

## **The Rights of Indigenous Women and Girls: General Recommendation 39 of the CEDAW Committee**

### **Introduction**

On October 26, 2022, the Committee on the Elimination of Discrimination against Women (hereinafter CEDAW Committee)<sup>1</sup> published its first General Recommendation on the rights of Indigenous women and girls. This moment is historic in its recognition of the emblematic forms of discrimination Indigenous women and girls face worldwide, after decades of activism and exclusion before global, regional, and national bodies.

General Recommendation 39 highlighted the dire realities of Indigenous women and Indigenous peoples in general, and articulated a roadmap of state action to prevent and respond to discrimination in this context. The CEDAW Committee recognized the multifaceted identity of Indigenous women and girls, including their experience with gender-based discrimination and violence, but also the frequent violation of their rights to self-determination; territories and natural resources; free, prior, and informed consent; culture; and to a clean, healthy, and sustainable environment.

This piece summarizes some of the main findings of this General Recommendation and its implications for future international human rights law developments concerning Indigenous women and girls.

## Consultation Process and Foundational Principles

It is noteworthy that the elaboration of this General Recommendation (hereinafter GR or GR 39) was preceded by a careful and thorough consultation process implemented by the CEDAW Committee, involving numerous submissions from Indigenous women's organizations, experts, human rights organizations, and states. The CEDAW Committee held consultations around the world to seek inputs for the text of this GR, including in Africa, Asia, Latin America, and Europe.

The CEDAW Committee opened the GR by recognizing the critical role of Indigenous Women as “driving actors and leaders” inside and outside their communities and territories.<sup>2</sup> The GR made a powerful call to consider Indigenous women not only as victims, but also as leaders and active participants at the local, national, and global levels. The GR also underscored the importance of the rights to self-determination; free, prior, and informed consent; and effective participation as key ingredients to fully protect the rights of Indigenous women and girls to be free from all forms of discrimination.

Very noteworthy are the introductory statements that the CEDAW Committee made concerning Indigenous women and girls and its decision to elaborate this General Recommendation. The Committee recognized openly the history of racism, colonialism, dispossession of territories, militarization, forced displacement, and violence which still affects Indigenous women, and confirmed that these are forms of discrimination prohibited under CEDAW. The GR also framed the discrimination faced by Indigenous women and girls as *intersectional*, demanding close state interventions which consider their sex; gender; Indigenous origin, status or identity; race; ethnicity; age; and other factors which contribute to their exclusion and the negation of their rights.<sup>3</sup> According to the GR, all state action to prevent and address discrimination against Indigenous women must be guided by a *gender, intercultural, and multidisciplinary perspective*, taking full consideration of the harmful social practices which have affected Indigenous women historically and an appreciation of their multifaceted identity.<sup>4</sup> The Committee foremost recognized the complicated context in which Indigenous women currently defend and exercise their human rights, including challenges such as climate change, environmental degradation, deficiencies in food and water security, and the implementation of harmful extractive activities.<sup>5</sup>

The Committee also advanced an understanding of the rights of Indigenous women and girls, including individual and collective dimensions, confirming that the experience of discrimination hinders their spiritual life, connection with Mother Earth, cultural integrity, and the survival of Indigenous Peoples and their communities.<sup>6</sup> The GR discussed how

dire problems such as discrimination and gender-based violence harm the preservation of knowledge, culture, and identities of Indigenous peoples.<sup>7</sup> Therefore, the state failure to safeguard the rights of Indigenous peoples to self-determination and their territories constitutes a form of discrimination against Indigenous women and girls.<sup>8</sup>

## **Legal Framework**

GR 39 confirmed that the United Nations Declaration on the Rights of Indigenous Peoples is “an authoritative framework” to interpret the content of the legal obligations contained in CEDAW.<sup>9</sup> The Committee also made noteworthy reference to the Convention on the Rights of the Child and the work of the Committee on the Rights of Child, underscoring the priority nature of the rights of Indigenous girls.<sup>10</sup> In particular, it emphasized the need for states to create safe environments for the leadership and participation of Indigenous girls, as a key ingredient for them to fully enjoy rights related to their territories, culture, and a clean, healthy and sustainable environment.<sup>11</sup>

## **General Obligations of States Parties: Articles 1 and 2 of CEDAW**

The CEDAW Committee devoted a great part of its analysis on this GR to the states’ duty under articles 1 and 2 of the Convention to adopt comprehensive policies to eliminate discrimination against Indigenous women and girls.<sup>12</sup> As part of this mandate, states must address intersectional discrimination and its individual and collective components. This includes state action to eradicate racism, discriminatory sociocultural stereotypes, marginalization, and forms of gender-based violence against Indigenous women. States are also urged to ensure the elimination of discrimination in critical realms, such as the family, marriage, custody matters, inheritance, and nationality laws.<sup>13</sup> The CEDAW Committee also innovatively underscored the presence of discrimination against Indigenous women and girls in the digital space, which includes the internet, social media, and all technology-based platforms.<sup>14</sup>

The CEDAW Committee made special mention of women with disabilities, and lesbian, bisexual, transgender and intersex Indigenous women, and the pernicious impact of intersectional discrimination on their lives.<sup>15</sup> The GR underscored the need for Indigenous women to access adequate information on existing laws and remedies to claim their rights at the national level; information which should be available in their own languages and in culturally appropriate forms of communication.<sup>16</sup>

The CEDAW Committee also made groundbreaking statements in the areas of access to justice and plural legal systems. It emphasized the need for a “multidisciplinary and

holistic approach,” with the understanding that existing barriers are linked to racism, racial discrimination, colonialism, sex- and gender-based discrimination, and access to lands and territories.<sup>17</sup> The GR also recognized the right of Indigenous peoples to maintain their own judicial structures and systems, but the need for these to be consistent with international human rights standards, using CEDAW as a useful reference.<sup>18</sup> Justice systems should have available interpreters, translators, anthropologists, and training on the realities, cultures, and views of Indigenous women and girls.<sup>19</sup> The GR underscored a number of variables which impede prompt and full access to non-indigenous and indigenous justice systems, including racial and gender biases; the need to travel long distances; illiteracy; the scarcity of interpretation services; and the dearth of culturally appropriate methods of evidence collection.<sup>20</sup>

The CEDAW Committee overall recommended a number of state actions to ensure adequate access to justice in both Indigenous and non-Indigenous justice systems, including training for judges and all law enforcement officials; the appointment of Indigenous women justices; the provision of accommodations for women with disabilities; the inclusion of professionals specialized on the needs of Indigenous women; and the availability of free and quality legal aid, among others.<sup>21</sup>

## **Prevention and Protection from Gender-Based Violence**

The GR highlighted the alarming problem of gender-based violence faced by Indigenous women and girls as a form of discrimination under Article 1 of CEDAW, referring to rape, harassment, disappearances, killings, and femicide.<sup>22</sup> The Committee underscored that gender-based violence against Indigenous women occurs in all spaces, including the family, their communities, employment settings, educational institutions, and while seeking health services.<sup>23</sup> The GR also shed light on several forms of violence with very specific effects on Indigenous women – including that which is *spiritual* and harms the collective identity and cultural life of their communities; *environmental violence* derived from foreseeable degradation, pollution, and climate-related harm unaddressed by states; and *political violence* suffered by women who seek to participate in public spaces.<sup>24</sup>

The GR reiterated the importance for states to act with due diligence to prevent, investigate, and sanction all acts of violence against Indigenous women and girls, including the need to have in place effective legislation and adequate support services.<sup>25</sup> This general obligation applies to all areas of state action, in times of peace and during armed conflicts.<sup>26</sup>

## **Specific obligations under CEDAW**

The CEDAW Committee in this GR underscored the need for states to ensure the meaningful, real, and effective participation of Indigenous women and girls in leadership positions, in local, national, and international processes.<sup>27</sup> The GR referred in particular to armed conflicts, political violence, racism, sexism, language constraints, and the lack of economic support, as critical barriers Indigenous women and girls face to participate in political and public life.<sup>28</sup> The GR made special reference to the dire situation of environmental human rights defenders, who often suffer killings, harassment, arbitrary detention, and the criminalization of their work for opposing the implementation of extractive and development projects.<sup>29</sup>

Lastly, the CEDAW Committee identified many forms of discrimination which affect Indigenous women and girls in key areas of public life, including in settings concerning education, work, health, and culture.<sup>30</sup> Very noteworthy are the references to the limited recognition of ownership and titles of the territories and lands Indigenous women use and enjoy as a form of discrimination, and as a significant contributor to poverty and food and water insecurity.<sup>31</sup> The Committee also expressed its concern over state failures to address foreseeable climate-related harm, human-driven pollution, contamination, deforestation, the burning of fossil fuels, and the loss of biodiversity as a form of discrimination against Indigenous women and girls.<sup>32</sup>

## **Conclusions**

This General Recommendation is a formidable call by the CEDAW Committee for states to enhance their prevention and response efforts to address the dire discrimination Indigenous women and girls are still facing around the world. It can serve as a valuable instrument for all actors and sectors working to advance rights in this area – including Indigenous women and girls, states, civil society organizations and human rights defenders, international organizations, and even the private sector.

A focus on adequate and effective enforcement of this new GR will be key, as an authoritative interpretation of the content of CEDAW obligations and their applicability to Indigenous women and girls. Efforts should include translation of this GR to Indigenous languages and training and awareness-raising efforts at the global, regional, national, local, and rural levels.

Foremost, it is key that this General Recommendation impacts future United Nations efforts to develop human rights legal standards and benchmarks related to Indigenous

women and girls. Indigenous women and girls should have effective, real, and meaningful participation in the development of future international law concerning the respect, protection, and fulfillment of human rights. Both the gender and Indigenous dimension of their rights should be taken into consideration. This is salient to ensure the prevention and eradication of intersectional discrimination against Indigenous women and girls, and the effectiveness of international law in this area.

**About the Author:** Rosa Celorio is Burnett Family Associate Dean and Distinguished Lecturer, International and Comparative Law and Policy, at the George Washington University Law School.

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<sup>1</sup> The CEDAW Committee monitors the implementation of the Convention on the Elimination of Discrimination against Women (hereinafter CEDAW” or the “Convention), the leading international human rights treaty in the world on women’s rights issues. The Committee is composed of 23 experts, who serve in their personal capacities. The Committee has adopted 39 General Recommendations to States Parties offering authoritative guidance on the content of CEDAW and its provisions. For more information, see United Nations High Commissioner for Human Rights, Committee on the Elimination of All Forms of Discrimination Against Women, <https://www.ohchr.org/en/treaty-bodies/cedaw>.

<sup>2</sup> U.N. Committee on the Elimination of Discrimination Against Women, *General Recommendation 39: The Rights of Indigenous Women and Girls*, CEDAW/C/GC/39 (Oct. 31, 2022), ¶ 2, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no39-2022-rights-indigeneous>.

<sup>3</sup> *Id.* ¶ 2

<sup>4</sup> *Id.* ¶¶ 3-5.

<sup>5</sup> *Id.* ¶ 7.

<sup>6</sup> *Id.* ¶ 17.

<sup>7</sup> *Id.* ¶ 18.

<sup>8</sup> *Id.* ¶ 18.

<sup>9</sup> *Id.* ¶ 13. See generally, U.N. Declaration on the Rights of Indigenous Peoples, A/RES/61/295 (Sept. 13, 2007).

<sup>10</sup> *Id.* ¶ 14. See generally, Convention on the Rights of the Child, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) and U.N Committee on the Rights of the Child, <https://www.ohchr.org/en/treaty-bodies/crc>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* ¶¶ 16-22, 23 (a).

<sup>13</sup> *Id.* ¶¶ 17, 21-22.

<sup>14</sup> *Id.*, ¶ 22.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* ¶ 23(f).

<sup>17</sup> *Id.* ¶ 24.

<sup>18</sup> *Id.* ¶ 25.

<sup>19</sup> *Id.* ¶ 27.

<sup>20</sup> *Id.* ¶ 30.

<sup>21</sup> *Id.* ¶ 33.

<sup>22</sup> *Id.* ¶¶ 34, 36.

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- <sup>23</sup> *Id.* ¶ 36.  
<sup>24</sup> *Id.* ¶¶ 36-37.  
<sup>25</sup> *Id.* ¶¶ 39-41.  
<sup>26</sup> *Id.* ¶ 41.  
<sup>27</sup> *Id.* ¶ 43.  
<sup>28</sup> *Id.* ¶¶ 44-45.  
<sup>29</sup> *Id.* ¶ 45.  
<sup>30</sup> *Id.* ¶¶ 47-55.  
<sup>31</sup> *Id.* ¶¶ 56, 58.  
<sup>32</sup> *Id.* ¶ 60.