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**Mandate of the Working Group on discrimination against women and girls**

**Inputs on the Committee on the Elimination of Discrimination against Women (CEDAW) draft General Recommendation No. 39 on the rights of indigenous women and girls**

The Working Group on discrimination against women and girls (the Working Group) welcomes the opportunity to share its inputs on the draft General Recommendation No. 39 on the rights of indigenous women and girls, on the basis of its own findings and recommendations available in its various [thematic reports](https://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/Annualreports.aspx) where the situation of indigenous women and girls has been given particular attention.

*Introduction*

In a global context of persistent gender inequality and severe backlashes against women’s and girls’ rights which is being exacerbated by rising fundamentalisms of all kinds, coupled with political populism, unchecked authoritarian rule and disproportionate focus on corporate profits over human rights and most recently the devastating impact of the COVID-19 pandemic, indigenous women and girls have to face increased challenged due to the multiple and intersecting forms of discrimination they experience (see A/HRC/38/46, para).

*Access to justice and plural legal systems*

*Paragraph 34* could include a reference to the work of the Working Group which stressed in its report on *Eliminating discrimination against women in family and cultural life* that plural legal systems are mostly dominated by men and therefore tend to perpetuate inequalities and patriarchal interpretations of culture, resulting in discrimination against women. ([A/HRC/29/40](https://undocs.org/A/HRC/29/40), para. 54). The Working Group noted that the right to appeal, before the State courts, discriminatory decisions of indigenous courts, tribunals or arbitrators is a good practice. The commitment of indigenous women in some countries to securing State recognition of parallel systems has enabled them to challenge, in the State system, the discrimination they suffered in indigenous legal systems. (para. 57)

*Paragraph 37* could include a reference to the report of the Working Group report on *Women deprived of liberty* which stressed that the legacy of colonization and systemic marginalization, ensuing high levels of poverty, dire financial and social stress, and significant gaps in opportunities and well-being between indigenous and non-indigenous women, leading to exposure to alcohol and drug use, aggravates the disproportionate incarceration of indigenous women. Disproportionate criminalization of indigenous women remains a significant problem [A/HRC/41/33](https://undocs.org/A/HRC/41/33), para. 62)

*Paragraph 39*: When referring to “free legal aid”, the word “quality” should be added. Indeed, throughout its work and in particular in its country visits and communications, the Working Group has noted that, even when free legal aid is provided, it is of poor quality and therefore, inadequate and inefficient.

*Right to effective participation in political and public life*

*Recommendation 52 (i)*: could be reinforced as per the recommendations formulated by the Working Group in its report on *Eliminating discrimination against women in political and public life:* “Create the enabling conditions for public recognition and acceptance for women in positions of leadership and decision-making through public campaigns and educational programmes which are responsive to multicultural settings. This should include giving recognition to the diversity of women’s engagements in political and public life and providing a positive image of indigenous women in leadership and decision-making positions ([A/HRC/23/50](https://undocs.org/A/HRC/23/50), para. 97 8b)

*Right to education*

*Paragraph 55*: It might be pertinent to edit this sentence as follows: “Indigenous women and girls frequently must travel long distances to schools and they are at risk of gender-based violence, including sexual violence, on the way to and at schools” to insist on the fact that the risks of sexual violence do not only exist within the school as stressed in the following sentence.

*Right to work*

*Paragraph 57* could refer to the Working Group’s report on the *Changing world of work* which stressed that important lessons can be drawn from existing women’s cooperatives, which have often formed to bring women workers together to address basic and practical needs and then shifted to focus on identifying collective priorities and strategies for change. The complex challenge of achieving a just transition, with gender equality as a priority, also requires cross-movement solidarity between women’s, labour, environmental and indigenous movements. Strategies to increase women’s participation and leadership within trade unions is critical both as a matter of equality and to ensure that gender-specific concerns are prioritized in collective bargaining agreements and in the culture of spaces where workers unionize. Supporting women’s collective action in the changing world of work, including ensuring their freedom of association, free from violence and intimidation, is critical to realizing women’s rights to work and at work ([HRC/44/51](https://undocs.org/en/A/HRC/44/51), para 55).

*Right to health*

Paragraph 59 could make a reference to the latest Working Group’s report on *Women’s and girls’ sexual and reproductive rights in crisis* which emphasizes that p**regnancy-related morbidity and mortality rates are relatively higher among indigenous women and girls**. The absence of health services that specifically incorporate indigenous knowledge, their worldview and an intercultural approach contributes to language and cultural barriers, cost barriers and poorer reproductive health outcomes ([HRC/47/38](https://undocs.org/en/A/HRC/47/38), para.64). References to the fact that indigenous women are often targeted for sexual violence, including in the form of sexual exploitation and trafficking, which has been linked to **higher incidences of sexually transmitted infections and HIV** (para 58).

*Paragraph 61* could also refer to the above mentioned report of the Working Group which stressed that in urban areas, indigenous women and girls may have greater access to health facilities than their rural counterparts, but they often “suffer from invisibility and discrimination” based on their indigenous identity. In many cases, the criminalization of indigenous midwifery and the denial of the opportunity to give birth on the land of their ancestors, which in many traditions breaks the spiritual connection of the newborn with the community, also contributes to the overall feeling of insecurity and the distress of pregnant women during childbirth. For indigenous women, the connection to ancestral lands and the environment is fundamental to their health status ([HRC/47/38](https://undocs.org/en/A/HRC/47/38), para. 65)

*Right to equality in marriage and family relations*

*Paragraph 63* could include a footnote to the Working Group report on *Eliminating discrimination against women and girls in the family*, in particular to the fact that the State must act as an agent of change as regards women’s place in cultural and family life, by fostering and creating a culture free of all forms of discrimination against women. A transformative approach to women and girls’ status in the family is crucial. There needs to be awareness that, in the past, a patriarchal concept of family pervaded all secular, religious, customary and indigenous laws and institutions and that some States and groups are now trying, in a retrograde manner, to subject women to the most oppressive forms of patriarchy, particularly in the context of religious fanaticism. It should also be understood that the transition towards equality between women and men, and girls and boys, in the culture and in the family is a prerequisite for a decent society (see [A/HRC/29/40](https://undocs.org/A/HRC/29/40), para 72).

*Effects of COVID-19 on indigenous women and girls*

This section could be strengthened by stressing that the COVID-19 pandemic has struck a planet that was already torn by many crises. The management and recovery phases of a crisis provide a unique opportunity for reform, innovative thinking and transformation (see A/HRC/47/38, para 73). The lives of indigenous women have been shaped by histories of oppression, enslavement, exclusion, racial discrimination, forced assimilation and apartheid, linked to conquest and colonization, as well as systematic violence and disregard for their culture, spirituality and traditions, and, as a result, have been subjected to a “persistent state of crisis”. Many have been systematically subjected to reproductive violence, including forced pregnancy and sterilization, while others have been separated from their children ( para. 63). During the COVID-19 pandemic, delivery of a broad range of essential sexual and reproductive health services and goods has been suspended or postponed, including: contraceptive information and services; safe abortion services and post-abortion care; mammograms, cervical cancer detection and testing and treatment for HIV and other sexually transmitted infections (para. 26).

*Paragraph 79* should specifically mention abortion services which are particularly time-sensitive in the following sentence: “Home confinement measures led to increased reporting of domestic violence acts and other forms of violence, and a severe reduction in shelters, courts, sexual and reproductive health services, including abortion care, and other needed services for victims”. As stressed in the Working Group, WHO has called for the relaxation of certain requirements and the reduction of barriers during COVID-19 in order to avoid delays in acquiring access to certain essential sexual and reproductive health goods and services, including contraceptives and safe abortion and post-abortion care. A promising practice by some States has been the expansion of access to self-managed medical abortion, including through telemedicine. The Working Group notes that community-based midwifery can play a crucial role in responding to sexual and reproductive health needs during a crisis, supplementing scarce human resources and ensuring service coverage, in particular in remote areas, while allowing for an intercultural approach to care, which is a crucial component of acceptable and good quality care in certain communities (para. 29). Situations of crisis may be exploited to restrict access for women and girls to certain reproductive health services. During the COVID-19 pandemic, a number of countries restricted access to abortion services and suspended the operations of mobile outreach teams providing contraceptive services to rural and marginalized communities, by deeming them non-essential, and further rollbacks of existing laws and policies have been attempted (para.53)

The Working Group on discrimination against women and girls appreciates this opportunity to contribute to this powerful work of standard-setting which represents a renewed opportunity to mutually reinforce our work. We remain at the Committee’s disposal to provide further inputs and look forward to strengthening future collaboration.