[979]
- In Article 15, UNDROP mentions that peasants and people in rural areas have the "right to adequate food and the fundamental right to be free from hunger."[980]
    - This article includes the right to "produce food and the right to adequate nutrition," while respecting the different cultures.[981]

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[971] Universal Declaration of Human Rights ("UDHR") art. 25, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948).
[972] Convention on the Rights of Persons with Disabilities ("CRPD") art. 28, *adopted* Jan. 24, 2007, U.N. Doc. A/RES/61/106.
[973] Convention on the Rights of the Child ("CRC") art. 24(2)(c), *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3.
[974] Convention on the Rights of the Child ("CRC") art. 24, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3.
[975] Convention on the Rights of the Child ("CRC") art. 27, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3.
[976] International Labour Organization ("ILO"), Indigenous and Tribal Peoples Convention 169 art. 14(1), *adopted* June 27, 1989.
[977] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 20, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[978] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 26, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[979] American Declaration on the Rights of Indigenous Peoples ("ADRIP") art. XXIX(1), AG/Res. 2888 (XLVI-O/16), *adopted* June 16, 2016.
[980] United Nation Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP") art. 15, G.A. Res. 73/16 U.N. Doc. A/RES/73/16 (Dec. 17, 2018).
[981] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP") art. 15, G.A. Res. 73/16 U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

    - The right to food sovereignty, especially in regard to determining food and agriculture systems and decision-making in policy, is protected.
- The World Food Summit Plan of Action 1996's Objective 7.4 seeks to "clarify the content of the right to adequate food and the fundamental right of everyone to be free from hunger" and mentions that governments must "make every effort to implement the provision of Article 11" of ICESCR.[982]
- The FAO Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security is a soft law instrument that seeks to guide States in implementing the right to food.[983] Some guidelines include:
    - 8.1: States should respect and protect rights of people with respect to resources with special attention given to Indigenous Peoples.[984]
    - 8.12: States should ensure sustainable use of resources for food and agriculture, including protecting traditional knowledge and encouraging the participation of Indigenous Peoples in decision-making.[985]

d. Current Normative Content

- The right to food is separated into two categories in ICESCR's Article 11 as: the right to be free from hunger and the right to adequate food.[986]
- CESCR's General Comment 12 sets out the following components of the right to food:
    - *Accessibility*: adequate food must be accessible both economically and physically.[987] The cost of accessing food cannot be so high that "other basic needs are . . . threatened or compromised."[988]
    - *Availability*: adequate food must be available through either one's own land or from a distribution system "that can move food from the site of production to where it is needed in accordance with demands."[989]
    - *Adequacy*: food must be culturally acceptable, be free of harmful substances, and provide sufficient nutrition.[990] This is realized when "every man, woman and child, alone or in community with others has physical and economic access at all times to adequate food or means for its procurement."[991]

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[982] World Food Summit, FOOD AND AGRICULTURE ORGANIZATION OF THE UN (Nov. 17, 1996), http://www.fao.org/3/X2051e/X2051e00.htm.
[983] UN Food and Agriculture Organization ("FAO"), Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security (2005), http://www.fao.org/3/a-y7937e.pdf.
[984] UN Food and Agriculture Organization ("FAO"), Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, 8.1 (2005), http://www.fao.org/3/a-y7937e.pdf.
[985] UN Food and Agriculture Organization ("FAO"), Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, 8.12 (2005), http://www.fao.org/3/a-y7937e.pdf.
[986] The Right to Food Within the International Framework of Human Rights and Country Constitutions, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS at 5 (2014), http://www.fao.org/3/a-i3448e.pdf.
[987] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 12: The Right to Adequate Food, 13, U.N. Doc. CESCR/C/12/Rev.12/Add12 (May 12, 1999).
[988] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 12: The Right to Adequate Food, 6, U.N. Doc. CESCR/C/12/Rev.12/Add12 (May 12, 1999).
[989] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 12: The Right to Adequate Food, 12, U.N. Doc. CESCR/C/12/Rev.12/Add12 (May 12, 1999).
[990] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 12: The Right to Adequate Food, 7, U.N. Doc. CESCR/C/12/Rev.12/Add12 (May 12, 1999).
[991] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 12: The Right to Adequate Food, 6, U.N. Doc. CESCR/C/12/Rev.12/Add12 (May 12, 1999).

- *Sustainability*: food must be accessible, available, and adequate for present and future generations.[992]

- The right to food has a collective dimension in the context of food sovereignty and food sustainability.[993]
- Food sovereignty identifies "who should control the natural and productive resources and their use; who should define food and nutrition and related policies; and, who should regulate the powerful economic and political actors."[994] Within Indigenous communities, their collective right to retain ownership over their natural food production resources, exemplifies a collective dimension.
- Sustainability relates to the community and requires ensuring that food is available for present and future generations.[995] CESCR's General Comment 12 identifies that "sustainability is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations."[996]

III. State Actions Needed in New CEDAW General Recommendation on Indigenous Women and Girls

- Parties to ICESCR are required to adopt legislative acts that are necessary to realize the right to adequate food.[997]
- CESCR General Comment 12 sets out the following state responsibilities:
  - *Respect*: States must respect "existing access to adequate food" by not taking any measures that "result in preventing such access."[998]
    - This entails not taking Indigenous land and not engaging in any activities that degrade their land.
    - States must guarantee "full and equal access" to "the inheritance and the ownership of land and other property" so that Indigenous women have equal access to food sources. [999]
  - *Protect*: States must protect the right by taking measures to "ensure that enterprises or individuals do not deprive individuals of their access to adequate food."[1000]

[992] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 12: The Right to Adequate Food, ¶ 7, U.N. Doc. CESCR/C/12/Rev.12/Add12 (May 12, 1999).
[993] The Right to Food and Nutrition: Beyond Food Security, Towards Food Sovereignty, FIAN (July 2016), https://www.fian.org/fileadmin/media/Publications/30th_Anniversary/Right_to_Food_and_Nutrition_Beyond_Food_Security__towards_Food_Sovereignty.pdf.
[994] The Right to Food and Nutrition: Beyond Food Security, Towards Food Sovereignty, FIAN (July 2016), https://www.fian.org/fileadmin/media/Publications/30th_Anniversary/Right_to_Food_and_Nutrition_Beyond_Food_Security__towards_Food_Sovereignty.pdf.
[995] The Right to Food and Nutrition: Beyond Food Security, Towards Food Sovereignty, FIAN (July 2016), https://www.fian.org/fileadmin/media/Publications/30th_Anniversary/Right_to_Food_and_Nutrition_Beyond_Food_Security__towards_Food_Sovereignty.pdf.
[996] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 12: The Right to Adequate Food, ¶ 7, U.N. Doc. CESCR/C/12/Rev.12/Add12 (May 12, 1999).
[997] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 11, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3.
[998] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 12: The Right to Adequate Food, ¶ 15, U.N. Doc. CESCR/C/12/Rev.12/Add12 (May 12, 1999).
[999] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 12: The Right to Adequate Food, ¶ 26, U.N. Doc. CESCR/C/12/Rev.12/Add12 (May 12, 1999).
[1000] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 12: The Right to Adequate Food, ¶ 15, U.N. Doc. CESCR/C/12/Rev.12/Add12 (May 12, 1999).

States are "ultimately accountable for compliance" with the right despite the fact that "individuals, families, local communities, non-governmental organizations, civil society organizations, as well as the private business sector" have responsibilities for the realization of the right to food.[1001]

- *Fulfill*: Fulfilling this right means that a State must "proactively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security."[1002]
  - States have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in ICESCR Article 11(2).[1003]
  - Even if a state is facing economic constraints, "measures should be undertaken to ensure that the right to adequate food is especially fulfilled for [Indigenous Peoples]."[1004]
  - This obligation also extends to Indigenous women and girls that are affected by natural or any other disasters.[1005]
  - States are responsible for ensuring that everyone has access to "the minimum essential food which is sufficient, nutritionally adequate and safe."[1006]

- Indigenous women often lack authority in decision-making processes which directly affect their role as food providers and their economic stability. States thus have the responsibility to ensure the meaningful participation of Indigenous women.[1007]
- States must provide reparations to the communities whose labor has been systematically exploited or had their land and resources appropriated (taken) by State or private parties.[1008]
- States should ensure adequate and appropriate food production services and related infrastructures, access to technology, and provide subsidies to support small-scale food producers in Indigenous Peoples.[1009]
- States must address the consequences of the climate crisis on Indigenous lands by ensuring the participation of Indigenous women and respecting their ancestral knowledge.[1010]
- States must protect ancestral forms of farming and respect Indigenous cultures, including an emphasis on organic farming.[1011]

[1001] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 12: The Right to Adequate Food, ¶ 20, U.N. Doc. CESCR/C/12/Rev.12/Add12 (May 12, 1999).
[1002] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 12: The Right to Adequate Food, ¶ 15, U.N. Doc. CESCR/C/12/Rev.12/Add12 (May 12, 1999).
[1003] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 12: The Right to Adequate Food, ¶ 6, U.N. Doc. CESCR/C/12/Rev.12/Add12 (May 12, 1999).
[1004] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 12: The Right to Adequate Food, ¶ 28, U.N. Doc. CESCR/C/12/Rev.12/Add12 (May 12, 1999).
[1005] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 12: The Right to Adequate Food, ¶ 15, U.N. Doc. CESCR/C/12/Rev.12/Add12 (May 12, 1999).
[1006] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 12: The Right to Adequate Food, ¶ 14, U.N. Doc. CESCR/C/12/Rev.12/Add12 (May 12, 1999).
[1007] *Toolkit for Effective Advocacy, From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions*, Indigenous Women's organizations.
[1008] Land Reparations and Indigenous Solidarity Toolkit, Resource Generation, https://resourcegeneration.org/land-reparations-indigenous-solidarity-action-guide/ (last visited Oct. 8, 2020).
[1009] Miami Law Human Rights Clinic UPR Submission.
[1010] *Toolkit for Effective Advocacy, From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions*, Indigenous Women's organizations.
[1011] Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la

- States must guarantee the right to ancestral food while respecting Indigenous autonomy and food sovereignty, without the imposition of industrialized and transgenic food, inorganic agricultural inputs (i.e. weedicides, pesticides, etc.), and the introduction of foreign species.[1012]
- States must implement school food programs that provide nutritious, low-cost or free breakfast and lunch to children every day so that Indigenous children (girls) have access to food regardless of financial status.
- States must realize the right to food of Indigenous women living in urban areas by ensuring that food is economically accessible. States should take proactive measures to ensure decent working conditions for Indigenous women who often work in precarious environments, face gender-based violence and racism, and receive inadequate wages as urban workers.

IV. Comparison with State Actions in CEDAW General Recommendation 34

- CEDAW's General Recommendation 34 puts a duty on States to implement policies to support rural women farmers, including Indigenous women farmers.[1013]
    - This includes protecting and conserving native land that is a source of food within the community and ensuring that Indigenous women have access to agricultural resources like seeds, tools, equipment, skill, and knowledge.[1014]
    - Additionally, General Recommendation 34 protects Indigenous women's traditional agricultural knowledge.[1015]
- States must "ensure the realization of the right to food and nutrition of rural [and Indigenous] women" in terms of food sovereignty so that Indigenous women can control their own resources.[1016]
- General Recommendation 34 pays attention to the nutritional needs of Indigenous women.[1017]
- There is protection of Indigenous women's access to markets, crops, and livestock.[1018]

Discriminación contra la Mujer (2020) ("Las ancestras se alimentaban "sanamente", alimentación basada en la producción orgánica y en los ciclos de la naturaleza, elemento diferenciador de la cultura que debe ser respetado.").

[1012] Petition by various organizations in Guatemala, Mexico, Honduras, Costa Rica, Panama, Colombia, Nepal, and Canada - PETICIÓN AL COMITÉ DE LA CEDAW: EMISIÓN DE UNA RECOMENDACIÓN GENERAL PARA GARANTIZAR EL RESPETO Y LA APLICACIÓN DE LOS DERECHOS INDIVIDUALES Y COLECTIVOS DE LAS MUJERES INDÍGENAS/ORIGINARIAS (2017) ("Garantizar el derecho a la alimentación ancestral respetando la autonomía y la soberanía alimentaria, sin la imposición de alimentos industrializados y transgénicos, que atenta contra la identidad de las mujeres originarias.").

[1013] Comm. On the Elimination of Discrimination Against Women ("CEDAW Comm."), General Comment No. 34: *Rights of Rural Women*, ¶ 62, CEDAW/C/GC/34 (Mar. 7, 2016).

[1014] Comm. On the Elimination of Discrimination Against Women ("CEDAW Comm."), General Comment No. 34: *Rights of Rural Women*, ¶ 62(b), CEDAW/C/GC/34 (Mar. 7, 2016).

[1015] Comm. On the Elimination of Discrimination Against Women ("CEDAW Comm."), General Comment No. 34: *Rights of Rural Women*, ¶ 62(a), CEDAW/C/GC/34 (Mar. 7, 2016).

[1016] Comm. On the Elimination of Discrimination Against Women ("CEDAW Comm."), General Comment No. 34: *Rights of Rural Women*, ¶ 64, CEDAW/C/GC/34 (Mar. 7, 2016).

[1017] Comm. On the Elimination of Discrimination Against Women ("CEDAW Comm."), General Comment No. 34: *Rights of Rural Women*, ¶ 65, CEDAW/C/GC/34 (Mar. 7, 2016).

[1018] Comm. On the Elimination of Discrimination Against Women ("CEDAW Comm."), General Comment No. 34: *Rights of Rural Women*, ¶ 66, CEDAW/C/GC/34 (Mar. 7, 2016).

The Right to Seeds of Indigenous Women and Girls[1019]

I. The Problem

a. General Overview

- The right to seeds has increasingly turned from a system of sharing seeds and knowledge under community control, to a "commodity" controlled by commercial monopolies, where rural and Indigenous communities become consumers, dependent on what is marketed to them.[1020]
- When resources on which rural communities depend—land, soil, seeds—are commodified, privatized, and converted into industrial monocultures, then displacement, dependency and growing poverty is an inevitable consequence.[1021] As a result, women are forced to be complicit in a system that undermines their rights and sustainable livelihoods.[1022]
- Moreover, women lose the most in this transition, as fixed gender roles mean that they have virtually no say about land transactions of the future of seeds they have fostered as custodians.[1023]
- Indigenous women and girls thus are stripped not only of their seeds, but also of the knowledge that enables them—and future generations—to make decisions and control their lives.[1024]
- Indigenous women and girls are the backbone of Indigenous communities and play a crucial role in the preservation of food sovereignty. Their role is central in seed systems,

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[1019] This narrative received contributions from Mary Miller, Denisse Córdova Montes, Gabriela Valentín Díaz, Abril Montero Dokser, Alicia Limtiaco, Igdalia Rojas, Maria Manuela Sequeira, and Natalia Caruso.

[1020] African Biodiversity Network and the Gaia Foundation, *Celebrating African Rural Women: Custodians of Seed, Food and Traditional Knowledge for Climate Change Resilience*, https://www.gaiafoundation.org/app/uploads/2015/11/Celebrating-African-Rural-Women.pdf ("The industrial revolution has turned economics from a prudent partnership with nature for mutual sustenance, to provide the basic needs for health and wellbeing of the human community, as well as for the renewal for the larger community of life, into a process of turning nature into commodities for profit maximisation for the few. The wealth of nature, and that produced by women for sustaining life, is rapidly decreasing. More commodities and more cash means less life – to the point where nature's regenerative capacity is increasingly impaired. In society, women's work in sustaining life is devalued, as it is not contributing to the industrial growth economy, so it too is drained of life.")

[1021] African Biodiversity Network and the Gaia Foundation, *Celebrating African Rural Women: Custodians of Seed, Food and Traditional Knowledge for Climate Change Resilience*, https://www.gaiafoundation.org/app/uploads/2015/11/Celebrating-African-Rural-Women.pdf

[1022] African Biodiversity Network and the Gaia Foundation, *Celebrating African Rural Women: Custodians of Seed, Food and Traditional Knowledge for Climate Change Resilience*, https://www.gaiafoundation.org/app/uploads/2015/11/Celebrating-African-Rural-Women.pdf

[1023] African Biodiversity Network and the Gaia Foundation, *Celebrating African Rural Women: Custodians of Seed, Food and Traditional Knowledge for Climate Change Resilience*, https://www.gaiafoundation.org/app/uploads/2015/11/Celebrating-African-Rural-Women.pdf

[1024] African Biodiversity Network and the Gaia Foundation, *Celebrating African Rural Women: Custodians of Seed, Food and Traditional Knowledge for Climate Change Resilience*, https://www.gaiafoundation.org/app/uploads/2015/11/Celebrating-African-Rural-Women.pdf; Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("Una labor ancestral de las mujeres que manejan pequeños espacios en los hogares del campo, donde gestionan y administran sus plantaciones, sus productos con el sello e identidad de cada territorio, diversidad que permite el intercambio y el manejo autónomo de semillas que han traspasado generaciones.").

where it is estimated that up to 90 percent of planting material used in peasant agriculture are seeds and germ plasms produced, selected and saved by women and girls.[1025]
    - Yet women and girls represent 70 percent of the world's hungry and are subject to triple discrimination—based on gender, ethnicity and socioeconomic status—in access to productive resources, including seeds.[1026]
- Undermining women's right to seeds harms their livelihoods and weakens the genetic base and community commons on which the food supply of future generations depends.[1027]
- Indigenous women play a significant role in the economic survival of their families and in contributing to the rural and national economy, but are often denied tenure and ownership of land, equal access to land, productive resources, financial services, information, and often endure violence and discrimination in a variety of forms and manifestations.[1028]
- General Recommendation 34 underlines that "rural women are critical to achieving food security, reducing poverty, malnutrition and hunger, and in promoting rural development, yet their contribution is often unpaid, unacknowledged, and poorly supported."[1029]
- The inequality between men and women is a barrier to the implementation of food and seed sovereignty.[1030]
- Women's unequal work burden allows them neither adequate time and decision-making power to reach full productivity as farmers, nor sufficient hours in the day to prepare nutritious meals for themselves or their families.[1031]

b. The Impact of the Climate Crisis and Environmental Violence

- The climate crisis and environmental violence is putting additional pressure on rural communities' seed and food production systems, often with different impacts on women and men.[1032]

[1025] Christophe Golay and Adriana Bessa, *The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas and the Protection of the Right to Seeds in Europe*, Geneva Academy, April 2019, at 29, https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20Right%20to%20Seeds%20in%20Europe.pdf; Concept note for a general recommendation on the rights of Indigenous women ("By losing control over natural resources, [women] lose a share of the contribution they make to their communities to survive.")

[1026] Christophe Golay and Adriana Bessa, *The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas and the Protection of the Right to Seeds in Europe*, Geneva Academy, April 2019, at 29, https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20Right%20to%20Seeds%20in%20Europe.pdf

[1027] African Biodiversity Network and the Gaia Foundation, *Celebrating African Rural Women: Custodians of Seed, Food and Traditional Knowledge for Climate Change Resilience*, https://www.gaiafoundation.org/app/uploads/2015/11/Celebrating-African-Rural-Women.pdf

[1028] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP"), G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

[1029] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 63, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[1030] Bezner Kerr, Rachel et al., *Participatory, Agroecological and Gender-Sensitive Approaches to Improved Nutrition: A Case Study in Malawi*, www.fao.org/fileadmin/user_upload/agn/pdf/ FAO-expert-meeting-submission-Bezner-Kerr- et-al-ver4-2_FAO_comments_doc.pdf (2013).

[1031] Elfrieda Pschorn-Strauss, *African Food Sovereignty: Valuing Women and the Seed they Keep*, https://www.righttofoodandnutrition.org/files/Watch_2016_Article_5_eng_African%20Food%20Sovereignty.pdf at 50.

[1032] Bioversity International, *Seeds of adaptation: climate change, crop diversification and the role of women farmers*, *http://www.cifor.org/publications/pdf_files/Brief/5896-GenderClimateBrief.pdf;* Concept note for a general

- Indigenous women and girls constitute the majority of the world's poor and are more dependent for their livelihood on natural resources, such as seeds, that are threatened by the climate crisis.[1033]
- The climate crisis forces rural and Indigenous women and girls to change their practices and search for information about crops and varieties better adapted to new weather dynamics.[1034]
- When this interplay between Indigenous Peoples and their environments is lost, because the knowledge erodes or the seeds are lost, it is the women and their household food sovereignty which is most impacted.[1035]

II. Current Protections in International Law

a. Current Protections in CEDAW

- CEDAW Article 14 maintains that States Parties should take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure that they participate in and benefit from rural development.[1036]
    - As such, States Parties should ensure to such women the right "to have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes."[1037]
- CEDAW's Article 2 prohibits discrimination against women in all forms and ensures that States protect the "rights of women on an equal basis with men."[1038]

b. Current Protections in Other International Treaties

- Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes 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 is the author."[1039]
- Article 11 of ICESCR affirms that State Parties should "improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing

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recommendation on the rights of Indigenous women ("Climate change ha[s] a direct impact on Indigenous women, insofar as they are responsible in their communities for food security, though production and agricultural work.")

[1033] *Fact Sheet: Women, Gender Equality and Climate Change,* UN WomenWatch (2009) https://www.un.org/womenwatch/feature/climate_change/downloads/Women_and_Climate_Change_Factsheet.pdf

[1034] Bioversity International, *Seeds of adaptation: climate change, crop diversification and the role of women farmers*, *http://www.cifor.org/publications/pdf_files/Brief/5896-GenderClimateBrief.pdf*

[1035] African Biodiversity Network and the Gaia Foundation, *Celebrating African Rural Women: Custodians of Seed, Food and Traditional Knowledge for Climate Change Resilience,* https://www.gaiafoundation.org/app/uploads/2015/11/Celebrating-African-Rural-Women.pdf

[1036] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 14, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.

[1037] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 14, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.

[1038] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 2, adopted Dec. 18, 1979, 1249 U.N.T.S. 13.

[1039] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 15, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3

or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources."[1040]

- The Committee on Economic, Social and Cultural Rights (CESCR) General Comment 21 on the right of everyone to take part in cultural life recognizes that Indigenous [P]eoples have "the right to act collectively to ensure respect for their right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions" which may include a variety of manifestations, such as "sciences, technologies and cultures," including seeds.[1041]
- CESCR General Comment 17 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 includes "plant seeds or other means of food production" within the list of intellectual properties which must be protected.[1042]
- CESCR General Comment 12 on the right to adequate food emphasizes the need for food to be sustainable, meaning it must be accessible for both present and future generations.[1043]

c. Current Protections in Non-Binding International Human Rights Instruments

- Perhaps most prominently, the right to seeds is mentioned in the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP). The UNDROP recognizes that access to land, water, seeds, and other natural resources is an increasing challenge for rural people.[1044]
    - More extensively, Article 19 of the UNDROP states that peasants and other people working in rural areas have the right to seeds, including the rights to *maintain, control, protect,* and *develop* their own seeds and traditional knowledge.[1045]
    - States shall ensure that seeds of sufficient quality and quantity are available to peasants at the most suitable time for planting, and at an affordable price.[1046]
    - Additionally, states shall ensure that seed policies, plant variety protection and other intellectual property laws, certification schemes and seed marketing laws

[1040] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 11, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3

[1041] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 21: Right of everyone to take part in cultural life, ¶ 37, U.N. Doc. CESCR/C/12/GC/21 (Dec. 21, 2009).

[1042] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 17: 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, ¶ 35, U.N. Doc. CESCR/C/12/GC/21 (Dec. 21, 2009); Concept note for a general recommendation on the rights of Indigenous women ("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.")

[1043] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 12: Right to adequate food, ¶ 7, U.N. Doc. CESCR/C/12/GC/21 (Dec. 21, 2009).

[1044] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP"), G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

[1045] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP"), G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

[1046] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP"), G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

respect and take into account the rights, needs and realities of peasants and other people working in rural areas.[1047]

- UNDRIP affirms that Indigenous Peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, among which includes seeds.[1048]
- Seeds are also referred to as collective intellectual property, which under the American Declaration on the Rights of Indigenous Peoples (ADRIP), "Indigenous [P]eoples have the right to full recognition and respect for the ownership, dominion, possession, control, development and protection of their tangible and intangible cultural heritage and intellectual property, including its collective nature, transmitted over millennia from generation to generation."[1049]

d. Current Normative Content

- The right to seeds has been defined as the right to conserve, use, maintain and develop one's own seeds, crops and genetic resources, or those of their choice, as well as to save, store, transport, exchange, donate, sell, use and re-use farm-saved seeds, crops and propagating material.[1050]
- Those working in rural areas have the right to conserve, maintain and develop agricultural biodiversity, and the right to associated knowledge, including in crops and animal races.[1051]
- The right to seeds and biological diversity are interlinked with the right to land and natural resources.[1052]
- The right to seeds and biological diversity contain both freedoms and entitlements.[1053]
    - Freedoms include the collective right to continue sustaining peasants' and rural peoples' evolving relationship with plants, animals and nature; as well as the right to be free from interference in the enjoyment of these rights including the right to be protected from:
        - Genetic contamination, bio-piracy and theft;
        - Legal and de facto dispossession and destruction of peasants' seeds practices/systems; and
        - Measures threatening biological diversity and traditional knowledge.[1054]
    - The entitlements include:

[1047] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP"), G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

[1048] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.

[1049] American Declaration on the Rights of Indigenous Peoples, AG/RES.288 (XLVI-O/16), *adopted* June 15, 2016.

[1050] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP"), G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

[1051] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP"), G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

[1052] FIAN International, *The right to seeds and biological diversity: in the UNDROP,* https://www.fian.org/fileadmin/user_upload/droits_semences_UK_web.pdf (2016)

[1053] FIAN International, *The right to seeds and biological diversity: in the UNDROP,* https://www.fian.org/fileadmin/user_upload/droits_semences_UK_web.pdf (2016)

[1054] FIAN International, *The right to seeds and biological diversity: in the UNDROP,* https://www.fian.org/fileadmin/user_upload/droits_semences_UK_web.pdf (2016)

- The right to conserve, use, maintain, and develop peasants' own seeds, crops and genetic resources, as well as to save, store transport, exchange, donate, sell, use and re-use farm-saved seeds, crops and propagating material;
- The right to legal recognition and effective protection of autonomous peasants' seed systems;
- The right to maintain, create and develop seed practices/systems, autonomous agrarian, fishing, pastoral and agro-ecological systems and the knowledge associated to each of these systems upon which peasants' and other rural peoples' subsistence and the renewal of agricultural biodiversity depend;
- The right to conduct their own research, selection and innovation in relation to seeds and agro-biodiversity; and
- The right to participate in decision-making on matters related to the conservation and sustainable use of agricultural biodiversity.[1055]

III. State Actions Needed in New CEDAW General Recommendation on Indigenous Women and Girls

- States must ensure that Indigenous women and girls have the authority to manage and control their natural resources, within the framework of food sovereignty, and the adoption of effective policies to ensure that they have access to adequate food and nutrition.[1056]
- States parties must respect and protect the strong collective dimension of Indigenous Peoples' cultural life, which includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.[1057]
- Indigenous Peoples' cultural values and rights associated with their ancestral lands and their relationship with nature must be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity.[1058]
- States parties must take appropriate measures to remove and prohibit all forms of discrimination relating to the right to land, including those resulting from change of marital status, lack of legal capacity, or lack of access to economic resources.[1059]

[1055] FIAN International, *The right to seeds and biological diversity: in the UNDROP*, https://www.fian.org/fileadmin/user_upload/droits_semences_UK_web.pdf (2016)

[1056] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 64, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[1057] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 21: Right of everyone to take part in cultural life, ¶ 36, U.N. Doc. CESCR/C/12/GC/21 (Dec. 21, 2009).

[1058] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 21: Right of everyone to take part in cultural life, ¶ 36, U.N. Doc. CESCR/C/12/GC/21 (Dec. 21, 2009); Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("Tanto para las mujeres indígenas rurales y de urbanidad la tierra es un ser vivo.").

[1059] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP"), G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018); Petition by various organizations in Guatemala, Mexico, Honduras, Costa Rica, Panama, Colombia, Nepal, and Canada - PETICIÓN AL COMITÉ DE LA CEDAW: EMISIÓN DE UNA RECOMENDACIÓN GENERAL PARA GARANTIZAR EL RESPETO Y LA APLICACIÓN DE LOS DERECHOS INDIVIDUALES Y COLECTIVOS DE LAS MUJERES INDÍGENAS/ORIGINARIAS

- States parties must take appropriate measures to provide legal recognition for land tenure rights and ownership of land to Indigenous women.[1060]
- States parties must respect, protect, and promote Indigenous women's traditional knowledge and practices on Indigenous food production and livelihood systems, particularly the role of Indigenous women in preserving, using, and exchanging traditional and native seeds.[1061]
- States parties must also prohibit contractual requirements on the mandatory purchase of sterile (i.e., terminator) seeds, which prevent Indigenous women from storing and preserving seed.[1062]
- Moreover, States parties must adopt laws, policies and measures to promote and protect Indigenous women's diverse traditional agricultural practices and products, and provide support for marketing and linkages in the value chains.[1063]
- States parties must ensure that seed policies, plant variety protection and other intellectual property laws, certification schemes, and seed marketing laws respect and take into account the rights, needs, realities, and roles of Indigenous women in ensuring food sovereignty.[1064]
- Most methods of adaptation to the climate crisis involve some sort of technology: this can include "soft" technologies based on crop rotation patterns or traditional knowledge; it may also include "hard" technologies such as drought resistant seeds or irrigation systems. [1065]
- States parties must ensure Indigenous women's access to available resources for adaptation and mitigation to the climate crisis.
- State parties must effectively address threats to Indigenous food and livelihood systems such as criminalization of traditional livelihood practices (i.e. rotational/swidden farming), intrusion of monocrop plantations, and extractive industries.
- States must support the production of Indigenous food varieties and respect the right of Indigenous Peoples to choose appropriate and acceptable varieties to plant/cultivate/raise, especially basic food staples.

(2017) ("Prohibir todas las formas de discriminación contra la mujer considerando los derechos individuales y colectivos específicos de las mujeres indígenas/originarias al adoptar cualquier medida.").

[1060] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP"), G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

[1061] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 62, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[1062] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 62, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016); Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("Las mujeres indígenas debemos concientizarnos contra las semillas transgénicas (alimento) que están matando la madre tierra.").

[1063] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 66, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[1064] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP"), G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

[1065] *Fact Sheet: Women, Gender Equality and Climate Change*, UN WomenWatch (2009) https://www.un.org/womenwatch/feature/climate_change/downloads/Women_and_Climate_Change_Factsheet.pdf

IV. Comparison with State Actions in CEDAW General Recommendation 34

- General Recommendation No. 34 of CEDAW considers rural women's, which includes Indigenous women's, right to land and natural resources, including seeds, as fundamental human rights.[1066]
    - Barriers that prevent Indigenous women from enjoying these rights often include discriminatory laws, lack of harmonization of laws and ineffective implementation of laws at the national and local levels, as well as discriminatory cultural attitudes and practices.[1067]
- CEDAW General Recommendation 34 not only recognizes Indigenous women's right to seeds as a fundamental human right, but General Recommendation 34 more explicitly calls on State parties to protect Indigenous women's effective access to high quality seeds, including "the right of women to preserve, used, and exchange traditional and native seeds."[1068]
    - However, General Recommendation 34 seems to only protect Indigenous women's *access* to seeds.[1069]
    - For example, UNDROP protects Indigenous peoples' right to *maintain, control, protect,* and *develop* their own seeds and traditional knowledge.[1070]
    - UNDROP also emphasizes the right to the protection of traditional knowledge relevant to plant genetic resources for food and agriculture; the right to equitably participate in sharing the benefits arising from the utilization of those resources; the right to participate in decision-making relating to the conservation and sustainable use of those resources; and the right to save, use, exchange and sell their farm-saved seed or propagating material.[1071]
- General Recommendation 34 does not specifically mention seed policies, plant variety protection, patent rights and intellectual property rights of Indigenous women on seeds, or seed marketing laws.[1072]
- While General Recommendation 34 makes a number of recommendations in relation to the protection of peasant women's right to seeds, it fails to mention rural and Indigenous girls and their right to seeds.[1073]

[1066] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 56, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[1067] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 56, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[1068] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 56, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016); Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 62, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[1069] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[1070] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP"), G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

[1071] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP"), G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

[1072] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

[1073] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016).

The Right to Water of Indigenous Women and Girls[1074]

I. The Problem

a. General Overview

- Close to 1 billion persons lack access to a basic water supply.[1075] 2.5 billion persons lack access to adequate sanitation facilities.[1076] Lack of adequate sanitation facilities and poor hygiene can cause water-borne diseases, such as diarrhea, cholera, typhoid and several parasitic infections.[1077]
- Governments and companies typically fail to consult with Indigenous Peoples about development on their lands and water sources, in violation of their right to free, prior, and informed consent.[1078]
- For Indigenous women in particular, access to land, water, and other natural resources is sometimes dependent on marital status or a male guarantor.[1079]
- For Indigenous Peoples, water quantity and quality are not only ecological and health issues, but water also has traditionally and continuously been used in ceremonies to grow medicines, and for cleansing and purification.[1080]
- Access to safe drinking water is closely linked to Indigenous women's control over their ancestral lands, territories and resources. A lack of legal recognition or protection of these can have far-reaching implications for their enjoyment of the right to water and their rights as environmental defenders.[1081]

[1074] This narrative received contributions from Cameron Ewing, Denisse Córdova Montes, Tamar Ezer, Gabriela Valentín Díaz, Mary Miller, Abril Montero Dokser, Alicia Limtiaco, Igdalia Rojas, Maria Manuela Sequeira, and Natalia Caruso.

[1075] The Right to Water, Fact Sheet No. 35, UN Human Rights Office of the High Commissioner for Human Rights, 1 at https://www.ohchr.org/documents/publications/factsheet35en.pdf .

[1076] The Right to Water, Fact Sheet No. 35, UN Human Rights Office of the High Commissioner for Human Rights, 1 at https://www.ohchr.org/documents/publications/factsheet35en.pdf .

[1077] United Nations, UN-Water, Task Force on Gender and Water, Gender, Water, and Sanitation: A Policy Brief, Page 5, 26 May 2006, available at: https://www.unwater.org/publications/gender-water-sanitation-policy-brief/

[1078] Cultural Survival, *Rural Women's Right to Free, Prior, and Informed Consent, https://www.culturalsurvival.org/news/rural-womens-right-free-prior-and-informed-consent* (2016).

[1079] Cultural Survival, *Rural Women's Right to Free, Prior, and Informed Consent, https://www.culturalsurvival.org/news/rural-womens-right-free-prior-and-informed-consent* (2016); Concept Note for a General Recommendation on the Rights of Indigenous Women, ("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-industry and, in more serious cases, armed conflicts or the militarization of their land, is the violation of Indigenous Peoples' rights to water and food."); Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("El acceso al agua es cada vez más difícil.").

[1080] Kate Cave, Shianne McKay, *Water Song: Indigenous Women and Water*, https://www.resilience.org/stories/2016-12-12/water-song-indigenous-women-and-water/ (2016)

[1081] The Right to Water, Fact Sheet No. 35, UN Human Rights Office of the High Commissioner for Human Rights, 1 at https://www.ohchr.org/documents/publications/factsheet35en.pdf; World Conference of Indigenous Women, Lima Declaration, *Progress and Challenges Regarding the Future We Want,* (Oct. 2013) ("We will defend our lands, waters, territories and resources, which are the source of our survival, with our lives.")

- The forces of colonization have worked to create disconnects with the land and therefore the role of women and girls in water governance.[1082]
    - Natural water sources traditionally used by Indigenous Peoples may no longer be accessible because of land expropriation or encroachment.[1083]
- Lack of access to safe drinking water and sanitation affects rural and Indigenous women and girls in particular.[1084] Indigenous women and girls do most of the water collecting if drinking water is not available on the premises.[1085] When traditional sources of water are no longer accessible due to the climate crisis of environmental violence, Indigenous women and girls are forced to walk long distances to reach water sources and expose themselves to gender-based violence.
- Rural and Indigenous women are often excluded from decision-making concerning water and sanitation.[1086] As a result, their specific needs and circumstances are not taken into account in the development of water and sanitation programs.[1087]
- Women account for an average of 43 percent of the agricultural labor force in developing countries but in spite of this, water policies related to agriculture continue to wrongly assume that farmers are men, thus marginalizing women in water resource management.[1088]
- Water governance policies and processes often fail to take into account women's and men's multiple water needs and the gender-specific constraints.[1089]
    - Women's coping strategies to lift themselves out of poverty include the cleaning, conservation, storage and preparation of food, all of which require water.[1090]

[1082] Kate Cave, Shianne McKay, *Water Song: Indigenous Women and Water*, https://www.resilience.org/stories/2016-12-12/water-song-indigenous-women-and-water/ (2016)

[1083] The Right to Water, Fact Sheet No. 35, UN Human Rights Office of the High Commissioner for Human Rights, 1 at https://www.ohchr.org/documents/publications/factsheet35en.pdf .

[1084] The Right to Water, Fact Sheet No. 35, UN Human Rights Office of the High Commissioner for Human Rights, 1 at https://www.ohchr.org/documents/publications/factsheet35en.pdf; Oral Statement on Behalf of Indigenous Women Delegation, MADRE, *Follow up on the recommendations of the UN Permanent Forum Empowerment of Indigenous Women* (2017) ("We reiterate that the special theme of the next session should be water and the violence against water and the water protectors.")

[1085] The Right to Water, Fact Sheet No. 35, UN Human Rights Office of the High Commissioner for Human Rights, 1 at https://www.ohchr.org/documents/publications/factsheet35en.pdf .

[1086] The Right to Water, Fact Sheet No. 35, UN Human Rights Office of the High Commissioner for Human Rights, 1 at https://www.ohchr.org/documents/publications/factsheet35en.pdf .

[1087] The Right to Water, Fact Sheet No. 35, UN Human Rights Office of the High Commissioner for Human Rights, 1 at https://www.ohchr.org/documents/publications/factsheet35en.pdf .

[1088] UN Chronicle, *Women and Agricultural Water Resource Management, https://www.un.org/en/chronicle/article/women-and-agricultural-water-resource-management.*

[1089] UN Chronicle, *Women and Agricultural Water Resource Management, https://www.un.org/en/chronicle/article/women-and-agricultural-water-resource-management.*

[1090] UN Chronicle, *Women and Agricultural Water Resource Management, https://www.un.org/en/chronicle/article/women-and-agricultural-water-resource-management;* Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("La falta de agua pone en riesgo los sistemas alimentarios de los que dependen las mujeres indígenas, sus familias, las comunidades.").

b. The Impact of the Climate Crisis and Environmental Violence

- According to the Special Rapporteur, "Indigenous [P]eoples are among those who have contributed least to climate change, but are disproportionately vulnerable to its effects because many depend on ecosystems that are particularly prone to the effects of climate change."[1091] The climate crisis and environmental violence not only pose a threat to Indigenous Peoples' national resources and livelihoods, but also to their cultural identity and survival.[1092]
- The climate crisis and environmental violence, including changing ice and permafrost, wildfires, warming water temperatures, changes in precipitation and water levels, unpredictable weather, and land and resource grabbing, threatens to decimate food systems for rural and Indigenous Peoples.[1093]
- Warmer winters have been accompanied by significant decreases in snow and dropping water levels.[1094]
- The climate crisis also affects key habitable areas for certain fish, as their river and ocean migration, spawning, incubating, and rearing are sensitive to temperature increase and change in water levels.[1095]
- Extreme and unpredictable weather patterns make it more difficult and dangerous for rural and Indigenous women to access harvesting opportunities.[1096]
- Lack of access to safe drinking water and sanitation affects women in particular, for reasons including (but not limited to): that women often do most of the water collecting if water is not available, that water collected may be dirty or from unprotected sources, and that the heavy burden of carrying water can be detrimental to their health.[1097] When water is scarce, women and girls may have to travel longer distances to obtain water, and conditions can be more dangerous.[1098] Lack of physically clean water can "prohibit women and girls from

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[1091] Hmn. Rts. Council, Report of the Special Rapporteur on the rights of Indigenous Peoples, Paragraph 6, A/HRC/36/46 (2017).

[1092] Hmn. Rts. Council, Report of the Special Rapporteur on the rights of Indigenous Peoples, Paragraph 9, A/HRC/36/46 (2017).

[1093] Human Rights Watch, *"My Fear is Losing Everything": The Climate Crisis and First Nations' Right to Food in Canana*, https://www.hrw.org/report/2020/10/21/my-fear-losing-everything/climate-crisis-and-first-nations-right-food-canada#_ftn488 (2020).

[1094] Human Rights Watch, *"My Fear is Losing Everything": The Climate Crisis and First Nations' Right to Food in Canana*, https://www.hrw.org/report/2020/10/21/my-fear-losing-everything/climate-crisis-and-first-nations-right-food-canada#_ftn488 (2020) ("We get less snow in the mountains...hotter summers...last year were the lowest water levels in 100 years.")

[1095] Human Rights Watch, *"My Fear is Losing Everything": The Climate Crisis and First Nations' Right to Food in Canana*, https://www.hrw.org/report/2020/10/21/my-fear-losing-everything/climate-crisis-and-first-nations-right-food-canada#_ftn488 (2020) ("Salmon is...what we live from...Salmon is food security for us, that is no longer guaranteed.")

[1096] Human Rights Watch, *"My Fear is Losing Everything": The Climate Crisis and First Nations' Right to Food in Canana*, https://www.hrw.org/report/2020/10/21/my-fear-losing-everything/climate-crisis-and-first-nations-right-food-canada#_ftn488 (2020).

[1097]The Right to Water, Fact Sheet No. 35, UN Human Rights Office of the High Commissioner for Human Rights, 20 at https://www.ohchr.org/documents/publications/factsheet35en.pdf

[1098] United Nations, UN-Water, Task Force on Gender and Water, Gender, Water, and Sanitation: A Policy Brief, Page 3, 26 May 2006, available at: https://www.unwater.org/publications/gender-water-sanitation-policy-brief/

devoting time to the pursuit of education, income generation, and even the construction and management of water and sanitation facilities."[1099]

- Gendered impacts of the climate crisis, such as migration and water scarcity, are likely to affect women and girls in particular by placing them at greater risk of different types of discrimination and exploitation.[1100]
- Customary practices and traditions take place with or without the sanction of the formal legal system – if an Indigenous community's traditions exclude or discriminate against women, exclusionary practices can be entrenched, and inequality is perpetuated.[1101]
- Relating to water and natural resources, ownership is communal and temporary. Water rights are often associated with land use, and loss of the latter would mean a corresponding loss of water rights.[1102]

II. Current Protections in International Law

a. Current Protections in CEDAW

- In the Convention for Elimination of All Forms of Discrimination Against Women, Article 14 stipulates that State parties should ensure to women the right to "enjoy adequate living conditions, particularly in relation to . . . water supply."[1103] Here, CEDAW specifically pointed to the right to water being a component of adequate living conditions.
- Article 12 of CEDAW sets forth that States parties should take appropriate measures to "eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services."[1104]
    - CEDAW General Recommendation 24 on women and health sets forth that States parties should take all appropriate measures to "ensure adequate living conditions, particularly housing, sanitation, electricity and water supply . . . all of which are critical for the prevention of disease and promotion of good health care."[1105]
- CEDAW's Article 2 prohibits discrimination against women in all forms and ensures that States protect the "rights of women on an equal basis with men."[1106]

[1099] United Nations, UN-Water, Task Force on Gender and Water, Gender, Water, and Sanitation: A Policy Brief, Page 10, 26 May 2006, available at: https://www.unwater.org/publications/gender-water-sanitation-policy-brief/

[1100] Hmn. Rts. Council, Report of the Special Rapporteur on the rights of Indigenous Peoples, Paragraph 11, A/HRC/36/46 (2017).

[1101] Marco Ramazzotti, *Customary Water Rights and Contemporary Water Legislation: Mapping out the interface*, FAO, http://www.fao.org/3/a-bb109e.pdf (2008).

[1102] Marco Ramazzotti, *Customary Water Rights and Contemporary Water Legislation: Mapping out the interface*, FAO, http://www.fao.org/3/a-bb109e.pdf (2008) ("Most land (and water) disputes derive from the conflict between, on the one hand, expectations and ideas regarding property relations under customary systems and, on the other, the rights and privileges flowing from individualization, tilting and registration.")

[1103] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 14(2), *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.

[1104] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 12, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.

[1105] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 24: Article 12 of the Convention (Women and Health), ¶ 28, U.N. Doc. A/54/38/Rev.1, (1999)

[1106] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 2, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.

b. Current Protections in Other International Treaties

- The right to water is not specifically mentioned in the Universal Declaration of Human Rights, but may be interpreted under Article 25, which states "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing. . ."[1107]
- CESCR General Comment 15 recognizes the right to water is a prerequisite for the realization of other human rights, including that of an adequate standard of living, standard of health, and adequate food.[1108]
- In the International Covenant on Economic, Social, and Cultural Rights, Article 11 states that "the. . . parties. . . recognize the right of everyone to an adequate standard of living for himself and his family. . . and to the continuous improvement of living conditions."[1109] Again, the right is not explicitly stated, but can be inferred.
- In the International Covenant on Economic, Social, and Cultural Rights, Article 12 states that "the State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."[1110] CESCR General Comment 14, paragraph 4 points out that the right to health "embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health," including the access to safe and potable water and adequate sanitation.[1111] Moreover, ensuring access to "an adequate supply of safe and potable water" is part of the core content of the right to health, which must be realized immediately and is not dependent on resources.[1112]
- In the Convention on the Rights of the Child, Article 24 required that state parties combat disease and nutrition through provisions of "adequate nutritious foods and clean drinking water."[1113]
- In the International Covenant on Civil and Political Rights, Article 6 stated that "every human being has the inherent right to life," and that "this right shall be protected by law."[1114] Here, the right to water is not specifically mentioned, but it can be understood as falling under the inherent right to life. Under the Committee on Economic, Social, and

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[1107] Universal Declaration of Human Rights ("UDHR" art. 25, G.A. Re. 217 (III) A, U.N. Dec. A/810 (Dec. 10, 1948).

[1108] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraph 1.

[1109] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 11(1), *adopted* Dec. 16, 1966, 993 U.N.T.S. 3.

[1110] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 12(1), *adopted* Dec. 16, 1966, 993 U.N.T.S. 3.

[1111] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14, The Right to the Highest Attainable Standard of Health, Paragraph 4, 11 August 2000, E/C.12/2000/4, available at: https://www.refworld.org/pdfid/4538838d0.pdf .

[1112] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14, The Right to the Highest Attainable Standard of Health, para. 43(c), 11 August 2000, E/C.12/2000/4, available at: https://www.refworld.org/pdfid/4538838d0.pdf.

[1113] Convention on the Rights of the Child ("CRC") art 24(2), *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3.

[1114] International Covenant on Civil and Political Rights ("ICCPR") art. 6(1), *adopted* Dec. 16, 1966, 999 U.N.T.S. 171.

Cultural Rights, General Comment 15 states that "the human right to water is indispensable for leading a life in human dignity."[1115]

- The Right to Water was recognized in 2010 by the UN General Assembly in Resolution 64/292, which stated that the assembly "recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights."[1116]
- The right to safe drinking water was further affirmed in the Human Rights Council Resolution 15/9, which stated that the right was "derived from the right to an adequate standard of living and inextricably related to the right of the highest standard of physical and mental health, as well as the right to life and human dignity."[1117]

c. Current Protections in Non-Binding International Human Rights Instruments

- The United Nations Declaration on the Rights of Indigenous Peoples also recognizes this right in numerous places, and it can be inferred in others:
  - Article 21(1) states, "Indigenous Peoples have the right. . . to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security."[1118]
  - Article 24(2) states, "Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health."[1119]
  - Article 26(1) states, "Indigenous Peoples have the right to the lands, territories, and resources which they have traditionally owned, occupied or otherwise used or acquired."[1120]
- The American Declaration on the Rights of Indigenous Peoples recognizes the right in numerous places, and it can also be inferred in others:
  - Article 18(1) states, "Indigenous Peoples have the collective and individual right to the enjoyment of the highest attainable standard of physical, mental, and spiritual health."[1121]
  - Article 19(1) states, "Indigenous Peoples have the right to live in harmony with nature and to a healthy, safe, and sustainable environment, essential conditions for

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[1115] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11, available at: https://www.refworld.org/docid/4538838d11.html

[1116] United Nations General Assembly resolution 64/292, The Human Right To Water and Sanitation, A/Res/64/292, (28 July 2010), available from https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/479/35/PDF/N0947935.pdf?OpenElement .

[1117] United Nations Human Rights Council resolution 15/9, Human Rights and Access to Safe Drinking Water and Sanitation, GE.A/HRC/15/31/Add.1.0-16633 (October 2010), available from https://www.right-docs.org/doc/a-hrc-res-15-9/ .

[1118] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 21(1), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.

[1119] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 24(2), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.

[1120] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 246(1), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.

[1121] American Declaration on the Rights of Indigenous Peoples art. 18(1), AG/RES. 288 (XLVI- O/16), *adopted* June 15, 2016.

the full enjoyment of the rights to life and to their spirituality, cosmovision, and collective well-being."[1122]
    - Article 24(2) states, "Indigenous Peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired."[1123]
- The International Labor Organization – Indigenous and Tribal Peoples Convention No. 169 also recognized the right, and allowed it to be inferred:
    - Article 15 states, "The rights of the people concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources."[1124]

d. Current Normative Content

- Water is fundamental to every aspect of the lives of rural and Indigenous women and girls from individual health and well-being to the ability to enjoy traditional lands and territories in a manner consistent with their respective cultures, teachings, understandings and legal orders.[1125]
    - Water is necessary for the realization of Indigenous women's right to self-determination—to produce food (right to adequate food) and ensure environmental hygiene (right to health),[1126] for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life).[1127]
    - Attention should be given to ensuring that disadvantaged and marginalized Indigenous women food producers have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology.[1128]
- CESCR General Comment 15 interpreted the Right to Water as guaranteeing access to safe drinking water and to adequate sanitation.[1129] It further defined the right to water as "the right of everyone to acceptable and physically accessible and affordable water for domestic use" and stated that the right to water is a "prerequisite for the realization of other human rights."[1130]

[1122] American Declaration on the Rights of Indigenous Peoples art. 19(1), AG/RES. 288 (XLVI- O/16), *adopted* June 15, 2016.

[1123] American Declaration on the Rights of Indigenous Peoples art. 24(2), AG/RES. 288 (XLVI- O/16), *adopted* June 15, 2016.

[1124] Int'l Labour Organization [ILO], *Indigenous and Tribal Peoples Convention*, art. 15(1) (1989).

[1125] Native Women's Association of Canada, *The right to water Nacosar and Indigenous women*, *https://www.nwac.ca/wp-content/uploads/2015/05/2010-NWAC-Right-to-Water-NACOSAR-and-Indigenous-Women-Report.pdf* (2010)

[1126] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. ¶ 6

[1127] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. ¶ 6

[1128] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. ¶ 7

[1129] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. ¶ 1-2.

[1130] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. ¶ 2.

    - The right to water contains freedoms, such as the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies.[1131]
    - The right to water contains entitlements, such as the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.[1132]
- "The elements of the right to water must be adequate for human dignity, life and health."[1133]
- The right to water should be adequate for human dignity, including being available, high quality, and accessible .[1134] Water should be available, in that the water supply should be sufficient for each person and continuous for both personal and domestic uses.[1135] Water should be high quality, in that it should be free from micro-organisms, chemical substances, and radiological hazards, as well as an acceptable color, odor, and taste.[1136] Water should be accessible to everyone, which includes being physically accessible by being within safe physical reach, and economically accessible by being affordable to all.[1137]
- States must guarantee that the right to water is enjoyed without discrimination.[1138] This is an obligation of immediate effect and not dependent on resources.[1139]
- "Indigenous Peoples' access to water resources on their ancestral lands is protected from encroachment and unlawful pollution. States should provide resources for Indigenous Peoples to design, deliver and control their access to water." [1140]
- Sustainable access to water resources for agriculture is essential to realize the right to adequate food.[1141]
    - The Protocol to the African Charter on Human and Peoples' Right on the Rights of Women in Africa explicitly highlights the need for States Parties to provide women with access to clean drinking water and the means of producing nutritious food.[1142]

[1131] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. ¶ 10.

[1132] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. ¶ 10.

[1133] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraph 11.

[1134] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraphs 11-12.

[1135] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraph 12(a).

[1136] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraph 12(b).

[1137] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraph 12(c).

[1138] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11, para. 13.

[1139] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11, para. 17.

[1140] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. para. 16(d).

[1141] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. ¶ 7.

[1142] Protocol to the African Charter on Human and Peoples' Right on the Rights of Women in Africa ("Maputo Protocol") art. 15, *adopted* July 11, 2013.

- The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, program or strategy concerning water.[1143]
    - Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.[1144]

III. State Actions Needed in New CEDAW General Recommendation on Indigenous Women and Girls

- States must take deliberate, concrete and targeted steps to the maximum of their available resources to realize the right to water.[1145]
- While there is a strong presumption that retroactive measures are prohibited, if any deliberate retrogressive measures are taken, the State has the burden of proving that they were introduced after careful consideration of potential alternatives and that they are justified based on the consideration of other rights in CESCR.[1146]
- States must respect the right to water by refraining from interfering directly or indirectly with the enjoyment of the right to water, in ways such as refraining from participating in activities that denies or limits equal access to water, interfering in arrangements for water allocation, unlawfully diminishing or polluting water, or limiting access to water services.[1147]
- States must protect the right to water, by preventing third parties from interfering with the enjoyment of that right in ways such as adopting legislative measures to restrain and prevent third parties from denying equal access to water.[1148]
- States must ensure tenure of Indigenous women over their lands, territories, and resources to be able to manage and protect their water resources based on their customary and sustainable water management systems.
- States must fulfill the right to water, by facilitating, promoting, and providing water to those in need when required. Facilitating requires the state to take positive measures to assist in the enjoyment of that right, while promotion obliges the state to provide

[1143] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. ¶ 48.

[1144] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. ¶ 48.

[1145] Hmn. Rts. Council, Report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Paragraph 7, A/HRC/45/10 (2020); Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("[D]ebe recomendar a los Estados que se reconozcan y garanticen los derechos al agua . . . como derechos fundamentales.").

[1146] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraph 19.

[1147] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraph 21; Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("La protección de los ríos es necesaria y que no se contamine con químicos de las empresas.").

[1148] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraph 23-24.

appropriate education regarding water use, and providing requires the state to fulfil the right to those who are unable to realize the right by themselves.[1149]

- The right to water includes core obligations that are not dependent on the availability of resources. This entails ensuring access to the minimum essential amount of water that is sufficient and safe for personal and domestic uses, ensuring access is based on a non-discriminatory basis, ensuring physical access to water facilities, ensuring personal security is not threatened when having this physical access, ensuring equitable distribution of facilities and services, adopting and implementing a national water strategy and plan of action for the whole population, monitoring the extent of the realization or non-realization of the right, adopting low-cost targeted water programs aimed at Indigenous groups, with an emphasis on Indigenous women and girls, and taking measures aimed at the control and treatment of water linked diseases.[1150]
- States must take steps to remove discrimination in regard to the right to water.[1151] States must ensure that the allocation of resources facilitate access to water for all members of society and provide water to those that do not have sufficient means to achieve their right to water.[1152] States must give special attention to individuals or groups who have traditionally faced difficulties in exercising the right, including women, children, and Indigenous Peoples amongst others.[1153] States need to enact progressive realization strategies in order to address inequalities in the distribution of water.[1154]
- Governments need to have a clear commitment to both incorporate water and sanitation programs into their national development strategies, as well as ensure that a gender perspective is included into this agenda.[1155] National governments must promote access to sanitation and ensure that the overall national sanitation framework is gender-sensitive.[1156] States must monitor compliance and implementation of programs related to the right to water.[1157]
- Governments have the responsibility to develop national strategies and plans of action to realize the right to water. National strategies must define clear objectives, set goals and the timeframe for those goals, and formulate benchmarks and indicators to measure

[1149] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraph 25.
[1150] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraph 37.
[1151] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraph 13.
[1152] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraph 14-15; Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("[D]ebe recomendar a los Estados parte la recuperación del agua como un bien público.").
[1153] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraph 16.
[1154] Hmn. Rts. Council, Report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Paragraph 6, A/HRC/45/10 (2020).
[1155] United Nations, UN-Water, Task Force on Gender and Water, Gender, Water, and Sanitation: A Policy Brief, Page 11, 26 May 2006, available at: https://www.unwater.org/publications/gender-water-sanitation-policy-brief/
[1156] United Nations, UN-Water, Task Force on Gender and Water, Gender, Water, and Sanitation: A Policy Brief, Page 11, 26 May 2006, available at: https://www.unwater.org/publications/gender-water-sanitation-policy-brief/
[1157] Hmn. Rts. Council, Report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Paragraph 63, A/HRC/45/10 (2020).

progressive realization. The formulation and implementation of these strategies must respect the principles of non-discrimination and participation.[1158] States must monitor the realization of the right to water and must identify factors and difficulties affecting implementation.[1159]
    - Where there is an inadequate protection of communal and customary property rights under the law, possible approaches could be taking stock of the various groups claiming use of water resources and securing their rights to the commons.[1160]
    - This is particularly important with respect to possible inequalities heightened by factors such as gender, that pervade customary practices and affect access to water resources.[1161]
- States must recognize that any person or group who has been denied their right to water must have access to judicial or other appropriate remedies at both the national and international level. They must further recognize that those denied the right must be entitled to adequate reparation.[1162]
- States must develop and implement gender-responsive policies, budgets, and regulations that address the specific needs of Indigenous women and girls. Further, it is necessary to address the specific gendered circumstances that act as barriers to the realization of those rights for Indigenous women and girls in practice.[1163] National governments must mobilize resources to improve access to safe water and sanitation specific to Indigenous women and girls.[1164] National governments must strengthen legislation and facilitate access to land and water for productive uses with a focus on Indigenous women and girls and include women in the decision-making process.[1165] States must guarantee women the right to be a part of the decision-making processes concerning water resources and entitlements.[1166]
- States must provide resources for Indigenous Peoples to design, deliver, and control their access to water.[1167]

[1158] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraphs 47-48.
[1159] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraphs 52-54.
[1160] Marco Ramazzotti, *Customary Water Rights and Contemporary Water Legislation: Mapping out the interface*, FAO, http://www.fao.org/3/a-bb109e.pdf (2008).
[1161] Marco Ramazzotti, *Customary Water Rights and Contemporary Water Legislation: Mapping out the interface*, FAO, http://www.fao.org/3/a-bb109e.pdf (2008).
[1162] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraph 57.
[1163] Hmn. Rts. Council, Report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Paragraph 51, A/HRC/45/11 (2020).
[1164] United Nations, UN-Water, Task Force on Gender and Water, Gender, Water, and Sanitation: A Policy Brief, Page 11, 26 May 2006, available at: https://www.unwater.org/publications/gender-water-sanitation-policy-brief/; Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("Los establecimientos educacionales deben tener . . . agua potable.").
[1165] United Nations, UN-Water, Task Force on Gender and Water, Gender, Water, and Sanitation: A Policy Brief, Page 11, 26 May 2006, available at: https://www.unwater.org/publications/gender-water-sanitation-policy-brief/
[1166] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraph 16(a).
[1167] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraph 16(d).

- States must adopt comprehensive programs to ensure sufficient water for future generations by assessing the impacts of actions that may impinge upon water availability and natural ecosystems, such as the climate crisis.[1168] States must develop national plans, policies, and programs to address the climate crisis, while fully engaging Indigenous Peoples and Indigenous women in their design. States must take all necessary measures to mitigate the adverse consequences of the climate crisis on the right to food and to water of Indigenous Peoples.[1169]
- States must effectively protect Indigenous Peoples' right to free, prior, and informed consent in regards to hydroelectric and other development projects.

IV. Comparison with State Actions in CEDAW General Recommendation 34

- CEDAW General Recommendation34 recognizes rural women's and girls' and Indigenous women's and girls' water and sanitation as not only essential rights in themselves, but as keys to the realization of a wide range of other rights, including food, health, participation and education.[1170]
- CEDAW General Recommendation 34 primarily focuses on the *accessibility* of water.[1171]
    - CESCR General Comment 15 emphasizes the importance of water being available, accessible and of good *quality*.[1172]
        - *Availability.* The water supply must be sufficient and continuous for domestic and personal uses.[1173]
        - *Accessibility.* Water and water services must be physically and economically accessible, without discrimination.[1174]
        - *Quality.* Water must be safe, therefore free from micro-organisms, chemicals, and other hazards.[1175]
- CEDAW General Recommendation 34 could better recognize the importance of non-consumptive uses of water – including the centrality of water in a biological habitat, its cultural value used as a source of healing by many Indigenous Peoples, and its aesthetic value.[1176]

[1168] Hmn. Rts. Council, Report of the Special Rapporteur on the rights of Indigenous Peoples, Paragraph 51, A/HRC/36/46 (2017).

[1169] Hmn. Rts. Council, Report of the Special Rapporteur on the rights of Indigenous Peoples, Paragraph 27, A/HRC/36/46 (2017).

[1170] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 81, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016)

[1171] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34 on the rights of rural women, ¶ 82, U.N. Doc. CEDAW/C/GC/34 (Mar. 04, 2016)

[1172] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraphs 11-12.

[1173] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraph 12.

[1174] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraph 12.

[1175] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraph 12.

[1176] Julie Nania & Julia Guarino, Restoring Sacred Waters: A Guide to Protecting Tribal Non-Consumptive Water Uses in the Colorado River Basin (Getches-Wilkinson Ctr. for Natural Res., Energy, and the Env't, Univ. of Colo. Law Sch. 2014).

- For example, CESCR General Comment 15 has recognized that water is "essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life)," while personal and domestic uses must take priority.[1177]

The Right to a Healthy Environment of Indigenous Women and Girls[1178]

I. The Problem

a. General Overview

- The consequences of environmental damage are disproportionately felt by Indigenous women and girls, because they are commonly at the overlap of gender, economic, and environmental discrimination. Indigenous women and girls' inequality in access to education, justice, land, water, health care and social protection increase their exposure to negative effects of the climate crisis.[1179] These gender-based inequalities, merged with ethnic discrimination, limit Indigenous women and girls' access to information, resources and assets for preventing or recovering from environmental disaster.[1180]
- Indigenous Peoples, especially women and girls, are more deeply affected by the climate crisis, including displacement. This climate-induced displacement of Indigenous Peoples exacerbates pre-existing gender inequities, resulting in economic instability, land disputes and lack of access to basic infrastructure and services, leading to increased rates of gender-based violence (GBV), such as domestic violence, sexual abuse, trafficking, and environmental violence, against Indigenous women and girls.[1181]

[1177] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11. Paragraph 6.

[1178] This narrative received contributions from Braelyn Saumure, Denisse Córdova Montes, Tamar Ezer, Gabriela Valentín Díaz, Mary Miller, Abril Montero Dokser, Alicia Limtiaco, Ellen Bangoa, Igdalia Rojas, Maria Manuela Sequeiro, and Natalia Caruso.

[1179] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 37: General recommendation on the gender-related dimensions of disaster risk reduction in the context of climate change, ¶ 1, U.N. Doc. CEDAW/C/GC/37 (Mar. 13, 2018).

[1180] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 37: General recommendation on the gender-related dimensions of disaster risk reduction in the context of climate change, ¶ 1, U.N. Doc. CEDAW/C/GC/37 (Mar. 13, 2018); *Oral Statement on behalf of Indigenous Women Delegation*, 16TH SESSION OF THE UN PERMANENT FORUM ON INDIGENOUS ISSUES (Apr. 24, 2017) ("Madam chair, we all know that Indigenous women globally are at the forefront of movements to model sustainable environmental solutions and are key in using these models to halt climate in their land and territories. They do this with the knowledge that they and their communities bear many of the worst impacts of climate change. We however note with concern that women and girls still continue facing inequality, discrimination, and often do not have the sufficient means to adequately research, access, and implement climate change adaptation and mitigation practices.").

[1181] Int'l Labour Organization [ILO], *Indigenous peoples and climate change*, (2017), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.; UN Department of Economic and Social Affairs Indigenous People, *Environment*, https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/environment.html; *World Conference of Indigenous Women Progress and Challenges Regarding the Future We Want*, MUJER INDIGENA, CHIRAPAQ, ECMIA (Oct. 28, 2013) ("We are subject to all forms of violence, such as domestic violence and sexual abuse, including in the contexts of trafficking, armed conflict, environmental violence and extractive industries.").

- The actions of private actors, like fossil fuel companies, also cause significant effects on the right to a healthy environment of Indigenous women and girls.[1182]
- Majority of the world's subsistence farmers are rural Indigenous women, tending to land more prone to adverse climatic events than their male counterparts. Thus, environmental erosion and disaster disparately impact the livelihood and food security and sovereignty of Indigenous women and girls.[1183]
- Environmental violence, such as exposure to pesticides, has been proven to cause disproportionate rates of disease and cancer and intergenerational reproductive health issues in Indigenous women and girls.[1184]
- Indigenous rural women possess traditional knowledge on environmental adaptation and mitigation that may aid in the capacity of rural areas to adapt to the climate crisis but are frequently excluded from decision-making processes.[1185] The recognition of the right to a healthy environment will present Indigenous women and girls a means of implementing this knowledge, as well as serve as a protection of their cultural, social, and economic rights.
- Indigenous girls are at risk of many of the same disproportionate impacts and environmental harms as Indigenous women. This is especially true in light of roles girls occupy in their communities. For example, droughts disproportionately affect Indigenous girls because of their role in collecting water.
- Exposure to toxins, pollution or other environmental degradation in childhood has permanent consequences, such as increased likelihood of cancer and other diseases, and diminished mental capacity.[1186] Because various environmental harms often occur in close proximity to (or on) Indigenous land, and due to the aforementioned gender inequalities, the health of Indigenous girls is at a heightened risk.

II. Current Protections in International Law

a. Current Protections in CEDAW

- The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) does not explicitly mention the right to a healthy environment; however, the right to a healthy environment is implicitly present in CEDAW through virtue of articles 12 and 14.[1187]
- Article 14 of CEDAW states "States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic

[1182] Hum. Rts. Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, ¶ 55 & 92 U.N. Doc. A/73/188 (2018).
[1183] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 37: General recommendation on the gender-related dimensions of disaster risk reduction in the context of climate change, ¶ 1, U.N. Doc. CEDAW/C/GC/37 (Mar. 13, 2018).
[1184] Andrea Carmen, *Environmental Violence: Impacts on Indigenous Women and Girls*, (2017) https://academiccommons.columbia.edu/doi/10.7916/D80V9MDW.
[1185] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 37: General recommendation on the gender-related dimensions of disaster risk reduction in the context of climate change, ¶ 1, U.N. Doc. CEDAW/C/GC/37 (Mar. 13, 2018).
[1186] Hum. Rts. Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, ¶ 41(b) U.N. Doc. A/37/59 (2018).
[1187] *See* Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 12 & 14, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.

survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas."[1188]

- Article 14 further guarantees rural women other rights "on a basis of equality of men and women, that they participate in and benefit from rural development," and ensures specific access to other rights like the enjoyment of "adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications."[1189]
- General Recommendation 34, which is the authoritative interpretation of article 14 of CEDAW, contains many of the key normative provisions of the right to a healthy environment, including access to safe water and other resources, adequate sanitation and healthy and sustainably produced food.[1190]
- Article 12 of CEDAW deals with women's right to health and states "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning." While this does not explicitly include the right to a healthy environment, General Recommendation 24, which is the authoritative interpretation of article 12 of CEDAW dealing with women's right to health, also contains some of the normative content of the right to a healthy environment. For example, General Recommendation 24 states article 12 obliges "States parties to take all appropriate measures to ensure adequate living conditions, particularly housing, sanitation, electricity and water supply, transport and communications, all of which are critical for the prevention of disease and the promotion of good health care."[1191]
- General Recommendation 24 also states "the full realization of women's right to health can be achieved only when States parties fulfil their obligation to respect, protect and promote women's fundamental human right to nutritional well-being throughout their lifespan by means of a food supply that is safe, nutritious and adapted to local conditions."[1192]
- CEDAW's Article 2 prohibits discrimination against women in all forms and ensures that States protect the "rights of women on an equal basis with men."[1193]

b. Current Protections in Other International Treaties

- There are limited explicit provisions regarding the right to a healthy environment in international instruments. It could be interpreted in the Universal Declaration of Human Rights (UDHR)'s protection of right to life or as inherent in the recognition of "[the] right

[1188] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 14(2)(h), *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.
[1189] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 12 & 14, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.
[1190] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).
[1191] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 12 , *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13; Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 24: Article 12 of the Convention (Women and Health), ¶ 28, U.N. Doc. A/54/38/Rev. 1 (1999).
[1192] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 24: Article 12 of the Convention (Women and Health), ¶ 7, U.N. Doc. A/54/38/Rev. 1 (1999).
[1193] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 2, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.

to a standard of living adequate for the health and well-being of himself […]" of Article 25 (1).[1194] The General Assembly pointed to this provision as the basis for its resolution on the need to ensure a healthy environment for the well-being of individuals.[1195]

- The right to a healthy environment can be inferred from the International Covenant on Economic, Social, and Cultural Rights (ICESCR) Article 12(2)'s recognition of the necessity of "the improvement of all aspects of environmental and industrial hygiene" to fully realize the right to physical and mental health.[1196] The General Assembly additionally referenced ICESCR in their resolution regarding a healthy environment.[1197]
- The Committee on Economic, Social and Cultural Rights General Comment 14 states that "the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as […] a healthy environment."[1198]
- As of March 2020, 110 States have constitutionally protected the right to a safe, clean, healthy and sustainable environment.[1199]
- The Convention on the Rights of the Child (CRC) acknowledges the State's responsibilities to inform and educate "all segments of society" on environmental sanitation to fulfill this "right of the child to the enjoyment of the highest attainable standard of health".[1200]

c. Current Protections in Non-Binding International Human Rights Instruments

- Explicitly located in the Stockholm Declaration as a fundamental right necessary for the enjoyment of other recognized rights in "an environment that permits a life of dignity and well-being"[1201] and in Principle 1 of the subsequent Rio Declaration, which noted that humans are "entitled to a healthy and productive life in harmony with nature."[1202]
- The right has been recognized regionally. Article 24 of the Banjul Charter states that "[a]ll peoples shall have the right to a general satisfactory environment favorable to their development."[1203] The Protocol of San Salvador recognized the right in Article 11 (1), which states that "Everyone shall have the right to live in a healthy environment and have access to basic public services."[1204]

[1194] Universal Declaration of Human Rights ("UDHR") art. 3 and 25(1), G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948).
[1195] G.A. Res. 45/94, (Dec. 14, 1990).
[1196] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 12(2), *adopted* Dec. 16, 1966, 993 U.N.T.S. 3.
[1197] G.A. Res. 45/94, (Dec. 14, 1990).
[1198] Comm. On Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), ¶ 4, U.N. Doc. CESCR/C/12/Rev. 2000/Add. 4 (Aug. 11, 2000).
[1199] Hum. Rts. Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, ¶ 23 U.N. Doc. A/73/188 (2018).
[1200] Convention on the Rights of the Child ("CRC") art 24., *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3.
[1201] UN General Assembly, Declaration of the United Nations Conference on the Human Environment ("Stockholm Declaration") art 1, UN Doc. A/CONF.48/14/Rev.1 (1972).
[1202] U.N. Comm'n on Human Rights, 1992 Rio Declaration on Environment and Development ("Rio Declaration") UN Doc. A/CONF.151/26 (vol. I), 31 ILM 874 (1992)
[1203] African Charter on Human and Peoples' Rights ("Banjul Charter") art. 24, *adopted* June 27, 1981, 1520 U.N.T.S. 217, I.L.M. 58 (1982).
[1204] Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights ("Protocol of San Salvador"), art. 11 (1) Nov. 17, 1988.

- The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) acknowledges the rights of Indigenous Peoples "to the conservation and protection of the environment and the productive capacity of their lands."[1205]
    - UNDRIP Article 32 mandates that States take measures to provide redress for the exploitation of Indigenous lands, and that "appropriate measures shall be taken to mitigate adverse environmental […] impact."[1206]
- Explicitly stated in Article 19(1) of the American Declaration on the Rights of Indigenous Peoples (ADRIP) as a right of Indigenous Peoples "to live in harmony with nature and to a healthy, safe and sustainable environment" as essential for their full enjoyment of rights to life and spirituality.[1207]

d. Current Normative Content

- "The substantive elements of this right include a safe climate, clean air, clean water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems."[1208]
- The normative content of this right is its employment for the "greening" of other human rights.[1209] Human rights bodies, special rapporteurs, treaty bodies and other international actors have reported how environmental degradation interferes with a broad range of existing human rights, such as the rights to life, culture, health, food, water, property and self-determination. The Special Rapporteur on Human Rights and the Environment explained the way human rights bodies "greened" human rights through their elaboration "on the understanding that a healthy environment is of fundamental importance to the full enjoyment of a vast range of human rights."[1210]
    - The Stockholm Declaration first acknowledged the connection between human rights and the right to a healthy environment, proclaiming that people's environment is "essential to his well-being and to the enjoyment of basic human rights-even the right to life itself."[1211]
    - Principle 25 of the Rio Declaration recognizes the right as crucial to other rights, asserting "[p]eace, development and environmental protection are interdependent and indivisible."[1212]
- The right to a healthy environment is inherently a collective right, as it applies to communities and not just individuals. The collective dimension of this right has been primarily recognized as an inherent right of Indigenous Peoples by several regional commissions and courts.

[1205] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[1206] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[1207] American Declaration on the Rights of Indigenous Peoples, AG/RES. 288 (XLVI-O16), *adopted* June 15, 2016.
[1208] Hum. Rts. Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, ¶ 43 U.N. Doc. A/73/188 (2018).
[1209] "Greening" refers to the application of already existing rights (such as the right to health, or the right to life) and applying them to within the context of environmental issues.
[1210] Hum. Rts. Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, ¶ 13 U.N. Doc. A/73/188 (2018).
[1211] UN General Assembly, Declaration of the United Nations Conference on the Human Environment ("Stockholm Declaration") art 1, UN Doc. A/CONF.48/14/Rev.1 (1972).
[1212] U.N. Comm'n on Human Rights, 1992 Rio Declaration on Environment and Development ("Rio Declaration") UN Doc. A/CONF.151/26 (vol. I), 31 ILM 874 (1992)

- The African Commission on Human and People's Rights ruled that pollution caused by the oil industry violated the right of the Ogoni peoples to a healthy environment under the African Charter.[1213]
- The Inter-American Court of Human Rights held that under the Protocol of San Salvador, the right protects individuals and collectives, including future generations.[1214] The Court recently held that the failure of Argentina's government to stop degradation on Indigenous land constituted a violation of the impacted Indigenous Peoples' autonomous right to a healthy environment under the Pact of San Jose.[1215]

III. State Actions Needed in New CEDAW General Recommendation on Indigenous Women and Girls

- The Special Rapporteur on Human Rights and the Environment has produced multiple reports recognizing this right and urging the international system to explicitly acknowledge and implement it.[1216]
  - The obligation of States to respect, protect and fulfill human rights extends to the environmental context.[1217] Within this right, States must respect human rights by refraining from causing environmental harm. States must protect against harmful environmental interference by outsiders, including private actors, businesses and even natural causes.[1218] States must actively enforce compliance with existing standards and punish violators. Additionally, States must respect and protect Indigenous women and girls, who experience a disproportionate share of the burden of environmental degradation and lack adequate access to essential environmental resources such as adequate sanitation and clean water. States must fulfill this right by taking positive actions, such as creating further environmental regulations, with a goal of ensuring an equal level of environmental quality for all of society.[1219]
- States must address the actions of the fossil fuel industry, extractive industries, monoculture agro-industrial plantations, big hydropower dams and even infrastructures (i.e. roads), among others, affecting the integrity of the environment in Indigenous Peoples territories by enacting laws that limit their industry and terminate subsidies.[1220]

[1213]Hum. Rts. Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, ¶ 35 U.N. Doc. A/73/188 (2018).
[1214] Hum. Rts. Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, ¶ 35 U.N. Doc. A/73/188 (2018).
[1215] *Inter-American Court Decides First Environmental Rights Case Against Argentina*, INTERNATIONAL JUSTICE RESOURCE CENTER (Apr. 8 2020), https://ijrcenter.org/2020/04/08/inter-american-court-decides-first-environmental-rights-case-against-argentina/
[1216]*See generally htt*ps://www.ohchr.org/en/Issues/environment/SRenvironment/Pages/SRenvironmentIndex.aspx.
[1217] Hum. Rts. Council, Res. 34/20, (Apr. 6, 2017).
[1218] Hum. Rts. Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, ¶ 5 U.N. Doc. A/37/59 (2018).
[1219] Hum. Rts. Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, ¶ 23 U.N. Doc. A/73/188 (2018); *World Conference of Indigenous Women Progress and Challenges Regarding the Future We Want*, MUJER INDIGENA, CHIRAPAQ, ECMIA (Oct. 28, 2013) ("We often bear the burden of social and environmental harms arising from the consistent denial and violation of our human rights and the lack of implementation and accountability of States.").
[1220] Hum. Rts. Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, ¶ 77 U.N. Doc. A/73/188 (2018).

- States must facilitate and make compulsory of the participation of Indigenous women, who are often excluded from the decision-making processes that disproportionately impact them, in the creation and execution of environmental policies.[1221] This must include Indigenous women's participation in the development of policies that support gender and climate equity including equitable benefit sharing accounting, values and practice for Indigenous cultural values.[1222]
- States must respect Indigenous women's rights to free, prior and informed consent in order to address environmental violence.[1223] States must hold businesses accountable for "not involving Indigenous Peoples in a free, prior, informed consent mechanism prior to engaging in any development projects [on their lands]," territories, and resources. [1224]
- Indigenous women are the best guardians of Mother Earth and already possess the knowledge to ensure the sustainability of the world's biodiversity.[1225] This knowledge must be protected.[1226] States must uproot discrimination that persists against Indigenous women and girls because this discrimination hampers the enjoyment of all cultural and customary rights, including the right to the preservation and practice of Indigenous practices, including spiritual practices.[1227]
- The international system must formally acknowledge the right to a healthy environment, and how it affects other recognized rights. Building recognition from an international level would reinforce State actions and result in reduced environmental injustices, greater public

[1221] Hum. Rts. Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, ¶ 41(b) U.N. Doc. A/37/59 (2018); *Oral Statement on behalf of Indigenous Women Delegation*, 16TH SESSION OF THE UN PERMANENT FORUM ON INDIGENOUS ISSUES (Apr. 24, 2017) ("Urge the UN Permanent Forum to work closely with other UN Agencies in collaboration with Indigenous Peoples Organization to establish a monitoring mechanism that oversees the implementation of UN Declaration on the Rights of Indigenous Peoples and the actions taken in ensuring free, prior informed consent in development process. And to provide resources and technical assistance to Indigenous women to conduct research and monitor the processes at the local, national and regional level.").

[1222] *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("States should . . . [e]xpand engagement from non-Western cultures to develop and shape policies in support of gender equity and climate adaptation that include women's traditional leadership roles and cultural values.").

[1223] *Toolkit for Effective Advocacy, From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions*, Indigenous Women's organizations.

[1224] MADRE and Rosa Luxemburg Stiftung, *Statement on behalf of Indigenous Women Delegation: 17th Session of the UN Permanent Forum on Indigenous Issues* (Apr. 18, 2018).

[1225] *Lima Declaration: The Indigenous Women Towards Inclusion and Visibility!*, World Conference of Indigenous Women Progress and Challenges Regarding the Future We Want, (Lima, 28-30 October 2013) ("We, Indigenous women, affirm our responsibility to protect the Earth, our Mother. Indigenous women experience the same pain and impacts from the physical abuse and excessive exploitation of the natural world, of which we are an integral part. We will defend our lands, waters, territories and resources, which are the source of our survival with our lives.").

[1226] Hum. Rts. Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, ¶ 86 U.N. Doc. A/73/188 (2018); *Systematization, Inputs for agreed language towards the General Recommendation on Indigenous Women and Girls*, FIMI (Oct. 12, 2020) ("Although Indigenous Women hold important knowledge for mitigation and adaptation, they remain underrepresented in environmental policymaking at multiple levels environmental violence caused by large development projects, extractive industries, agribusiness and military contamination on IP's territories are having alarming consequences on IW's health, including reproductive health, and spiritual well-being.").

[1227] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 21: Right of everyone to take part in cultural life, ¶ 23, 44, U.N. Doc. CESCR/C/12/GC/21 (Dec. 21, 2009); Memorandum from Rebecca Pendleton on Notes from CEDAW Expert Meeting on Indigenous Women Rights (MADRE, FIMI, CWGL, WHRI) (Mar. 15, 2019) (on file with author) ("There needs to be more positive cultural rights. States need to understand traditional birthing with midwives and indigenous traditional medicines, because as of today there is a lot discrimination around these practices.").

participation in the protection of the environment and improve the global environmental performance. International recognition could also create a principal forum for addressing human rights, including collective rights, violations caused by environmental destruction.[1228]

- Recognizing the right to a healthy environment would respect and promote the procedural rights of Indigenous Peoples with respect to the right to a healthy environment, including access to information, access to justice and public participation.

IV. Comparison with CEDAW General Recommendation 34

- General Recommendation 34 mentions that States should ensure that rural women, which includes Indigenous women, have a "safe, clean and healthy environment."[1229]
- Furthermore, the General Recommendation says States should address specific threats posed to rural and Indigenous women by the climate crisis.[1230]
- General Recommendation 34 further states Indigenous women are entitled to adequate living conditions, including sanitation, access to clean water and adequate food and nutrition.[1231] However, a "healthy environment" is not defined and it is not referred to as a right.[1232]
- Even though the right to a healthy environment is not recognized in General Recommendation 34 in itself, the normative content of the right to a healthy environment is present throughout General Recommendation 34.[1233] As such, the right to a healthy environment is implicitly present in article 14 of CEDAW.
- General Recommendation 34 says that States should address the impact on rural and Indigenous women when planning and implementing policies, laws, and programs involving the environment and climate crisis as well as ensuring the participation of rural and Indigenous women when designing these policies.[1234]

[1228] Hum. Rts. Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, ¶ 23 U.N. Doc. A/73/188 (2018).
[1229] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶12, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).
[1230] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶12, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).
[1231] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).
[1232] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶12, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).
[1233] *See* Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).
[1234] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶12, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

The Rights of Nature[1235]

I. The Problem

a. General Overview

- States consistently fail to respect and protect the natural resources on Indigenous territories, and oftentimes disrespect this territory by permitting the infringement upon Nature.[1236]
- Indigenous Peoples are extremely important for the protection of natural resources.[1237] Indigenous communities' unique connection to their territories, land, and natural resources have resulted in inter-generational practices that protect the environment and help prevent and respond to the climate crisis. Indigenous women and girls play an important role in "maintaining and conserving biodiversity and other natural resources."[1238]
- Access to contaminate-free water is often limited for Indigenous Peoples because of the infringement of their natural resources.[1239]
- The actions of private actors, like fossil fuel companies and other extractive industries, also cause significant detrimental effects on Nature, thus affecting Indigenous women and girls' health and cultural practices.[1240]
- Environmental violence, such as exposure to pesticides, toxins, or pollution, can lead to disproportionate rates of disease and cancer in Indigenous women and girls.[1241]
- Nature needs protection because species extinction, global warming, deforestation, sea-level rising, periodicity and tropical cyclone frequency, coastal flooding, and shoreline erosion, are accelerating.[1242]
- The rights of Nature have not seen international recognition as a formalized right. Instead, Nature has consistently been deemed as a property interest, rather than a living being with its own legal rights.[1243]

[1235] This narrative received contributions from Samantha Johnson, Denisse Córdova Montes, Tamar Ezer, Gabriela Valentín Díaz, Mary Miller, Abril Montero Dokser, William Talley, Alicia Limtiaco, Igdalia Rojas, Natalia Caruso, and Ximena Armendariz Nicho.

[1236] *See generally* Why are Indigenous Groups Protesting a Canada Gas Pipeline, REUTERS (Feb. 12, 2020), https://www.reuters.com/article/us-tc-energy-pipeline-explainer/explainer-why-are-indigenous-groups-protesting-a-canada-gas-pipeline-idUSKBN2062U2; *see also* Jessica Knoblauch, *Ignored and Infuriated, Pawnee Stop Illegal Fracking Plans on Tribal Lands*, EARTH JUSTICE (Dec. 7, 2018), https://earthjustice.org/blog/2018-december/agency-nixes-fracking-leases-on-pawnee-tribal-land.

[1237] *Fire, Poachers, and Pandemic Spell Trouble in the Amazon*, Miami Law Explainer (Sept. 10, 2020) (downloaded using Soundcloud).

[1238] MADRE and Rosa Luxemburg Stiftung, *Statement on behalf of Indigenous Women Delegation: 17th Session of the UN Permanent Forum on Indigenous Issues* (Apr. 18, 2018).

[1239] As with so Many Other Human Rights, Indigenous Peoples Suffer Disproportionate Violations of Right to Safe Water, Sanitation, Permanent Forum Told, UNITED NATIONS (May 24, 2011), https://www.un.org/press/en/2011/hr5061.doc.htm.

[1240] Hum. Rts. Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, ¶ 55 & 92 U.N. Doc. A/73/188 (2018).

[1241] Andrea Carmen, *Environmental Violence: Impacts on Indigenous Women and Girls*, (2017) https://academiccommons.columbia.edu/doi/10.7916/D80V9MDW.

[1242] Universal Declaration on the Rights of Mother Earth, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE (Apr. 22, 2010), https://therightsofnature.org/universal-declaration.

[1243] What is Rights of Nature?, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE, https://therightsofnature.org/what-is-rights-of-nature/ (last visited Oct. 5, 2020).

b. The Impact of the Climate Crisis and Environmental Violence

- The climate crisis and environmental violence affects Indigenous communities and destroys Nature by causing extreme temperatures, floods or droughts, crop failure, and population migration due to resource scarcity.[1244]
- The consequences of environmental damage are disproportionately felt by Indigenous women and girls, because they are commonly at the overlap of gender, economic, and environmental discrimination.[1245]
- Indigenous Peoples are highly affected by the climate crisis due to their dependence on and close relationship with the environment.[1246] Further, the lack of respect and protection of Indigenous lands, territories, and natural resources inhibits Indigenous Peoples' ability to freely profess and practice their cultures and spiritual beliefs.[1247]
- The majority of the world's subsistence farmers are rural Indigenous women and as a result, Indigenous women are more prone to adverse climatic events than their male counterparts. Thus, environmental erosion and disaster disparately impacts the livelihood and food security and sovereignty of Indigenous women and girls.[1248] Droughts and floods can cause a loss of vegetation and impede the ability to engage in livestock farming and other forms of exercising of their food sovereignty.[1249]
- Extractive activities have caused widespread pollution and environmental damage, the effects of which have had a disproportionate impact on Indigenous Peoples.[1250] This environmental violence has effectively forced eviction and increased levels of poverty and disease in Indigenous communities.[1251]
    - Subsoil extraction such as "Gold-mining in San Miguel Ixtahuacán and Sipakapa in Guatemala, nickel extraction in the Goro and Prony deposits in New Caledonia, the Chad-Cameroon oil pipeline, and the gas pipeline in Camisea in the Peruvian Amazon have had devastating effects on the [I]ndigenous [P]eoples."[1252]
    - Similarly, "[i]n the Russian Federation, a new Land Code adopted in 2001 permits private land appropriation, but access to ownership is so mired in red tape as to exclude most [I]ndigenous communities from the process. The same is true of the country's Water and Forestry Codes. Central Siberia is currently a vast petroleum, gas, coal and heavy-metal reserve. Russian and foreign companies are vying for

[1244] *Indigenous Peoples and Climate Change*, ILO, 8 (2017) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf.
[1245] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 37: General recommendation on the gender-related dimensions of disaster risk reduction in the context of climate change, ¶ 1, U.N. Doc. CEDAW/C/GC/37 (Mar. 13, 2018).
[1246] UN Permanent Forum on Indigenous Issues, *Climate Change and Indigenous Peoples*, UNITED NATIONS (Sept. 24, 2007), https://www.un.org/en/events/indigenousday/pdf/Backgrounder_ClimateChange_FINAL.pdf.
[1247] *See Voice*, U.N. DEP'T OF ECON. AND SOC. AFF. 1, 1-2 (Apr. 2018) https://www.un.org/development/desa/undesavoice/wp-content/uploads/sites/49/2018/03/DESAVoiceApril2018.pdf
[1248] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 37: General recommendation on the gender-related dimensions of disaster risk reduction in the context of climate change, ¶ 1, U.N. Doc. CEDAW/C/GC/37 (Mar. 13, 2018).
[1249] UN Permanent Forum on Indigenous Issues, *Climate Change and Indigenous Peoples*, UNITED NATIONS (Sept. 24, 2007), https://www.un.org/en/events/indigenousday/pdf/Backgrounder_ClimateChange_FINAL.pdf.
[1250] Hum. Rts. Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, ¶49, U.N. Doc. A/HRC/4/32 (2007).
[1251] Hum. Rts. Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, ¶49, U.N. Doc. A/HRC/4/32 (2007).
[1252] Hum. Rts. Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people, ¶52, U.N. Doc. A/HRC/4/32 (2007).

access to subsoil resources in this region and for the right to build roads and pipelines for transporting fuel and timber to foreign markets. These are the problems facing the [I]ndigenous [P]eoples of, for instance, the Turukhansk, Taimyr and Evenk districts in Krasnoyarsk Territory."[1253]

- "In recent years the forests of the [I]ndigenous [P]eople[s] have been systematically affected by the activities of large forestry corporations and of legal and illegal logging, leading to the progressive destruction of their traditional means of subsistence. This process not only leads to the deforestation and desertification of large tracts of the planet, but also accelerates the gradual destruction of the [I]ndigenous [P]eople[s'] lifestyle and culture. This process affects the living conditions of a multitude of [I]ndigenous communities in the equatorial forests of Central Africa, the Amazon basin, the boreal forests of Siberia and America, the Andean range and South-East Asia, as well as the Pacific islands."[1254]

II. Current Protections in International Law

a. Current Protections in CEDAW

- The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) does not explicitly mention the rights of Nature; however, Article 14 and General Recommendation 34—the authoritative interpretation of CEDAW Article 14—do touch upon some of the important dimensions of the rights of Nature.[1255]
- Article 14 guarantees rural women's rights to "participate in and benefit from rural development" along with specific access to rights like the enjoyment of "adequate living conditions," particularly sanitation and water supply.[1256]
- General Recommendation 34 on the rights of rural women protects the rights of rural women in regards to access to clean water and freedom from contamination.[1257]
- General Recommendation 34 also calls for the realization of the right to adequate food and nutrition within the framework of food sovereignty. Food sovereignty has been defined by the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) as "the right to participate in decision-making processes on food and agriculture policy and the right to healthy and adequate food produced through ecologically sound and sustainable methods[,]"[1258] thus, implying the rights of Nature.

[1253] Hum. Rts. Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people, ¶21, U.N. Doc. A/HRC/4/32 (2007).
[1254] Hum. Rts. Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people, ¶25, U.N. Doc. A/HRC/4/32 (2007).
[1255] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.
[1256] Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") art. 14, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.
[1257] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶85, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).
[1258] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶ 64, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016); United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP"), art. 15, G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).

b. Current Protections in Other International Treaties

- The rights of Nature have not been explicitly mentioned in binding international treaties, but the rights are indirectly mentioned.
- The International Covenant on Economic, Social, and Cultural Rights (ICESCR) requires that States, in ensuring their citizens' right to the highest attainable standard of health, must take steps to improve "all aspects of environmental and industrial hygiene."[1259]
- The Committee on Economic, Social and Cultural Rights has interpreted ICESCR Article 11 on the right to food to include a sustainability dimension that implicitly recognizes the rights of Nature by calling for adequate food to be accessible for present and future generations.[1260]
- The ILO Convention 169 article 15 holds that "the rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources."[1261]

c. Current Protections in Non-Binding International Human Rights Instruments and Other Regional, National, and Civil Society Instruments

- Article 29 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) mentions that Indigenous Peoples have a right to the "conservation and protection of the environment," and States are responsible for establishing "assistance programmes for [I]ndigenous [P]eoples for such conservation and protection."[1262]
    - This seems to inherently give Indigenous Peoples the right to take action when their environment is being harmed.
- Article 32 of UNDRIP says that "States shall consult and cooperate in good faith with the Indigenous [P]eoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."[1263]
- Article 19 of the American Declaration on the Rights of Indigenous Peoples (ADRIP) says that Indigenous Peoples have the right to "live in harmony with [N]ature and to a healthy, safe, and sustainable environment" and also have the right to "conserve, restore, and protect the environment."[1264]
    - This could be inferred to provide Nature with the right to be free from pollution and degradation.

[1259] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 12, *adopted* Dec. 16, 1966, 933 U.N.T.S. 3.
[1260] Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 12: The Right to Adequate Food, ¶ 7, U.N. Doc. CESCR/C.12/1999/5 (Dec. 5, 1999).
[1261] Int'l Labour Organization [ILO] Indigenous & Tribal Peoples Convention, art. 15, (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.
[1262] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 29(1), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[1263] United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") art. 29(1), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007.
[1264] American Declaration on the Rights of Indigenous Peoples ("ADRIP") art. XIX(1-2), AG/RES. 288 (XLVI-O/16), *adopted* June 15, 2016.

- Article 15 of the UNDROP contains implicit references to the rights of Nature.[1265] This article protects the rights of peasants and other people working in rural areas to food and food sovereignty, which includes food that is "produced and consumed sustainably . . . preserving access to food for future generations."
- Additionally, UNDROP's Article 5 mentions the right to "access to and to use in a sustainable manner the natural resources present in their communities."[1266]
- The U.N. Economic Commission for Latin America and the Caribbean recently opened for signatures the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, more commonly known as the Escazú Agreement, which has been ratified by nine nations.[1267] The agreement ensures the "rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters," and the protection of the right of every person to "live in a healthy environment."[1268]
- There are no direct references to the rights of Nature in international documents, however, there has been a trend of individual countries passing laws to grant Nature a legal personhood:[1269]
    - Ecuador Constitution (Article 71): Nature has "the right to integral respect for its existence and for maintenance and regeneration."[1270]
    - India: The legal personhood status given to the Ganges River was upheld by an Indian court which ordered the protection of the river.[1271]
    - Bolivia: The Mother Earth Law was passed in 2012 which gave Earth the "right to life, diversity of life, to water, clean air, . . . restoration and pollution free living."[1272]
    - Pittsburgh, Pennsylvania (U.S.): In 2010, Pittsburgh became the first United States city to enact a law that recognized the rights of Nature.[1273]
        - Ordinance (Chapter 618): The Ordinance banned the extraction of combustible gasses within the city and rejected state preemption of local regulations. The City Council stated that they believed the protection of "the

[1265] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP"), art. 15, G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).
[1266] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP"), art. 5, G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).
[1267] *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*, OBSERVATORY ON PRINCIPLE 10 IN LATIN AMERICA AND THE CARIBBEAN, https://observatoriop10.cepal.org/en/treaties/regional-agreement-access-information-public-participation-and-justice-environmental.
[1268] *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*, OBSERVATORY ON PRINCIPLE 10 IN LATIN AMERICA AND THE CARIBBEAN, https://observatoriop10.cepal.org/en/treaties/regional-agreement-access-information-public-participation-and-justice-environmental.
[1269] UN General Assembly, *Report of the Secretary-General on Harmony with Nature*, ¶ 27, U.N. Doc. A/72/175 (2017).
[1270] ECUADOR CONST. Ch. 7, Art. 71.
[1271] Michael Safi, *Ganges and Yamuna Rivers Granted Same Legal Rights as Human Beings*, THE GUARDIAN (Mar. 21, 2017), https://www.theguardian.com/world/2017/mar/21/ganges-and-yamuna-rivers-granted-same-legal-rights-as-human-beings.
[1272] Cameron La Follette, Living in a World Where Nature has Rights, Earth Law Center (July 16, 2019), https://www.earthlawcenter.org/blog-entries/2019/7/living-in-a-world-where-nature-has-rights.
[1273] Rights of Nature FAQS, Community Environmental Legal Defense Fund ¶ 9 (Mar. 21, 2016), https://celdf.org/2016/03/rights-nature-faqs/#:~:text=In%20November%202010%2C%20the%20City,of%20Nature%20in%20its%20constitution.

natural environment constitutes the highest and best use of the police powers."[1274]

- Toledo, Ohio (U.S.): In 2019, residents of Toledo voted to give Lake Erie person status after four years of devastating pollution.[1275] The Lake Erie Bill of Rights Charter Amendment empowered citizens to advocate for the lake when parties were polluting the lake.[1276] Despite its wide approval in Toledo, the bill died in court in 2020.[1277]
- Santa Monica, California (U.S.): In 2013, the City Council voted unanimously to adopt California's first Bill of Rights for Sustainability.[1278] Under the document, the city recognizes the right of "natural communities and ecosystems to exist, regenerate and flourish."[1279]
- New Zealand: In 2017, the Whanganui river was granted personhood by an act of the New Zealand parliament.[1280]

- The Universal Declaration on the Rights of Mother Earth (UDRME), a civil society instrument, provides that Nature has inherent rights to be free from destruction or pollution.[1281]
  - Article 2 mentions that Mother Earth has inherent rights such as: "the right to life and to exist; the right to be respected; the right to regenerate . . . the right to maintain its identity and integrity as a distinct, self-regulating and interrelated being."[1282]
  - This Declaration is informal, but it is a widely supported agreement that was based on the UDHR.[1283]

d. Current Normative Content

- In 2010, the General Assembly adopted the consensus of the Bolivia-led UDRME resolution by declaring April 22 to be Mother Earth day and recognizing that:[1284]

[1274] Pittsburgh, Penn. Code of Ordinances § 618.01.
[1275] Ryan Prior, *An Ohio City has Voted to Grant Lake Erie the Same Rights as a Person*, CNN (Feb. 27, 2019), https://www.cnn.com/2019/02/21/us/ohio-city-lake-erie-rights-trnd/index.html.
[1276] Jason Daley, *Toledo, Ohio, Just Granted Lake Erie the Same Legal Rights as People*, SMITHSONIANMAG (Mar. 1, 2019), https://www.smithsonianmag.com/smart-news/toledo-ohio-just-granted-lake-erie-same-legal-rights-people-180971603/.
[1277] James Proffitt, Struck Down: *Federal Court Rules Lake Erie Bill of Rights Unconstitutional*, Great Lakes Now (Mar. 6, 2020), https://www.greatlakesnow.org/2020/03/lake-erie-bill-rights-federal-court-unconstitutional/.
[1278] Legalizing Sustainability? Santa Monica Recognizes Rights of Nature, GLOBAL EXCHANGE (Apr. 11, 2013), https://globalexchange.org/2013/04/11/legalizing-sustainability-santa-monica-recognizes-rights-of-nature/.
[1279]Santa Monica, California Municipal Code §1 Chapter 4.75.010; *see also*Legalizing Sustainability? Santa Monica Recognizes Rights of Nature, GLOBAL EXCHANGE (Apr. 11, 2013), https://globalexchange.org/2013/04/11/legalizing-sustainability-santa-monica-recognizes-rights-of-nature/.
[1280] New Zealand Parliament, Te Awa Tupua (Whanganui River Calims Settlement) Bill (2017), https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/00DBHOH_BILL68939_1/te-awa-tupua-whanganui-river-claims-settlement-bill.
[1281] Universal Declaration on the Rights of Mother Earth, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE (Apr. 22, 2010), https://therightsofnature.org/universal-declaration.
[1282] Universal Declaration on the Rights of Mother Earth, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE (Apr. 22, 2010), https://therightsofnature.org/universal-declaration.
[1283] Rights of Nature: FAQS, Community Environmental Legal Defense Fund (Nov. 9, 2016), https://celdf.org/advancing-community-rights/rights-of-nature/rights-nature-faqs/.
[1284] General Assembly Proclaims 22 April 'International Mother Earth Day': Adopting by Consensus Bolivia-Led Resolution, 63 G.A./10823.

    - The "Earth and its ecosystems are our home," and it is important to promote harmony with Nature.[1285]
    - Humans are in a position to "take care of Mother Earth."[1286]
- The Global Alliance for the Rights of Nature defines these rights as "the recognition and honoring that Nature has rights [and] the recognition that our ecosystems—including trees, oceans, animals, mountains—have rights just as human beings have rights."[1287]
- Nature is a living being and can be injured by humans.[1288]
- Providing Nature with a legal personhood, so that residents may bring charges on the ecosystem's behalf should some human actor harm that system.[1289]
- This right has a collective dimension as it entails legal personhood for Nature as a whole and provides for ecosystems to be free from degradation and pollution.[1290]
- The rights of Nature implicate all of humankind, because we have a collective duty to seek enforcement of this right on Nature's behalf.

III. State Action Needed in New CEDAW General Recommendation on Indigenous Women and Girls

- States must realize Indigenous women's right to self-determination over their natural resources and access to their lands.[1291] This entails a right to participate in decision-making processes involving their ecosystems.[1292]
- States must respect, protect, and fulfill the rights of Indigenous members to "use in a sustainable manner the natural resources present in their communities."[1293]
- States must provide Indigenous Peoples with the authority to protect their natural resources, which entails a level of protection inherently given to the natural resource itself.
- States must formally recognize the rights of Nature.[1294]

[1285] General Assembly Proclaims 22 April 'International Mother Earth Day': Adopting by Consensus Bolivia-Led Resolution, 63 G.A./10823.
[1286] General Assembly Proclaims 22 April 'International Mother Earth Day': Adopting by Consensus Bolivia-Led Resolution, 63 G.A./10823..
[1287] What is Rights of Nature?, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE, https://therightsofnature.org/what-is-rights-of-nature/.
[1288] What is Rights of Nature?, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE, https://therightsofnature.org/what-is-rights-of-nature/ (last visited Oct. 5, 2020).
[1289] What is Rights of Nature?, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE, https://therightsofnature.org/what-is-rights-of-nature/ (last visited Oct. 5, 2020).
[1290] Ashley Westerman, *Should Rivers Have the Same Legal Rights as Human? A Growing Number of Voices say yes*, NPR (Aug. 3, 2019), https://www.npr.org/2019/08/03/740604142/should-rivers-have-same-legal-rights-as-humans-a-growing-number-of-voices-say-ye.
[1291] Universal Declaration on the Rights of Peasants and Other Peoples Working in Rural Areas ("UNDROP") art. 2(1), G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).
[1292] Universal Declaration on the Rights of Peasants and Other Peoples Working in Rural Areas ("UNDROP") art. 5(2)(b), .A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).
[1293] Universal Declaration on the Rights of Peasants and Other Peoples Working in Rural Areas ("UNDROP") art. 5(1), .A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).
[1294] Memorandum by ECMIA on Aportes de ECMIA - Enlace Continental de Mujeres Indígenas de América a la Recomendación general sobre derechos de las mujeres indígenas del Comité para la Eliminación de la Discriminación contra la Mujer (2020) ("[D]ebe recomendar que los Estados parte comprendan que el territorio no es un bien y recurso económico, es la madre naturaleza, la gran casa, es parte del derecho a la vida.").

- States must promote and participate in "learning, analysis, interpretation and communication about how to live in harmony" with Nature.[1295]
- States must ensure that the "pursuit of human wellbeing" contributes to the wellbeing of Nature, now and in the future.[1296]
- States must "establish and apply effective norms and laws for the defence, protection and conservation of the rights of Nature."[1297]
- States must "respect, protect, conserve and . . . restore the integrity of the vital ecological cycles, processes and balances of Nature."[1298]
- States must guarantee that damages caused by human violations against Nature are rectified and those responsible are held accountable.[1299]
- States must empower institutions to defend the rights of Nature.[1300]
- States must "establish precautionary and restrictive measures to prevent human activities from causing species extinction, the destruction of ecosystems or the disruption of ecological cycles."[1301]
- States must "promote and support practices of respect for [Nature] in accordance with their own cultures, traditions and customs."[1302]
- States must respect their obligations to consult with Indigenous Peoples prior to exploration and exploitation of natural resources within their traditional territories.[1303]

IV. Comparison to CEDAW General Recommendation 34

- General Recommendation 34 states that States should implement agricultural policies that "recognize and protect the natural commons," promote organic farming, and protect women from pesticides and fertilizers.[1304]
- Additionally, General Recommendation 34 mentions that rural women, which includes Indigenous women, should have access to "sufficient, safe, [and] acceptable" water for

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[1295] Universal Declaration on the Rights of Mother Earth, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE (Apr. 22, 2010), https://therightsofnature.org/universal-declaration.
[1296] Universal Declaration on the Rights of Mother Earth, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE (Apr. 22, 2010), https://therightsofnature.org/universal-declaration.
[1297] Universal Declaration on the Rights of Mother Earth, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE (Apr. 22, 2010), https://therightsofnature.org/universal-declaration.
[1298] Universal Declaration on the Rights of Mother Earth, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE (Apr. 22, 2010), https://therightsofnature.org/universal-declaration.
[1299] Universal Declaration on the Rights of Mother Earth, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE (Apr. 22, 2010), https://therightsofnature.org/universal-declaration.
[1300] Universal Declaration on the Rights of Mother Earth, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE (Apr. 22, 2010), https://therightsofnature.org/universal-declaration.
[1301] Universal Declaration on the Rights of Mother Earth, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE (Apr. 22, 2010), https://therightsofnature.org/universal-declaration.
[1302] Universal Declaration on the Rights of Mother Earth, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE (Apr. 22, 2010), https://therightsofnature.org/universal-declaration; *Toolkit for Effective Advocacy, From the ground to the globe: Recommendations for effective and sustainable advocacy and public actions*, Indigenous Women's organizations, ("States should protect Indigenous territories as crucial areas for the resilience of the social, cultural and ecological lives of humanity and of the natural world.").
[1303] Tara Ward, *The Right to Free, Prior, and Informed Consent: Indigenous Peoples' Participation Rights within International Law,* (2011) https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1125&context=njihr
[1304] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶62, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).

personal use, domestic use, and irrigation.[1305] This relates to clean and uncontaminated water which is an aspect of the rights of Nature.

- General Recommendation 34 also calls for the realization of the right to adequate food and nutrition within the framework of food sovereignty, which has been defined by UNDROP as "the right to participate in decision-making processes on food and agriculture policy and the right to healthy and adequate food produced through ecologically sound and sustainable methods[,]"[1306] thus, implying the rights of Nature.

[1305] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶85, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016).
[1306] Comm. on the Elimination of Discrimination Against Women ("CEDAW Comm."), General Recommendation No. 34: The Rights of Rural Women, ¶ 64, U.N. Doc. CEDAW/C/GC/34 (March 4, 2016); United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP"), art. 15, G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018).