# **ONWA Comments on CEDAW General Recommendation No. 39 on the rights of Indigenous women and girls**

**Introduction**

Established in 1971, the Ontario Native Women’s Association (ONWA) is the largest and oldest Indigenous women’s organization in Canada. ONWA is a not-for-profit organization that empowers and support all Indigenous women and their families in the province of Ontario through research, advocacy, policy development and programs that focus on local, regional, and provincial activities. ONWA has a mandate to end violence against Indigenous women and continues to work at a national level to address the Missing and Murdered Indigenous Women and Girls crisis in Canada.

This submission follows the structure of the Committee on the Elimination of Discrimination against Women’s (the “Committee’s”) draft General Recommendation No. 39 (the “GR”) on the rights of Indigenous women and girls. ONWA supports the Committee’s approach and welcomes the opportunity to provide recommendations.

ONWA supports the GR, and respectfully sets out recommendations to improve the GR draft that speak to Indigenous women’s experiences in Canada and beyond.

**Overall Recommendations**

* The “I” on the word “Indigenous” be capitalized throughout the GR.
* An Indigenous Gender Based Analysis that adequately responds to Indigenous women’s lived experiences and issues is applied and is referenced in Article 4 that describes the different frameworks to apply when developing legislation for Indigenous women; and the IGBA be referenced through the document, each time the other frameworks are referenced.
* The context of Indigenous women living in remote areas (air access only) is important and must be considered.

**Specific Recommendations**

*Paragraph 1 - “… many indigenous women and girls living in both rural, remote and urban areas.”*

* Add the word “remote,” to reflect the lived experience of Indigenous women. All of the Inuit living in Inuit Nunaguat and First Nation women living in 80 communities in Canada live in remote areas where their only means to leave their communities is by air. As a result, Indigenous women living in remote areas face unique and distinct challenges. Multiple studies have shown that gender-based violence is particularly disproportionally high in remote communities

*Paragraph 2 - “… intersectional discrimination faced by indigenous women and girls, and their key role as leaders, knowledge-bearers, and culture transmitters within their families, peoples, communities, and society as a whole.”*

* Add the word “families,” as Indigenous women have key roles not just in communities and societies, but also in their families.

*Paragraph 2 - “...discrimination is often intersectional and based on factors such as …language, disability, and situation of poverty, housing and environment among others.”*

* Add “housing” and “environment” after the word “poverty,” as these are two additional, intersectional factors that contribute to the discrimination and violence Indigenous women face.

*Paragraph 3 - “... Indigenous women and girls also have an inextricable link and relation to their families, peoples, lands, territories, natural resources, culture, and worldview.”*

* Include the word “families,” as Indigenous women’s link to their communities and nations starts with their roles in their families.

*Paragraph 4 - “...different disciplines related to law, health, social services, education, culture, ...”*

* Include the words “social services” before “education, culture...” because the design and implementation of social services discriminates against indigenous women and exacerbates inequalities rooted in systemic racism and colonization.

*Paragraph 4 - “…prevent and eradicate discrimination against indigenous women and girls, and to fulfill the goal of social justice when human rights violations against them occur.* *An Indigenous Gender Based Analysis appreciates and articulates that Indigenous women hold specific roles and responsibilities to support their self, families, communities and Nations* *and is an important tool to inform the development of law and policy.”*

* Consider adding the following sentence to the end of paragraph 4: “An Indigenous Gender Based Analysis appreciates and articulates that Indigenous women hold specific roles and responsibilities to support their self, families, communities and Nations and is an important tool to inform the development of law and policy.”

*Paragraph 6 - “The Committee considers self-identification a guiding principle in international law to determine rights holders’ status as indigenous women and girls. States have denied Indigenous women their right to self-identification and their Indigenous communities the right to recognize them as Indigenous people.”*

* At the end of the paragraph, include the following sentence: “States have denied Indigenous women their right to self-identification and their Indigenous communities the right to recognize them as Indigenous people.” First Nation women in Canada have historically been denied status through the federal *Indian Act*, RSC 1985, c 1-5; currently Inuit women born south of Inuit Nunaguat and outside of their Land Claim area can be denied access to their Indigenous rights.

*Paragraph 7 - “and advocates for ~~a~~ clean, safe, healthy, and sustainable communities and environments.”*

* Add the words “communities” and “safe” to accurately reflect the roles Indigenous women hold and the importance of their safety in all spaces.

*Paragraph 9 - “Indigenous women often suffer domestic violence and violence in the workplace, in public and educational institutions, while receiving health services and navigating child welfare systems...”*

* Add the words “public” before “educational institutions” and “navigating child welfare systems” to accurately reflect the violence Indigenous women face in these systems, all of which are rooted in colonization and do not support Indigenous women’s role as mothers. Indigenous children are apprehended at much higher rates than non-Indigenous children. In fact, “In Canada, 52.2% of children in foster care are Indigenous, but account for only 7.7% of the child population.” (Government of Canada, 2016). Oftentimes, children are apprehended due to solely due to poverty (Ontario Human Rights Commission, 2017).

*Paragraph 11 - “This situation is frequently compounded by the ~~execution in indigenous territories of~~ economic and development projects in Indigenous territories without their free, prior, and informed consent and women’s participation in engagement or consultation processes to obtain consent.”*

* Adjust this sentence and add the words “in Indigenous territories” along with “and women’s participation in engagement or consultation processes to obtain consent” to the end of this sentence. While there are formal agreements or understandings regarding consultation processes with Indigenous people related to development, those agreements do not have specific terms or conditions to ensure an Indigenous gender-based analysis nor ensure Indigenous women’s safety. With the recent Nation-to-Nation discussions in Canada, for example, Indigenous women have been denied the right to be represented by organizations of their own choosing.

*Paragraph 20 - “Racism, culture, discriminatory stereotypes, marginalization….”*

* Add the word “culture” to this sentence as culture has been separately and distinctly denied in Canada particularly for Métis women.

*Paragraph 28 a) - “address intersectional discrimination faced by indigenous women with disabilities; indigenous girls; older indigenous women; indigenous LBTI women; those in situations of poverty; rural and remote indigenous women.”*

* Add the word “remote” in addition to rural.

*Paragraph 28 c) - “… which directly or indirectly discriminate against indigenous women and girls through an Indigenous Gender Based Analysis”*

* Add the words “through an Indigenous Gender Based Analysis” to the end of this statement..” This ensures that as state actors are considering how to repeal and amend laws, policies, regulations, programs, etc. they are doing so in a way that is responsive to the lived experiences of Indigenous women through the engagement of Indigenous women in the development and implementation of laws, policies, regulations, and programs.

*Paragraph 28 k) Recognize and support Indigenous women’s right to be consulted by State actors through their own representative Indigenous women’s organizations.*

* Add a new recommendation that recognized Indigenous women’s right to voice and self-representation, as this is essential to achieve the other recommendations. Voice and inclusion are critical to make systemic change, and the right to self-representation has been consistently violated in the Canadian context.

*Paragraph 31 - “Access to justice and remedies for indigenous women and girls should be offered with a gender, intersectional, indigenous women, intercultural, and multidisciplinary perspective through an Indigenous Gender Based Analysis as defined in paragraph 4 of this General Recommendation.”*

* Add an Indigenous Gender Based Analysis as part of this sentence, as applying such an analysis ensures specific consideration of Indigenous women’s experiences and issues and direct participation of Indigenous women in anything that impacts them and their roles in their families, communities, and Nations.

*Paragraph 35 - “...indigenous women and girls frequently face racism, ~~racial~~ discrimination.”*

* Remove the word “racial,” as the discrimination Indigenous women face is not just based on race, as the document has reflected by applying an intersectional approach; also racism and racial discrimination appear repetitive.

*Paragraph 39 d), … “ensure that justice systems include culturally and trauma informed interpreters, translators, ...”*

* Add the words “culturally and trauma informed” before the list of professionals in the justice system. It is imperative that all professionals in the justice system are well-trained to provide culturally safe and trauma informed services to Indigenous women.

*Paragraph 39 g) - “Guarantee that judicial institutions, remedies and services are available in proximity to indigenous territories, and where possible through their Indigenous institutions and communities.”*

* Add the following at the end of this sentence: “and where possible through their Indigenous institutions and communities.” This supports Indigenous women’s access to judicial supports that are Indigenous led, which can enhance their safety and support them to maintain their other responsibilities in their families and communities.

*Paragraph 39 i) – Add a new recommendation.*

* Add an additional recommendation: “*39 j)* Increase Indigenous women’s legal literacy as they access and navigate justice systems.” This supports capacity building for Indigenous women’s legal literacy. Indigenous women must know how to navigate systems that directly impact their lives and lived experiences.

*Paragraph 41 - “…in collaboration with indigenous women’s organizations, Indigenous organizations, and communities”*

* Include the words “in collaboration with indigenous women’s organizations, Indigenous organizations, and communities.” Indigenous women can support this work to ensure data collected is representative and relevant, applies an Indigenous methodology and includes an Indigenous Gender Based Analysis. It is imperative the Indigenous women have access and sovereignty over their own data. Further, in collecting data, it is important to ask the right questions to obtain the right information.

*Paragraph 42 - “Indigenous women and girls are frequently victims of rape, harassment, disappearances, killings, and femicide. Trafficking, exploitation in prostitution and contemporary forms of slavery such as domestic servitude are other forms of gender-based violence against indigenous women and girls. Environmental violence also adversely impacts indigenous women and girls, who are disproportionately affected by environmental harm, degradation, and pollution.”*

* Switch the last two sentences of paragraph 42. This order further solidifies the relationship between trafficking and gender-based violence with the first sentence.

*Paragraph 44 - “… and to be free from torture* *and their ability to fulfil their roles as mothers and advance and protect the best interests of the children and family.”*

* Add the following to the end of this sentence: “and their ability to fulfil their roles as mothers and protect the human rights of their children” to reflect the fundamental role of mother is embedded in the responsibilities of women in many States’ legislation including in child welfare legislation.

*Paragraph 45 - “Gender-based violence against indigenous women and girls undermines the collective spiritual, cultural, economic and social fabric of indigenous peoples and their communities...”*

* Add the word “economic” after the word “cultural,” as gender-based violence also impacts Indigenous women’s access to financial opportunities, employment, and training supports.

*Paragraph 45 - “…can silence the voice and leadership of Indigenous women for the transmission of culture, traditions, languages, Indigenous livelihoods, the advancement of self-determination...”*

* Add the word “livelihoods after the word “languages” in the last sentence of the Article, to reflect the unique Indigenous livelihoods that some women are responsible for (berry picking, medicine keepers).

*Paragraph 46 - “This framework must include measures to prevent, investigate, punish perpetrators or apply restorative justice remedies, …”*

* Add the words “or apply restorative justice remedies” after the words “punish perpetrators.” Restorative justice frameworks, when implemented from an Indigenous worldview, support Indigenous women’s healing, help restore families and communities and often glean better outcomes for survivors and families than punitive Western prison systems.

*Paragraph 47 e) - “Ensure that support services and remedies, including medical treatment, psychosocial counselling, professional training, cultural healing practices as well as reintegration services...”*

* Add the words “remedies” after the words “support services; ” and the words “cultural healing practices” after “professional training.” These words recognize the range of services and practices that Indigenous women must have access to when on their healing journeys.

*Paragraph 47 f) - “Systematically collect data and undertake studies, in collaboration with indigenous women through their organizations and through Indigenous communities and organizations; and using Indigenous methodologies, to assess the magnitude and gravity ...”*

* The proposed additions establish that Indigenous women are central to any collection of data about Indigenous women. It is imperative that any data collection and studies on the violence Indigenous women face are led by Indigenous women themselves.

*Paragraph 49 - “Indigenous women and girls face multiple and intersecting barriers to effective, meaningful, and real participation, as a result of colonization, in both State and Indigenous governance structures.”*

* Add at the end of the sentence “as a result of colonization, in both State and Indigenous governance structures.” This addition reflects the fact that colonization and patriarchy are embedded in all systems including both State and Indigenous systems.

*Paragraph 51 - “In many cases, indigenous women human rights defenders face killings, threats, harassment and other forms of violence.”*

* ONWA recommends adding “and other forms of violence” after this statement to reflect the range of violence that Indigenous women face including sexual violence.

*Paragraph 52 c) – “ … and stand for election and promote their recruitment into the public service, including at the decision-making level; and increase Indigenous women’s political literacy as they access and navigate the political sphere.”*

* Add this statement “*increase Indigenous women’s political literacy as they access and navigate the political sphere”* to the end of the sentence. Indigenous women must develop capacity to navigate systems that impact their lives and lived experiences.

*Paragraph 52 j) – Add a new recommendation.*

* Suggest to add *“52 j) Design and adopt public policies that strengthen the position of Indigenous women in society and help transform society and its recognition of the uniqueness and plurality of Indigenous women and their cultures and groups.”* States must support Indigenous women’s capacity to represent themselves and advocate for their own needs. Indigenous women must also be engaged in development of policies that impact them.

*Paragraph 55 - “... educational barriers for indigenous women and girls include: poverty; discriminatory gender stereotypes, racism and marginalization.”*

* Add “racism” to the list of educational barriers that Indigenous women face.

*Paragraph 56 a)i), Guaranteeing equal access of indigenous women and girls to quality education at all levels of education, within or close to their communities”*

* Add “within or close to their communities” at the end of this sentence. Indigenous women continue being forced to travel to access education, particularly after elementary school. Indigenous young women and girls have been exposed to the risk of violence and to being trafficked; denied the opportunity to learn in their Indigenous language; and are denied the opportunity to learn from their family and community about their roles and responsibilities as Indigenous women.

*Paragraph 56 c) - “Promote the adoption of curricula that is built on a human rights framework and reflect indigenous education, languages, cultures, history, knowledge systems, and epistemologies...”*

* Add “built on a human rights framework.”

*Paragraph 56 h) - “Guarantee the right of Indigenous women and girls to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, traditional ways of knowing and being, philosophies, writing systems, and Indigenous art.”*

* Including the wording “traditional ways of knowing and being” provides the opening for Indigenous women to bring forward other ways of knowing that will support restoration of Indigenous women’s roles, families, and communities.

*Paragraph 59 - “Indigenous women have limited access to adequate and safe health care services, including physical, mental, sexual and reproductive health information and education,...”*

* Add “safe” and “physical, mental” to accurately reflect the barriers that Indigenous women face around access to safe, quality healthcare that meets their wholistic health needs.

*Paragraph 62 a) - “Ensure that quality health services and facilities are available, accessible, affordable, culturally safe and appropriate, and acceptable for indigenous women and girls, …”*

* Add “safe and” between the words “culturally” and “appropriate”. It is not enough that services are only culturally appropriate, Indigenous women’s safety in accessing culturally appropriate services also requires specific practices and approaches.

*Paragraph 62 f) – “Identify and address the systemic barriers that perpetuate gender-based violence as well as the causes of violence against Indigenous women, within the health care system. Adopt steps to prevent all forms of gender-based violence, discrimination, gender stereotypes and racial prejudice in the provision of health services”*

* Add an additional sentence prior to “Adopt steps to prevent[...]”. It is imperative that systemic barriers be recognized in order to effectively prevent gender-based violence.

*Paragraph 62 h) Add a further recommendation.*

* 62 h) *“Ensure that Indigenous women’s maternal health is safe and culturally appropriate and reduces maternal mortality rates among Indigenous women.”* This addition reflects the reality that Indigenous women are disproportionately affected by issues related to maternal health and that their safety as mothers must be ensured.

*Paragraph 65 - “There are many sources of culture for indigenous women and girls, including languages, … access to medicine, respect sacred places, practice religion and their spiritual traditions, and transmit the history and heritage of their communities and peoples.”*

* Replace “exercise medicine” with “access to medicine” and add the word “spiritual” before “traditions”. This reflects the need for Indigenous women to have access to their traditional medicines and spiritual practices as they are intrinsically linked to their wellbeing.

*Paragraph 65 - “Indigenous culture and traditions are integral to the holistic and harmonious development of indigenous girls, women, families, communities and Nations.”*

* Expand the application of this sentence to include “women, girls, families, communities and Nations”. This reflects that Indigenous cultures and traditions are embedded in collective ways of lives and all our relations need to be included.

*Paragraph 76 - “This right is critical to the many indigenous women and girls that have a special connection and a stewardship responsibility to their environment, lands, territories, natural resources, and ecosystems.”*

* + Add the words “and stewardship responsibility” after the words “special connection”. Indigenous women’s special connection to the land is intrinsically linked to their responsibility as stewards of the land and water.

*Paragraph 78 b) - “…equal opportunities to meaningfully and effectively participate in decision-making related to the environment, disaster-risk reduction, and climate change and recognize Indigenous women’s environmental stewardship responsibilities”*

* Add “and recognize Indigenous women’s environmental stewardship responsibilities” to the end of the sentence. Indigenous women’s role as leaders in defending and caring for the land and waters is foundational.

*Finally, add the following new paragraph:*

**The Right of Indigenous Women to assume their roles as Mothers**

Colonially enforced policies have subjected generations of Indigenous women who are mothers to a legacy of discrimination that continues to present day. These policies have resulted in the overrepresentation of Indigenous women and girls in the criminal justice and child welfare systems via mandated government programs that enforce the apprehension of children from their families. These systems additionally interact with one another to ensure that Indigenous women’s ability to mother their children, transmit language and culture, and instill a sense of safety and connection is stripped from them. There must be clear requirements made for States that support and protect Indigenous women and ensure their right to take up their roles as mothers.

# References

Government of Canada. (2016). “Reducing the number of Indigenous children in care.” *Indigenous Services Canada*. Accessed January 31, 2022.

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