**Introduction**

Asia Indigenous Peoples Pact (AIPP) and The Network of Indigenous Women of Asia (NIWA) welcome the draft General Recommendation No. 39 on the rights of Indigenous women and girls prepared by the Committee on the Elimination of Discrimination against Women (CEDAW). We commend the draft for addressing the key issues highlighted in our 2021 submission,[[1]](#footnote-1) including: legal recognition of Indigenous women; right to land; access to water, natural resources and food security; cultural rights; access to justice; gender-based violence; Indigenous women human rights defenders; militarization and armed conflict; climate change; right to health; and right to education. This submission reiterates some of our previous positions and adds some elements in response to the draft General Recommendation made available.

**Overarching comments**

We strongly support the recognition of “multiple and intersecting barriers” (para 49) and encourage the recognition of the need to confront and eliminate **multiple and intersecting forms of discrimination** faced by Indigenous women and girls. This wording acknowledges that individuals carry different identities simultaneously that cannot be broken apart; the intersections are critical to retain. We suggest that the wording in section A, paras 8, 20, 25, and recommendation 28 (d) use the term “multiple and intersecting forms of discrimination” rather than “intersectional forms of discrimination”.

We agree that states “must integrate a gender, indigenous women, intersectional, intercultural, and multi-disciplinary perspective throughout their lifespan,” (para 4) and welcome the expansive definitions of these terms. However, in relation to defining an intersectional approach, as well as in general listing based on discriminatory grounds, we would recommend a more complete listing that acknowledges other grounds may exist, in line with feminist movements’ position. Instead of “indigenous origin or identity, sex, gender, ethnicity, age, disability, language, situation of poverty, educational level, migration, and displacement”, we suggest “age, household and relationship status, indigeneity, race or ethnicity, HIV/AIDS status, disability, immigration status, socioeconomic status, educational level, employment, sexual orientation, gender identity or expression, sex characteristics and other grounds.”

We also recommend that the draft overall, and in particular section B on ‘Right to effective participation in political and public life’ reference the active, free and equal **voice, agency, and leadership**, of Indigenous women and girls when it comes to decision-making. Voice, agency and leadership are distinct and interrelated concepts that are mutually reinforcing and should remain in any text addressing women and girls’ participation in decision-making processes. Voice refers to women’s priorities, thoughts, and opinions being heard. Agency refers to women’s ability to take actions that determine the course of their own lives. Leadership refers to positions of authority that are customary, traditional, official or unofficial.

We recommend the document acknowledge the persistence of **structural barriers** to the realization of the fundamental rights of Indigenous women and girls. These are issues that are part of the environment and beyond individual control. The Report on the Sixth Asia-Pacific Forum on Sustainable Development (APFSD) recommended ‘accelerating efforts to remove systemic and non-systemic barriers that hindered equity, inclusion and quality at all levels of education’;[[2]](#footnote-2) we suggest similar language in this General Recommendation, including in recognizing climate change as one such structural or systemic barrier that cannot be addressed through singular actions.

We commend the emphasis on Free, Prior and Informed Consent (FPIC) throughout the document. While not necessary in every instance, we also suggest mentioning (1) the need for consent to be obtained on a continuous basis (2) for there to be pathways to withdraw consent. In relation to development projects, conditions can change and new information may come to light that may lead Indigenous communities to reverse decisions made before knowing of the full impacts. We also note that conservation projects can be the basis of rights violations.

We welcome the recommendation under para 28(j) to adopt measures to end forced assimilation policies as well as the call to establish truth and reconciliation bodies as part of efforts towards investigation and accountability for past and present assimilation policies. However, we recommend expanding on the need for truth commissions in wider contexts than just assimilation policies, including addressing historic discrimination, current and past racist, colonial policies, and violence against Indigenous communities, which have disproportionately impacted Indigenous women and girls. We also acknowledge that in the few instances where there have been truth and reconciliation commissions, states must acknowledge their findings and take action to implement the commission’s recommendations.

**Comments on specific sections:**

* With regards to section A, ‘**Prevention and Protection from Gender-Based Violence against Indigenous Women and Girls (Articles 3, 5, 6, 10 (c), 11, 12, 14, 16)**’, we agree with the recommendations and suggest adding the following elements:
1. In order to ‘assess the magnitude and gravity of gender-based violence against indigenous women and girls’ (para 47(f)), it is necessary for the state and other actors, including private sector actors, to ensure transparency in releasing reports and information that pertains to violence carried out against Indigenous communities. In the Asian context, information about missing and murdered Indigenous women and girls is often unavailable when there is involvement of security forces, whether these are police, military or paramilitary forces; the family of Kalpana Chakma[[3]](#footnote-3) has still not received answers from the government or military on what has happened to her.
2. As mentioned in our submission, many Indigenous communities in Asia, particularly in India, Bangladesh, the Philippines and Myanmar, face violence in the context of militarization and conflict. In several contexts we have observed the use of physical and sexual violence to threaten Indigenous communities and we have also expressed grave concern at the occurrence of sexual slavery. We recommend reference to the commitments under the 2013 Declaration of Commitment to End Sexual Violence in Conflict and call for demilitarization and an urgent path to peace and reconciliation, with the participation of Indigenous women peacebuilders.
* With regards to section C, ‘**Right to Nationality (Article 9)**’, we draw attention to our previous submission, where we mention that in Asia there is a range of terminologies and approaches when it comes to recognition of Indigenous peoples, with detrimental impacts on Indigenous women and girls not just in their access to nationality and citizenship, but also on restrictions on freedom of movement, speech, and land ownership. We reiterate the need for legal recognition of Indigenous peoples in several countries, especially to enable advocacy around the applicability of the UN Declaration on the Rights of Indigenous Peoples in local contexts. We also remind states that it is for Indigenous communities to determine the names of our communities, who belongs to our communities and not for non-Indigenous or settler states to name, categorize and list us without our voice and participation, as was the case in the 2014 national census in Myanmar which referenced a controversial, outdated and colonial list of 135 ethnicities.[[4]](#footnote-4)
* With regards to section D, ‘**Right to Education (Articles 5 and 10)**’, we support the recommendations particularly with regard to development of curricula, and suggest that these be developed with the participation of Indigenous women and girls. We also reference BDPfA para 83(l), which states: ‘Recognize and support the right of indigenous women and girls to education and promote a multicultural approach to education that is responsive to the needs, aspirations and cultures of indigenous women, including by developing appropriate education programmes, curricula and teaching aids, to the extent possible in the languages of indigenous people, and by providing for the participation of indigenous women in these processes;’
* With regards to section F, ‘**Right to Health (Articles 10 and 12)**,’ we suggest direct reference to universal health coverage, which includes the three elements: financial risk protection, universal access to quality services, and universal access to medicines and vaccines. This is in line with the Beijing Declaration and Platform for Action (BDPfA) Strategic objective C.1. ‘Increase women’s access throughout the life cycle to appropriate, affordable and quality health care, information and related services’; as well as SDG 3.8 that states: ‘Achieve universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all.’ Universal health coverage is an essential component towards realizing the right to health for Indigenous women and girls; we additionally reiterate our recommendation from our previous submission to integrate Indigenous women’s specific health needs in national plans and programs with the support of budget allocations.
We also recommend adjustment to para 62(e) which recommends ‘encourage indigenous women to enter the medical profession’. A more appropriate and community-care centered recommendation can be based on BDPfA para 106(d) which states: ‘include women, especially local and indigenous women, in the identification and planning of health-care priorities and programmes’. As our previous submission indicated, there is a dearth in health services especially in remote communities, whereas in some countries in the Asia region, we have had strong successes in community medic structures that are horizontal and garner the trust of the communities that medics are themselves a part of and enable integration with traditional Indigenous knowledge. We believe that rather than just supporting Indigenous women to enter the medical profession, which can be a longer and more difficult process, to deliver on healthcare coverage that is disability and LBTI friendly, public healthcare as a sector needs to be strengthened to ensure universal access to comprehensive, gender-transformative, public health care services that are integrated, of high quality and free at the point of care.
We strongly support retention of the observations on access to sexual and reproductive health information and education, including about family planning methods, contraception, and access to safe and legal abortion, and suggest recommendation 62(b) also support sexual and reproductive health and rights, and take a reproductive justice approach. A reproductive justice approach would mean Indigenous women and girls would have full control over all aspects of their sexual and reproductive lives, would be empowered to make informed decisions from contraception to childbirth, would have quality nutrition and maternity care for pregnant persons, as well as have support systems that are culturally sensitive and built around an awareness of histories of sexual and obstetric violence against Indigenous women and girls.
* With regards to section J, ‘**Right to culture (articles 3, 5, 13 and 14)**’, we refer back to our previous submission, and suggest adding the point that Indigenous women’s cultural rights are intrinsically linked to their self-determination, and that their ability to transmit and hold traditional knowledge is under strain because of direct violence, policies of assimilation, and structural barriers posed by the neoliberal economic system that reduces the value of their knowledge and traditions to just intellectual property. The recommendation to ‘Recognize and protect indigenous women’s intellectual property to their cultural heritage, traditional knowledge, and natural resources’ (para 68(f)) is in our view limited. Intellectual property is one way of countering encroachment of traditional knowledge, but it is not the only way; and moreover, partnership is key to document, preserve and transmit this knowledge.
* With regards to section J, ‘**Rights to social protection and economic resources (articles 13)**’, we support the recommendations and would suggest mentioning forms of social protection (including social assistance, social insurance, and program coverage for childcare, parental leave, illness, accident, disability, and old age), as well as the need for state parties to reprioritize fiscal expenditures and the redistribution of resources and wealth to extend social protection coverage to all women and girls, and to establish social protection floors to ensure access to social protection for all. We encourage elaborating on social protection programs (particularly social assistance and social insurance) which are crucial to support Indigenous women, and can contribute to reducing poverty, improving income security, mitigating hunger and malnutrition and enabling access to better nutrition, healthcare and education. Indigenous women tend to have less access to social protection because they work primarily in the informal sector as mentioned in the draft. In order to extend such programs to 73 percent of the world’s population (most in rural areas) who have no access to social protection, fiscal policies need to focus on equitable redistribution of resources wealth. It is estimated that strong social protection systems only require 2 percent of GDP;[[5]](#footnote-5) in Asia and in other developing nations, governments need to have the revenue to invest in social protection systems, public goods and services, all of which can be transformative for women and girls, and particularly Indigenous women and girls. We note that the global economic order continues to become more and more unequal, with the wealthiest minority accumulating more wealth during the COVID-19 pandemic while Indigenous and other marginalized communities have struggled and suffered loss and violence. We support the application of a wealth tax, of a corporate tax and application of country-by-country reporting for transnational entities to ensure they are paying taxes and the use of other such measures to stop the billions lost in illicit financial flows, in practices of tax avoidance, evasion and fraud. Addressing these structural issues and changing the way the economy works will provide states the necessary resources to fund robust social protection systems and inclusive, accessible public services and infrastructure for marginalized communities, including Indigenous ones.
* With regards to section I, ‘**Rights to land, territories, and natural resources (articles 13 and 14)**, we wish to draw attention to the following points.
Firstly, that conflict and militarization is inherently tied to large-scale land dispossession, displacement, forced evictions, militarization, extra judicial killings, and human right violations throughout Asia: the Chittagong Hill Tracts in Bangladesh, and the Cordillera region in the Philippines are respectively the most militarized areas of each country. Therefore, demilitarization, and peace and reconciliation processes upholding the commitments to the Women, Peace and Security agenda are essential not only for the maintenance of sustainable peace but also to ensure Indigenous rights to collective use and enjoyment of land and customary land tenure.
Secondly, we believe that this section should speak to the call for reparations and for return of land. The section on gender-based violence includes a recommendation on ‘ensuring access to justice and reparations’ (para 28(j)) and similarly, the injustices of land dispossession, displacement and confiscation can only be addressed through a process of reparation and return.
* With regards to section K, ‘Rights to Food, Water, and Seeds (Articles 12 and 14)’:
1. We suggest this address the need for transparency and integration of human rights principles in trade and investment agreements in order to ensure rights to food and water. We draw attention to the 2016 thematic report of the former UN Special Rapporteur on the rights of Indigenous peoples (UN document A/HRC/33/42) on the impacts of international investment agreements on Indigenous peoples. The commercialization of seeds and the proliferation of genetically modified crops are impacts of multilateral and bilateral free trade agreements that Indigenous communities, including Indigenous women and girls, have no choice over. We suggest that to ensure the protection of ancestral forms of farming and sources of livelihood for Indigenous women and girls, that this section reiterate some of the recommendations from the Special Rapporteur’s report, which includes consultation procedures and mechanisms in cooperation with Indigenous peoples in relation to the drafting, negotiation and approval of international investment agreements, and respect for human rights as a policy objective in preambles of such agreements. The recommendation of *ex ante* and *ex post* impact assessments of trade and investment agreements is also supported by the former Independent Expert on the promotion of a democratic and equitable international order;[[6]](#footnote-6) the Special Rapporteur on the right to food has also presented reports on the impacts of trade agreements on the right to food that we take note of.
2. We suggest that this section include recommendations for the realization of food sovereignty. Food sovereignty refers to the ability to meet dietary and nutritional needs whilst participating in decision-making over one’s own food production and consumption. We see that the right to effective participation in decision-making is closely linked to Indigenous women and girls’ right to food, water and seeds in ensuring their voice and participation on issues that affect their ability to store and share seeds, access land, water and natural resources and continue in traditional farming practices. Food sovereignty would include Indigenous women and girls’ ability to consume food that is acceptable by their cultures and produced through agroecological methods that sustain the natural environment, and is important when considering the needs of Indigenous women and girls in agriculture. Food sovereignty recognizes the right of communities to food self-sufficiency and to prioritize own food production over the demands of the market, and the right to determine what constitutes safe, healthy, nutritious, and culturally acceptable food. The principle of food sovereignty thus upholds Indigenous women’s rights to land (including the ability to use, access, control and manage land) and their ability to produce food through sustainable and agroecological methods, guarding against land and resource grabs, and domination of agribusiness interests. It further upholds women’s agency and emphasizes the important roles that women and girls play in food production, leading to policies that ensure their participation and advances their rights and well-being.
* With regards to section L, ‘**Right to a Clean, Healthy, and Sustainable Environment (Articles 12 and 14)**’, we support the recommendations and the mention of the 2015 Paris Climate Change Agreement; we wish to note that the annual climate change conference of parties has been hostile and inaccessible to Indigenous leaders who have worked hard to contribute to the implementation of the accord and to address the climate crisis. We draw attention to the fact that fossil fuel lobbyists were by far the largest delegation of at least 500[[7]](#footnote-7) at the 26th Conference of Parties (COP26) and suggest that recommendations under the right to a clean, healthy and sustainable environment must go further. Firstly, as reports from the Intergovernmental Panel on Climate Change indicate, immediate and large-scale changes are needed moving away from fossil fuels: this industry negatively impacts Indigenous communities and particularly women and girls. We also draw attention to the 1995 Beijing Declaration and Platform for Action under Strategic objective K.1. requires involvement of women actively in environmental decision-making at all levels. We suggest that this section recommends states to report to UN treaty bodies, including the CEDAW committee, on (1) actions taken to divest from fossil fuels (2) actions taken to enable a just and equitable transition to a clean renewable energy sector that is community-centered and built on principles of energy democracy (3) actions taken to include Indigenous leaders including women and girls, and Indigenous women human rights defenders in policymaking, at the national, regional and international levels, including appointing them on delegations to intergovernmental meetings.

**Conclusion**

We support the CEDAW Committee in their efforts to develop this General Recommendation, and remain available to discuss any points raised in our submission.

1. NIWA and AIPP joint written submission to the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) General Recommendation on Indigenous Women and Girls 79th Session, Geneva, 18th June 2021. Available online: <https://aippnet.org/wp-content/uploads/2021/06/AIPP-CEDAW-23June2021.pdf> [↑](#footnote-ref-1)
2. UN. (2019). *Report of the Fifth Asia-Pacific Forum on Sustainable Development*. High-level political forum on sustainable development; Convened under the auspices of the Economic and Social Council. UN doc: E/HLPF/2019/3/Add.2, Para 15. Available online: <https://sustainabledevelopment.un.org/content/documents/22670E_HLPF_2019_3_Add_2_Note_by_the_Secretariat_on_reports_of_the_regional_forums_ESCAP.pdf> [↑](#footnote-ref-2)
3. Human Rights Watch. (2020). *Still No Answers on Activist’s Disappearance in Bangladesh*. <https://www.hrw.org/news/2020/04/08/still-no-answers-activists-disappearance-bangladesh> [↑](#footnote-ref-3)
4. Centre for Peace and Conflict Studies. (2019). *Reexamining Ethnic Identity in Myanmar*. Pp 5. Available online: <https://reliefweb.int/sites/reliefweb.int/files/resources/Ethnic-Identity-in-Myanmar.pdf> [↑](#footnote-ref-4)
5. World Bank: Social Protection & Labour Overview. Available online: <https://www.worldbank.org/en/topic/socialprotection/overview#1> [↑](#footnote-ref-5)
6. OHCHR: Statement by the Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas, on the upcoming signing the Trans-Pacific Partnership. Available online: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17005&LangID=E> [↑](#footnote-ref-6)
7. BBC. (2021). COP26: Fossil fuel industry has largest delegation at climate summit

<https://www.bbc.com/news/science-environment-59199484> [↑](#footnote-ref-7)