**EMRIP Written Submission – 18 June 2021**

**CEDAW Day of Discussion on Indigenous Women and Girls
Theme 1: Equality and non-discrimination with a focus on indigenous women and girls and intersecting forms of discrimination**

**Introduction**

Indigenous women and girls are at a critical juncture. We are more empowered than ever, and are ensuring our voices are heard, including at the international level. However, at the same time there are emerging and increased risks of losing ground our path towards equality, including due to Climate Change and the impact of COVID-19. EMRIP would like to commend CEDAW for its increased attention to Indigenous Girls and Women, included in its concluding observations in recent years. It is essential that CEDAW continues to increase its focus on Indigenous Women and Girls, and EMRIP see this General Recommendation as an important step in that direction. Going forward, this General Recommendation will be an important element to the international legal framework protecting the individual and collective rights of Indigenous Women and Girls.

**UNDRIP**

EMRIP is the UN body mandated to provide advice and expertise to the Human Rights Council on the **United Nations Declaration on the Rights of Indigenous Peoples**. We have the honour to work directly with Indigenous Peoples and States to achieve the goals of the Declaration, including through our Country Engagement mandate. The Declaration is central to the protection of the rights of Indigenous Peoples, recognizing minimum standards for the **survival, dignity, and well-being of Indigenous Peoples across the world.** The Declaration guarantees equal rights and freedoms between indigenous women and men.[[1]](#footnote-1) It recognizes special protection for several groups, including Indigenous women and children, including in its implementation. It calls for particular attention to the advancement of their economic and social conditions[[2]](#footnote-2) and measures guaranteeing indigenous women and children protection from all forms of violence and discrimination.[[3]](#footnote-3)

It places **collective rights** at the centre of the international human rights framework on the rights of Indigenous peoples, and this interplay between collective and individual rights will be important for the Committee to highlight in its upcoming General Recommendation.

**EMRIP Work**

**EMRIP** ensures the **inclusion** of the rights of indigenous women and girls in its reports, studies, and country engagements. EMRIP also ensures inclusion of indigenous women in its **Proposals** to the Human Rights Council, including in 2020 **relating to indigenous women human rights defenders**. It has also held events such as a panel on **Indigenous Women in Power** during its session in July 2019.[[4]](#footnote-4) While EMRIP has not yet undertaken a comprehensive study on the rights of Indigenous Women and Girls, it has ensured special attention throughout its studies, including in its **Study on the business and financial sectors**, and that will be presented here. With this General Recommendation, the Committee has provided inspiration for future dedicated EMRIP studies.

**Brief Mention on Participation, Consultation and Consent**

While participation, consultation and consent is the topic of a separate theme, given its critical importance, we must at least briefly address these topics. While Indigenous women hold central roles in Indigenous communities, they are often underrepresented in decision-making structures and governance structures of some indigenous communities are male dominated.[[5]](#footnote-5) As emphasized in the EMRIP’s **study on the right to participate in decision-making**, **participation** of indigenous **women** and youth in decision-making processes is of **critical** importance for the equal enjoyment of their rights.[[6]](#footnote-6)

With regards to **free, prior, and informed consent, it is essential that all indigenous peoples are consulted, and that the voices of indigenous women and girls are heard. In its 2018 study on Free, Prior, and Informed Consent, the Expert Mechanism reiterated** the importance of consulting with **women**, children, youth, and persons with disabilities, and considering specific impacts of decisions on them.[[7]](#footnote-7)

**Self-Determination**

The Right to Self-determination is the anchor of the United Nations Declaration on the Rights of Indigenous Peoples,[[8]](#footnote-8) and as with the Right to Land, necessary for the full enjoyment of all other rights.[[9]](#footnote-9) It is of central importance to all aspects of the lives of Indigenous Peoples, and crucial for peace and reconciliation. As highlighted by the EMRIP in its **upcoming report on Self-Determination**, denial of Indigenous Peoples’ self-determination is often at the root of violations and abuses against indigenous peoples. Many abuses, such as increased rates of violence, have a disproportionate impact on indigenous women and girls.[[10]](#footnote-10)

**Land/Climate Change/Urbanization**

Indigenous women’s vital role in the protection of land is often overlooked. Loss of land has widespread consequence on all aspects of Indigenous Peoples’ lives including on our food sources, connection to the earth, and our cultures as a whole. Indigenous Women face intersecting forms of discrimination affecting our rights to land, territories, and resources. Indigenous Women do not have access on an equal basis with men to ownership, possession, or control over land.[[11]](#footnote-11) In its **2020 study on the Right to Land**, the EMRIP reiterated the former Special Rapporteur on the rights of indigenous peoples Victoria Tauli Corpuz’ position that land appropriation is not gender-neutral[[12]](#footnote-12), and called on States to ensure that indigenous women have equal access to ownership, use, and control over their lands, territories, and resources, including through the revocation of discriminatory laws, policies, and regulations.[[13]](#footnote-13)

Lack of land devalues indigenous **women’s** status, a fact that has fueled indigenous **women’s** migration to the cities.[[14]](#footnote-14) Indigenous **women** face particular challenges upon migration to urban settings. They are no longer by traditional law, and often without trust in the police, leaving them with little recourse or access to justice.[[15]](#footnote-15)

While Climate Change is an ongoing and increasingly urgent concern to all people, it has an even greater impact on Indigenous Peoples given the intimate connection with our lands and it will cause irreparable harm to entire cultures and Peoples. Indigenous Women and girls are among those most vulnerable to, and affected by, Climate Change, and related migration.

**Migration**

Multiple and intersecting forms of discrimination increases Indigenous Women’s vulnerability during all types of **migration**. In its **2019 study on border, migration, and displacement,** the EMRIP found that indigenous **women** and **girls** are at high risk of human trafficking, forced labour and sexual exploitation,[[16]](#footnote-16) particularly around border regions.[[17]](#footnote-17) It emphasized the importance of adopting measures to better identify and service Indigenous Peoples at borders, taking into account the needs of vulnerable groups such as women and children.[[18]](#footnote-18)

One of the contributory factors to human trafficking particularly relevant to indigenous women and girls is **lack of birth registration or citizenship documentation and consequential statelessness** in some countries. This also limits **women** and children’s access to basic public services, including health and education, as the Committee has also dealt with in its reviews of States.[[19]](#footnote-19)

**Inequality and discrimination in access to services and enjoyment of Economic, Social, and Cultural Rights**

Indigenous **women** experience a broad and complex spectrum of mutually reinforcing human rights abuses and violations that result in challenges to the enjoyment of their economic, social, and cultural rights. Indigenous Peoples face systematic economic discrimination and are more likely to live in poverty, and indigenous women, children, and persons with disabilities face even further barriers.[[20]](#footnote-20) The United Nations Declaration on the Rights of Indigenous Peoples addresses this economic marginalization in **Articles 21 and 22** where it provides for special attention to be paid to the rights of Indigenous women, youth, and persons with disabilities.

Indigenous **women** are frequently **excluded from the labour market** or are **employed informally** with salaries below legal norms and without social protection.[[21]](#footnote-21) They also face particular challenges to remedying this situation. Women have more difficulties than men to obtain credit,[[22]](#footnote-22) and in some regions are not allowed to hold accounts or borrow money.[[23]](#footnote-23) While Indigenous women are often known for their entrepreneurship, their initiatives have often arisen out of lack of other opportunities in the labour market.[[24]](#footnote-24)

**Health**

In its work, EMRIP has seen that lack of access to **healthcare** has a disproportionate impact on Indigenous Peoples, particularly women and girls. In its **2016 report on the Right to Health**,

EMRIP found that a lack of available, accessible and acceptable health-care services, contributes to disproportionately high rates of maternal mortality, teenage pregnancy and sexually transmitted infections, and that indigenous **women** are often excluded from reproductive health services. **[[25]](#footnote-25)** EMRIP has called on States to r**eview laws and policies that have a discriminatory effect on indigenous women**, including those permitting harmful practices,[[26]](#footnote-26) and to provide adequate resources to ensure access to culturally appropriate healthcare for women.[[27]](#footnote-27)

**COVID**

**In both its upcoming study on the Rights of the Indigenous Child, and its 2020 Annual Report** focusing on the impact of **COVID-19** on the rights of Indigenous Peoples, EMRIP highlighted the disproportionate and differentiated impact of the pandemic and containment measures on Indigenous girls and women. This included increased violence against indigenous women and children and reported increases in cases of intimidation and repression of indigenous human rights defenders, including women, during the pandemic.

The pandemic also had a disproportionate impact on the social, economic, and cultural rights of indigenous women. Pregnant women were unable to travel from remote locations for prenatal controls and attention, and many women who relied on informal work faced the loss of their livelihoods, including those working in the tourism sector, and as domestic workers. Indigenous women are key solution finders and caretakers of communities. This has been highlighted during the pandemic with Indigenous women leading many initiatives, working to guarantee food security and information, including in indigenous languages, and were generally acting as caretakers of the well-being and resilience of communities.

EMRIP highlighted the risk that the pandemic would deepen gender inequality, including due to reliance on them for increased caretaking for children, elders and ill community members, which disproportionately fell on women and increased further during the pandemic. The impact has been even greater for those with intersecting vulnerabilities, including indigenous girls, even more so for those with disabilities. EMRIP emphasized that all COVID recovery plans must address intersectional discrimination faced by indigenous peoples, including indigenous women and girls.

**Indigenous Girls**

EMRIP emphasizes the importance of sufficient inclusion of the situation of **Indigenous Girls** in the General Recommendation. The rights of Indigenous Girls have featured in EMRIP’s recent work particularly its draft study on the **Rights of the Indigenous Child**. Indigenous Children, along with the Right to Self-Determination, will be a theme of the EMRIP’s upcoming session to take place from 12-16 July. The study will be finalized pursuant to comments received during the session and presented to the Human Rights Council in September.

As stated in its draft study, challenges to the enjoyment of the rights of Indigenous children are compounded by intersecting vulnerabilities, particularly for girls, LGBTI and two-spirit children, and children with disabilities, and those in remote or nomadic settlements or urban settings. It found that Indigenous girls experience additional barriers, including to their rights to **education** and **health**, and disproportionately high rates of teenage pregnancy, which is often attributed to underlying causes including lower education rates and harmful practices such as child marriage.

In its study on **Education**, the EMRIP noted that in certain communities, social norms prevent indigenous **girls** from attending schools. Families often prefer girls to remain at home to perform domestic chores and care for children and siblings; others prefer their daughters to be married off at a young age. This, coupled with other ongoing exclusion and discrimination of indigenous girls and **women**, has not only led to violations of their rights, but also serious consequences for the community and society. In that study, EMRIP emphasized that measures to ensure the provision of education at all levels for indigenous girls and **women** should be seen as a matter of urgency.[[28]](#footnote-28) It recommended the use of instruments of dialogue to help mediate conflicting issues and norms within indigenous societies and to ensure equal access to education for indigenous girls and **women.[[29]](#footnote-29)**

**GBV/Harmful Practices**

While the protection of Indigenous Women and Girls against all forms of **violence** and **discrimination** is enshrined in the **Declaration[[30]](#footnote-30)**, indigenous women and girls experience disproportionate rates of all types of **violence** including sexual, domestic, gender and conflict-based violence, and those with disabilities are at an even greater risk. Many forms of violence against indigenous **women** have a strong intergenerational element and stem from marginalization and legacies of colonization that permit or enable abuse.[[31]](#footnote-31)

In its study on the Right to Health, EMRIP highlighted the fact that the elimination of customary law or practices that violate **women’s** rights, such as forced marriage and domestic violence, has long been sought by many indigenous peoples. Other practices that are traditional or preferred by indigenous peoples should not be prohibited by States; instead, dialogue on pregnancy spacing, contraceptive use and parenting should be conducted in a culturally sensitive manner.[[32]](#footnote-32) In that study EMRIP also drew attention to violence against indigenous women perpetrated by State officials, and the fact that indigenous women and girls frequently have no effective legal remedy for such acts.[[33]](#footnote-33) States must do more to address gender-based violence, and it has made recommendations to this effect, including ensuring protection through the enforcement of criminal laws and making use of indigenous juridical mechanisms.[[34]](#footnote-34)

In its recent **draft study on Indigenous Children**, EMRIP including dedicated subsections on **heightened violence against Indigenous girls and harmful practices against Indigenous girls.** EMRIPfound that Indigenous girls are frequently victims of sexual violence, continue to experience violence through **harmful practices** such as female genital mutilation, and are particularly vulnerable to sexual exploitation and trafficking. It reiterated earlier findings by the Committee in its Joint General Recommendation No. 31 with the Committee on the Rights of the Child on harmful practices, and their previous General Comment 11, on indigenous children[[35]](#footnote-35), asserting that States and Indigenous Peoples should work together on finding ways to preserve culture without harm, in line with the best interests of the child and must engage on the particular vulnerabilities experienced by indigenous girls. In its 2012 **study on Languages and Culture**, EMRIP emphasized that when assessing whether indigenous peoples’ cultural practices infringe individuals’ human rights, it is important to consider indigenous perspectives. Indeed, the perspective of indigenous **women** is often unique, different from the perspectives of non-indigenous **women**. At the same time, it reaffirmed that discrimination against individuals should be eliminated.[[36]](#footnote-36)

**Business and Development Activities**
EMRIP has seen a disproportionate impact on business and development activities on indigenous women and girls and has dealt with this in several of its reports, **including its 2017 report on Business and Financial Sectors,** that had a focus on Indigenous women and Indigenous persons with disabilities. Indigenous women and girls experience particularly differentiated impacts due to the presence of extractive industries, and the EMRIP has made related recommendations, including on the need to ensure that all such activities are undertaken according to **the principle of free, prior, and informed consent,** in **consultation** with Indigenous peoples, including women and girls, and carried out in line with the **United Nations Guiding Principles on Business and Human Rights**.

**Language and Culture**

**Indigenous Languages** should also be highlighted, including in the context of the upcoming **International Decade on Indigenous Languages** (2022-2032). Indigenous languages are the principal mechanism in the intergenerational transmission of indigenous knowledge. They are a sign of life of indigenous peoples’ cultures and one of the essential elements of the identity of indigenous peoples.[[37]](#footnote-37) Indigenous women have a central role in the protection and promotion of their cultures.[[38]](#footnote-38) Indigenous women, particularly elders, play key roles in the retention, transmission and revitalization of their languages.[[39]](#footnote-39) In its study on Indigenous languages and cultures, EMRIP highlighted concerns regarding legislation and policies that discriminate against indigenous **women** and the impact that has had on the retention of languages and cultures.[[40]](#footnote-40)

**Access to Justice**

Through its work, EMRIP has seen that Indigenous women face challenges in both national and traditional justice systems. Their lack of access to justice is often rooted in multiple forms of discrimination, structural violence, and poverty. They are disproportionately represented in national criminal justice systems and face significant barriers throughout these processes.[[41]](#footnote-41)

Indigenous women also face challenges in Indigenous justice systems. While in some cultures, indigenous women play important roles, traditional justice systems can also be male-dominated.[[42]](#footnote-42) Challenges exist in the administration of traditional justice, for example in processes related to domestic or sexual violence against women and girls, processes may give collective concerns paramount importance over individual rights.[[43]](#footnote-43) At times the ability of indigenous justice systems to address violence experienced by Indigenous women is limited by State-imposed jurisdictional restrictions. This demonstrates a need for tribal justice systems to strengthen their ability to protect indigenous women and girls from violence.[[44]](#footnote-44) As it stands, when traditional justice systems are unable to protect indigenous women and girls they turn to national justice systems, where in some regions there are instances and allegations of abuse by police offices, leaving indigenous women in a precarious position, with no access to justice.[[45]](#footnote-45)

**Conclusion**

EMRIP urges the Committee to consider its full complement of work on Indigenous Women and Girls for its General Recommendation, including important overarching recommendations such as the need for investment in leadership of women and girls in indigenous communities and decision-making structures,[[46]](#footnote-46) and other important barriers not mentioned today, such as the lack of data dedicated to assessing the situation of Indigenous Women.

EMRIP once again recognizes the increased attention the Committee has placed on the rights of Indigenous Women and Girls in recent years, including increased referencing to the United Nations Declaration on the Rights of Indigenous Peoples in its work. EMRIP supports enhanced collaboration with the Committee and other treaty bodies, as it proposed to the Human Rights Council in 2020. EMRIP thanks the Committee for having chosen the important topic of the rights of Indigenous women and girls for its next General Recommendation and stands ready to support the Committee with the General Recommendation and all its work.

1. UNDRIP Article 44. [↑](#footnote-ref-1)
2. UNDRIP Article 21(2). [↑](#footnote-ref-2)
3. UNDRIP Article 22(2). [↑](#footnote-ref-3)
4. [OHCHR | IndigenousWomen](https://www.ohchr.org/EN/NewsEvents/Pages/IndigenousWomen.aspx). [↑](#footnote-ref-4)
5. A/HRC/39/62 Annex at para. 11. [↑](#footnote-ref-5)
6. A/HRC/18/42. [↑](#footnote-ref-6)
7. A/HRC/39/62, Annex at para. 11. [↑](#footnote-ref-7)
8. UNDIRP Art. 3. [↑](#footnote-ref-8)
9. A/HRC/12/34, para. 41., A/HRC/EMRIP/2021/2. [↑](#footnote-ref-9)
10. A/HRC/EMRIP/2021/2 at para. 40. [↑](#footnote-ref-10)
11. A/HRC/45/38 at para. 31. [↑](#footnote-ref-11)
12. A/HRC/45/38 at para. 31. Citing Victoria Tauli Corpuz in A/HRC/30/41. [↑](#footnote-ref-12)
13. A/HRC/45/38 Annex 1, at para. 10. [↑](#footnote-ref-13)
14. A/HRC/EMRIP/2019/Rev.1 at para. 76. [↑](#footnote-ref-14)
15. A/HRC/EMRIP/2019/Rev.1 at para. 78. [↑](#footnote-ref-15)
16. A/HRC/ EMRIP/2019/Rev.1 at para. 73. [↑](#footnote-ref-16)
17. A/HRC/ EMRIP/2019/Rev.1 at para. 74. [↑](#footnote-ref-17)
18. A/HRC/ EMRIP/2019/Rev.1, Annex 1 at para. 16. [↑](#footnote-ref-18)
19. CEDAW/C/HND/CO/7-8. [↑](#footnote-ref-19)
20. A/HRC/36/53, para. 4. [↑](#footnote-ref-20)
21. A/HRC/36/53, para. 90. [↑](#footnote-ref-21)
22. A/HRC/36/53, para. Para. 91. [↑](#footnote-ref-22)
23. A/HRC/36/53, para. Para. 80. [↑](#footnote-ref-23)
24. A/HRC/36/53, para. 80. [↑](#footnote-ref-24)
25. A/HRC/33/57, para. 62. [↑](#footnote-ref-25)
26. A/HRC/33/57, para. 29. [↑](#footnote-ref-26)
27. A/HRC/33/57 Annex 1, para 22. [↑](#footnote-ref-27)
28. A/HRC/12/33, at para.s 96 & 97. [↑](#footnote-ref-28)
29. A/HRC/12/33, Annex 1 at para. 20. [↑](#footnote-ref-29)
30. UNDRIP Article 22(2). [↑](#footnote-ref-30)
31. A/HRC/33/57, para. 63. [↑](#footnote-ref-31)
32. A/HRC/33/57, para. 65. [↑](#footnote-ref-32)
33. A/HRC/33/57, para. 66. [↑](#footnote-ref-33)
34. A/HRC/33/57, Annex 1, para. 23. [↑](#footnote-ref-34)
35. CRC/C/GC/11 at para. 22, See also CEDAW/C/GC/31-CRC/C/GC/18. [↑](#footnote-ref-35)
36. A/HRC/21/53 at para. 87. [↑](#footnote-ref-36)
37. A/HRC/21/53 at para. 33. [↑](#footnote-ref-37)
38. A/HRC/21/53 at para. 79. [↑](#footnote-ref-38)
39. A/HRC/21/53 at para. 44. [↑](#footnote-ref-39)
40. A/HRC/21/53 at para.44. [↑](#footnote-ref-40)
41. A/HRC/24/50 at para.s 62 and 63. [↑](#footnote-ref-41)
42. A/HRC/24/50 at para.s 49 & 63. [↑](#footnote-ref-42)
43. A/HRC/24/50 at para. 51. [↑](#footnote-ref-43)
44. A/HRC/24/50 at para. 63. [↑](#footnote-ref-44)
45. A/HRC/24/50 at para. 64. [↑](#footnote-ref-45)
46. A/HRC/EMRIP/2021/3. [↑](#footnote-ref-46)