**Submission of comments for the CEDAW General Recommendation No. 39 on the rights of Indigenous women and girls**

by

Rauna Kuokkanen, Research Professor, University of Lapland, Finland[[1]](#footnote-1)

Joyce Green, Professor Emerita, University of Regina, Canada[[2]](#footnote-2)

*Overall*, the draft CEDAW General Recommendation on the rights of Indigenous women and girls is a good although barebones description of Indigenous women’s and girls’ rights. It contains a lot of unnecessary repetition with a very mainstream approach to Indigenous peoples. For example, it fails recognize and acknowledge that colonialism is an ongoing phenomenon (e.g., in the form of denial of Indigenous land and water rights, of extractive industries and green colonialism) and instead, mentions ‘the legacy of colonialism’ as if colonialism was merely historical. The draft fails to consider Indigenous peoples as nations, societies or distinct political communities but problematically focuses on Indigenous culture/s (on several occasions in the singular, leading to a recognized problem of culturalization of indigenous rights). The draft also perpetuates a gender binary that doesn’t reflect Indigenous understandings and realities of gender fluidity – consider replacing “gender” with “genders”. Another substantial shortcoming is that the draft does not address the ways in which contemporary Indigenous institutions embedded in colonial regimes prevent Indigenous women’s access to land and resources (such as co-management bodies) and to their caretaking responsibilities to land, water and medicines.

Excessive repetition between sections makes the draft a tedious read while central concepts and their meanings to Indigenous peoples in general and to Indigenous women in particular (e.g., self-determination, participation) are not explained and/or fleshed out. This will reduce the efficacy of the General Recommendation because one cannot assume that many target audiences (such as states’ representatives) will have requisite knowledge of how these concepts are understood in Indigenous communities and how Indigenous peoples’ meanings often differ from mainstream understanding. Thus, we recommend that repetition be eliminated between sections IV and V, and the central and important concepts are explained to provide the document the precision it requires if it is to be effective.

Reference to the human rights of Indigenous women and girls should be framed as including Indigenous rights: Indigenous peoples’ human rights necessarily include their Indigenous rights.

We find the concept of “intercultural” problematic. While cultures are all distinct, it is colonialism, racism, misogyny and the concomitant oppressions that are of concern. Without an analysis of the oppressions there can be no accountability and no fundamental cultural and policy changes; with a primary focus on culture/s, the focus will be on inclusion and tolerance, quite repugnant goals of erasure.

*Our more detailed comments include:*

Para 1: In the first sentence, change “peoples” to “people.” The former (“peoples”) refers to Indigenous nations; there aren’t 476.6 million different Indigenous nations, but rather 476.6 million Indigenous individuals.

Para 2: Second sentence: The right to development is not a topmost priority for either Indigenous communities in general or to Indigenous women in particular and thus, ought not to be prioritized in the beginning of the document. Replace “situation of poverty” with “economic class.”

Para 3: Second sentence: Too broad and sweeping a statement. Discrimination and gender-based violence are both large, complex issues and should not be discussed together in such a summary manner. For example, the sentence does not recognize that Indigenous women also face violence by intimate partners, not only ‘non-state actors.’ Fourth sentence: terms ‘culture’ and ‘worldview’ must be in plural so not to feed misconceptions that there is only one Indigenous culture and worldview. The last sentence is redundant.

Para 4: The list of different perspectives that need to be taken into account is important but the way in which they are discussed here is counterproductive and at times incorrect, such as the description of ‘gender perspective,’ which is not mainly about stereotypes and inferior treatment (these are effects of the gender inequality). It would be also helpful to reduce the number of perspectives for efficacy and clarity. Such a laundry list is too easily glossed over. For example, the problematic (and not well worded) ‘indigenous women and girls’ perspective’ and ‘intercultural perspective’ could easily be integrated and explained under ‘intersectional perspective.’ The description of ‘multidisciplinary perspective’ seems redundant and repetitive in this context (but if kept, needs to be reworded for clarity).

Para 5: First sentence: explain what self-determination and integrity mean for Indigenous women.[[3]](#footnote-3)

Para 6: Not clear how the “identity” discussion relates here. Moreover, community recognition is a big part of identity; there are problematics where colonial governments have regulated, restricted and erased identity; and without identification persons cannot pursue recognition and rights. If persons choose not to identify, there is nothing more to be done in protecting their Indigenous human rights. This is a very complicated and important discussion and should be unpacked.

Para 7: First sentence: Add “intellectuals, language transmitters, caregivers.” The term ‘environmental human rights’ is confusing and unclear. The reference ought to be to Indigenous land, water and environment defenders, linked with relationship to land which are broader issues than human rights (or environmental human rights, whatever term might mean) and relate to land title and self-determination.

Para 8: Repetition to what’s already been stated. Or provide a good definition of intersectionality (which is lacking) followed by a non-exhaustive list of some of the most prominent of these.

Para 9: As research has shown, part of the problem of male violence against women is terms such as ‘domestic violence’ that hide the gendered character and dynamics of this violence. Change “domestic violence” to “intimate partner violence”; also use the phrase “violence against Indigenous women and girls”.

Replace current para 9 with the following: Violence against Indigenous women and girls is epidemic. It includes psychological, physical, sexual, economic, spiritual, and environmental violence, and the deprivations and oppressions of colonial occupation. Some forms of this violence occur in intimate relationship; in workplaces, including domestic work; educational, governmental, and health institutions; in political engagements and participation in political and community life; and while incarcerated and in relationships with police. Indigenous women and girls are disproportionately at risk of femicide, disappearance, sex trafficking and prostitution; slavery and exploitation; and abusive and inadequately remunerated domestic work placements.[[4]](#footnote-4)

Para 10: Any discussion of data collection and Indigenous peoples must recognize Indigenous peoples’ right to their data, according to the principles articulated in OCAP and by the Global Indigenous Data Alliance for Indigenous data governance and ownership. States must count indigeneity and gender in data collection in order to know and remedy problems, particularly with state institutions such as health care, education, prisons, policing and so on; and with economic and educational data collection.

Para 11: Insert “colonialism” and “misogyny” as the root cause of discrimination. While Indigenous peoples’ lands are a vital preoccupation, many Indigenous people live in settler communities (which are also always on unceded Indigenous lands), and attention to their rights and safety must take place in that context also. Tie these concerns to the “free, prior and informed consent” of Indigenous peoples and to other relevant provisions of the UNDRIP.[[5]](#footnote-5) First sentence: explain and distinguish individual and collective dimensions of Indigenous self-determination. Sentence starting with ‘this undermined indigenous women’s and girls.’: add “responsibilities toward the land” after “use and enjoyment of.”

Para 12: Sentence ‘Indigenous girls also often become stateless…’: this applies equally to Indigenous boys and thus is **not** gender specific. The effects are gendered, however, as discussed at the end of the para.

Para 13: As many intergovernmental bodies and large bodies of research indicate, there aren’t only three coinciding planetary crises, but multiple overlapping ones. Pollution is not among the top three for Indigenous peoples, but dispossession and lack of access to and jurisdiction on their territories, among others. Last sentence: include Indigenous land rights and related interests.

Para 14: Make clear that the act of reconciliation is initiated by the offending states and is an obligation upon them; and that reconciliatory acts do not eliminate outstanding Indigenous land and related claims or require Indigenous compliance with or incorporation into the political and economic objectives of the state.

Para 15: As above, terms ‘culture’ and ‘worldview’ must be in plural. The final sentence ought to mention the right to education for Indigenous women and girls. The invocation of international conventions and other instruments may name Indigeneity but should also reference gender (i.e., women and children) – these instruments are also sources of rights recognition for Indigenous people. The Universal Declaration of Human Rights should also be named because while Indigeneity confers particular rights, humanity confers general human rights, all in the context of Indigenous people.

Para 17: Third sentence needs to recognize that due to ongoing colonialism and displacement, not all Indigenous women have an ‘inextricable link to their traditional lands.’ This also contradicts a previous section on Indigenous women and girls as refugees and migrants. Some may be on their traditional territories and using them in a traditional manner, but many will not. See our comment at para 11. As violence and misogyny exist in Indigenous communities as well as outside of them, avoid asserting a human rights nirvana via self-determination: the fact is Indigenous women and girls require recognition of their rights from all governments, institutions and societies.

Para 19: Already stated more than once. Delete.

Para 20: First two sentences repeat what’s already been said. Delete.

Para 22: First sentence: ‘the legacy of colonialism’ is misleading as if colonialism belongs to the past. The ongoing nature of colonialism ought to be acknowledged and mentioned.

Para 23: Add “own land, sign contracts and enter into legal relationships” to what states must guarantee to Indigenous women and children.

Para 24: Include here and in para 28 states’ obligations to ensure the informed participation of indigenous women and girls in legal, political and policy participation, consultation, and implementation processes.

Para 25: Second sentence: Key barriers to Indigenous women’s rights often include Indigenous customary laws, misogyny, and existing institutions; this needs to acknowledged.

Para 31: Define ‘justiciability.’ The General Recommendation is not a place for obscure terminology.

32. Recommend states recruit and appoint Indigenous justices to the bench: the existing bench of judges is not neutral in its approach to Indigenous or women’s matters.

Para 34: Fourth sentence: Barriers to access to justice include a common lack of trust, not believing the victim, police brutality, biased law enforcement officials and courts, revictimization.

Para 35: ‘colonial legacies and post-colonial policies’ must be reworded. For Indigenous peoples, colonialism is ongoing and thus not only a matter of legacies. For the same reason, there aren’t such things as postcolonial policies. Final sentence: in addition of having limited access to medical care, Indigenous women and girls frequently experience racism and victimization at the hands of healthcare professionals.

Para 38: First sentence: add “and train Indigenous female judges and other court personnel” (see para 32; ensure this is in recommendations at para 39).

Para 40: Repetition to what’s already been stated. Delete.

Para 41: Use the terms “racism” and “misogyny”, not “stereotypes”; include that wording in paras. 43, 45, 46 also, and make wording consistent with recommendations in para 47.

Para 45: Replace references to “Gender-based violence” with “Racist and gender-based violence.”

Para 47 (f): See comment under para 10 above about Indigenous data.

Para 49: Needs to explain the multiple forms and ways of participation for Indigenous women, and recognize that not all conform western/mainstream notions of political and/or societal participation. Needs to acknowledge Indigenous forms of participation, engagement and leadership, authority and modes of organization. Needs to recognize and discuss that Indigenous political organizations are also characterized by gendered regimes.[[6]](#footnote-6)

Para 50: First sentence: Do the majority of world’s Indigenous women and girls have access to computers and internet? A very Global North-centric to discuss the fundamental role of online spaces. This needs to recommend state policies to improve on-line access for Indigenous people.

Para 53: Repetition to what’s already been stated. Delete.

Para 55: Second sentence: add first item on the list: patriarchal gender roles. Note racist curricula.

*Section F Right to Health*: Where is the discussion of Indigenous women’s and girls’ reproductive justice? Ought to be a separate heading/topic, not buried under other categories.

Para 61: Due to ongoing colonialism and dispossession, not all Indigenous women are custodians of traditional medicine in their communities. (And probably weren’t in the precolonial times either.) Sweeping statements about Indigenous women as anything should be avoided throughout.

Para 65: The final two sentences: another instance of sweeping, problematic statements about Indigenous women and girls. Culture is a fundamental human right; and women [and all] must be able to contest it for its repressive, sexist and other problematic content.

*Section I Rights to land, territories, and natural resources:* Given the interrelatedness of Indigenous self-determination and land rights, these two issues ought to be discussed together. Move this section earlier, after discussion of self-determination.

Para 69, 70: Include in first sentence assertion of land access as a fundamental Indigenous human right.

Para 70: Revise first sentence: ‘Lack of recognition of Indigenous rights **leads to multiple forms of dispossession** that …’

Para 76: Include reference to anthropogenic climate change as a catastrophe affecting Indigenous women’s and girls’ rights to land, water and livelihood on land and water.

Para 79: Revise third sentence so it reads: Indigenous women bore the burden of increased **caregiving** responsibilities…’

*Finally, a comment about the sources***:** Nearly all sources are UN and other intergovernmental organizations and/or NGOs. Individual authors are not cited except in the footnote 60 on environmental violence. This exception should be explained in the document, given the extensive scholarly literature on all the topics discussed in the General Recommendation, but which have not been cited as sources.

We also noted the following omission from the referenced sources: UNPFII (2012). Report of the International Expert Group Meeting on Combating violence against Indigenous women and girls: Article 22 of the United Nations Declaration on the rights of indigenous peoples. New York, ECOSOC.

1. Author of award-winning *Restructuring Relations: Indigenous Self-Determination, Governance and Gender*. New York, Oxford University Press (2019), among other publications on Indigenous women’s rights and feminism. Dr. Kuokkanen is an Indigenous Sámi woman. [↑](#footnote-ref-1)
2. Editor of *Making Space for Indigenous Feminism*. Halifax, N.S., Fernwood (2007), among other publications on Indigenous women’s rights and feminism. Dr. Green is an Indigenous woman with English, Ktunaxa and Metis ancestry; she is a citizen of the Ktunaxa Nation. [↑](#footnote-ref-2)
3. For a detailed discussion of both concepts from Indigenous women’s viewpoints, see Rauna Kuokkanen: *Restructuring Relations: Indigenous Self-Determination, Governance and Gender* (2019). [↑](#footnote-ref-3)
4. See, for reference, CEDAW Committee, *Report of the Inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, paras. 95-99; 111-127; FIMI Contribution, pages 37-41. [↑](#footnote-ref-4)
5. https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html [↑](#footnote-ref-5)
6. See chapter 4 in Kuokkanen 2019. [↑](#footnote-ref-6)