THE RIGHTS OF INDIGENOUS WOMEN AND GIRLS

SECOND SUBMISSION TO THE UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN IN RESPONSE TO THE COMMITTEE’S DRAFT GENERAL RECOMMENDATION

**Amnesty International welcomes this opportunity to provide feedback to the Committee on the Elimination of Discrimination against Women (CEDAW) in response to its draft General Recommendation on the rights of Indigenous women and girls. The comments below focus on specific issues that we hope the Committee will address in the final document. We consider that this document will make a crucial contribution to clarifying the interpretation of states’ obligations to respecting, protecting and fulfilling the rights of Indigenous women and girls.**

Specific recommended amendments or additions, on a paragraph-by-paragraph basis:

**Multiple locations:** Recommend amending references to ‘victims’ throughout the text with ‘victims/survivors’, as per the language used in CEDAW general recommendation 35.

**Multiple locations:** The text lists grounds on which Indigenous women and girls face discrimination (for example para 4: “on the basis of their race, indigenous origin or identity, sex, gender, ethnicity, age, disability, language, situation of poverty, educational level, migration, and displacement” – recommend adding “and others” throughout, to avoid implying a closed list (also paras 8, 10, 17, 19, 20, 25, 28(a) ….).

**Para 2:** The definitions of sex (“biological differences between women and men”) and gender (“socially constructed identities, attributes, and roles for women and men”) included are binary and risk excluding intersex people and Indigenous non-binary gender identities such as for example two-spirit persons (North America), fa'afafine and fa'afatama (Samoa), leiti (Tonga), muxes (Mexico), among others. These definitions are based on previous 2010 CEDAW general recommendation but in more recent documents such as the 2018 OHCHR “Integrating a Gender Perspective into Human Rights Investigations: Guidance and Practice” ([HR/PUB/18/4](https://www.ohchr.org/Documents/Publications/IntegratingGenderPerspective_EN.pdf)), the following comprehensive definitions are provided:

* “Gender refers to the socially constructed identities, attributes and roles of persons in relation to their sex and the social and cultural meanings attached to biological differences based on sex.”
* “Sex is the sum of biological and physiological characteristics that typically define men and women, such as reproductive organs, hormonal makeup, chromosomal patterns, hair-growth patterns, distribution of muscle and fat, body shape, and skeletal structure. “

We recommend considering including updated definitions of sex and gender, which are inclusive of Indigenous cultures and lived realities.

**Para 10:** Given the significant impact that data collection can have on affected communities, depending on how it is done (both positive and negative), we recommend that “and collaborate with indigenous women and their organizations” is amended to “and collaborate and consult with indigenous women and their organizations in order to obtain their free, prior and informed consent”.

**Para 11:** The wording “undertaking consultation processes designed to secure the consent of the indigenous peoples affected” is different to that found in the international standards, and might be interpreted as meaning that any means to secure consent might be used; we recommend to amend to “undertaking consultation processes in order to obtain the consent of the indigenous peoples affected”.

**Para 23:** Recommend amending “Inheritance laws – both ordinary and indigenous” to “Inheritance laws – both in the state legal system and indigenous” (also para 32, 33, 34, 35, etc.). “Many nationality laws still discriminate against women […] when they marry non-indigenous persons” – it is unclear here whether nationality refers to state citizenship or belonging to an Indigenous nation.

**Para 28 (g):** Recommend amending the text to include “including in their own languages and *in accessible formats for women and girls with disabilities”.*

**Para 35:** Recommend amending the reference to ‘rape and *other* sexual violence’.

**Para 42:** Recommend clarifying the meaning of the terms ‘environmental violence’, ‘cultural violence’ and ‘spiritual violence’ as well as whether they are considered specific forms of GBV experienced by Indigenous women. This is implied for spiritual violence by virtue of its inclusion in the list of forms of GBV alongside psychological, physical, sexual, and economic violence, however, remains unclear in relation to environmental and cultural violence. Recommend also providing further clarification on state obligations to address these forms of violence.

**Para 44:** Recommend replacing ‘gender factors’ with ‘gender discrimination, structural inequality and harmful gender stereotypes’ for clarity. Additionally, recommend amending the last sentence to avoid the list of rights affected by violence to be interpreted as exclusive: “The effects of the violence suffered by indigenous women severely impact their human rights *including their rights to* life, dignity, personal integrity and security, health, privacy, personal liberty, and to be free from torture.

**Para** **47:** In addressing gender-based violence within Indigenous peoples’ communities, werecommend adding a recommendation for states to address the root causes, including socio-economic and structural factors contributing to and reinforcing gender-based violence against Indigenous women and girls such as intersecting forms of inequality and discrimination, socio-economic and political exclusion, marginalisation and denial of the right to self-determination, as well as harmful gender and racial stereotypes and prejudices.

**Para 55:** Recommend amending the last sentence: “States in general should take steps to respect the rights of indigenous women *and girls* in the area of education, as a key vehicle to transmit their culture, traditional knowledge, and respect for the environment.”

**Para 56 (b):** Recommend replacing the phrase ‘sexual education’ with ‘sexuality education’ or ‘comprehensive sexuality education’ as per [UNESCO technical guidance.](https://unesdoc.unesco.org/ark%3A/48223/pf0000260770)

**Para 59:** Recommend amending the last sentence to read “and such practices infringe the *human rights* of indigenous women and girls including *their rights*to decide on the number and spacing of their children, *personal and bodily autonomy, health, equality and non-discrimination, privacy, information and to be free from torture and other ill-treatment*. These practices also adversely affect women´s physical and mental health, *constitute gender-based violence and amount to torture. Acts that have the effect of preventing births within an Indigenous people, if committed with intent to destroy that people, in whole or in part, are likely to constitute genocide. In the absence of such an intent, if committed on a sufficiently large scale, they may constitute crimes against humanity.”*

**Para 62 (g)**: Recommend amending “which violate the right to health *and other human rights*”.
Additionally, recommend adding a recommendation on forced medical procedures that “states must take all appropriate steps to eliminate forced and coerced sterilization and other forced medical procedure on Indigenous women, including by issuing mandatory codes of conduct, requiring free and informed consent in all cases, recognising that informed consent can never be given during and immediately after labour and delivery, setting up robust monitoring mechanisms, putting in place appropriate sanctions for the violation of the right to informed consent, and providing a transparent, accessible remedy to Indigenous women who have been subjected to forced or coerced sterilization or other forced medical procedures, and comprehensive, culturally appropriate services for physical and psychological rehabilitation.”

**Para 64**: Recommend clarifying the discrepancy between the recommendation in point (c) ‘Prohibit child and forced marriages, without exceptions’ and referenced jurisprudence of the CEDAW/CRC Joint General Recommendation No. 31 (2014), which in para 18 states that “As a matter of respecting the child’s evolving capacities and autonomy in making decisions that affect her or his life, in exceptional circumstances a marriage of a mature, capable child below the age of 18 may be allowed provided that the child is at least 16 years old and that such decisions are made by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity without deference to cultures and traditions.”

**Para 68(e)**: Recommend that where digital tools are used to support transmission and preservation of Indigenous cultures, that these tools are made accessible to and culturally appropriate for Indigenous women and girls, including where necessary through technical training.

**Para 73(c):** “Ensure that indigenous women have access to loans and other forms of financial credit without collateral” – recommend amend to “… access to loans and other forms of financial credit; such loans where appropriate should not require collateral, but any loans need to be sustainable, affordable and appropriate based on genuine consultation and transparency with those taking them out”

**Para 75 (a)** “Ensure adequate access to sufficient food, water, and seeds by indigenous women and girls and acknowledge their contribution to food production, sovereignty, and sustainable development” recommend adding “and further ensure that their intellectual property rights regarding their knowledge in these areas is respected, and is not made use of without consulting them to obtain their free, prior and informed consent, and without appropriate benefit-sharing / compensation.”

**Para 76**: last sentence: States should also act promptly to (*recommend add “recognize”*) support the work of indigenous women and girls who are environmental human rights defenders and ensure their protection and security – recommend to add *“in line with the UN Declaration on Human Rights Defenders”.*

**Para 77**: Under international human rights law, States should (*REPLACE with “must”*) take individual and collective actions to address climate change, including measures to mitigate climate change-related foreseeable human rights harms; to effectively adapt by limiting negative human rights impacts; and to remedy loss and damage. States should (*REPLACE with “must”*) take mitigation and adaptation measures, including through international cooperation, solidarity, and climate finance. EXPLANATION: Using “should” instead of “must” would be a retrogression compared to what the CEDAW and other Treaty Bodies had previously stated. See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998>, where they said “In order for States to comply with their human rights obligations, and to realize the objectives of the Paris Agreement, they must adopt and implement policies aimed at reducing emissions, which reflect the highest possible ambition, foster climate resilience and ensure that public and private investments are consistent with a pathway towards low carbon emissions and climate resilient development”.

Also, recommend after “States should take mitigation and adaptation measures”, to add *“such measures must comply fully with the state’s human rights obligations, and where they may impact on the human rights of Indigenous women and girls, the state must consult with them in order to obtain their free, prior and informed consent.”*

**Para 78(a):** Reference to General Recommendation 37 para. 26. In order to better reflect the wording of this text, recommend to amend to: “Ensure that laws and policies related to the environment, climate change, and disaster risk reduction *take into account* (instead of “reflect”) the specific impacts of climate change and other forms of environmental degradation and harm, including the triple planetary crisis, [recommend add] *on indigenous women and girls, and address the various multiple and intersecting forms of discrimination”.*

**Para 78(e)**: “Take action to mitigate climate change and build the adaptive capacities of indigenous women and girls” [recommend add] *and ensure access of indigenous women and girls to climate finance, including for loss and damage;*

**Para 78(f):** (f) Recommend adding “Ensure the free, prior, and informed consent of indigenous women and girls in matters affecting their environment, lands, *cultural heritage* and natural resources*, including when any proposal is made to designate their lands as a protected area for conservation or climate change mitigation purposes, a green energy project is proposed on their lands, and in any other matter significantly impacting on their human rights*.”

**Para 78 (g):** “Ensure the safety and support the work of indigenous women human rights defenders engaged in advocacy for environmental protection and climate justice.” Recommend to amend: *Support the work of indigenous women human rights defenders demanding environmental protection and climate justice, and ensure their protection and safety, including by refraining from using legal and administrative provisions or misusing of the judicial system to harass, criminalize and stigmatize their activities and urgently and thoroughly investigating all human rights violations and abuses against them and bringing perpetrators to justice.* In particular “engaged in advocacy” could be interpreted in a narrow way, while the work of HRDs is carried out through a variety of different tactics.

**Para 79:** Recommend adding: “indigenous women and girls*, including indigenous women and girls with disabilities,* faced high infection and mortality rates” … “as well as barriers to access adequate and culturally appropriate health care*, and information about the pandemic*.” … “*Indigenous women and girls have also reported that domestic violence was linked with loss of jobs and income.” …* “Indigenous women moreover bore the burden of increased child-care responsibilities due to the closing of childcare facilities and schools*, and in some countries increased poverty and lockdown measures resulted in increased forced marriages and female genital mutilation”.[[1]](#footnote-2)*

**Para 80(d)**: Recommend adding: “Ensure that indigenous women and girls can effectively participate and be leaders in decision-making related to the COVID-19 pandemic and future pandemics *and in line with Art. 23 of the UN Declaration on the Rights of Indigenous Peoples, be actively involved in developing and determining health programmes.”*

1. Based on information from a forthcoming report on Indigenous voices during the pandemic by Amnesty International to be published in the next couple of months. [↑](#footnote-ref-2)