

**Memorandum summarizing the main points on the issue of gender-based violence:
General Recommendation No. 39 on the rights of indigenous women and girls**

- There are an estimated 476.6 million indigenous peoples globally, of which more than half (238.4 million) are women. They are present in about 90 countries. They span 5,000 different cultures and constitute approximately 5 percent of the world's population.
- Gender-based violence is adversely affecting the lives of many indigenous women and girls, including psychological, physical, sexual, economic, spiritual, political, and environmental violence.
- The Committee calls on States parties to promptly engage in data collection efforts to fully assess the situation of indigenous women and girls, and the forms of discrimination and gender-based violence they face. Data collection and the development of indicators can be important to identify forms of discrimination and violence against indigenous women and girls, and can inform the development of prevention measures, legislation, public policies, and programs.
- The Committee recognizes ongoing colonization, militarization, forced migration and displacement, and armed conflicts as important catalysts of gender-based violence and discrimination against indigenous women and girls.
- **Equality and Non-Discrimination**
 - o Discrimination against indigenous women and its effects should be understood in both their individual and collective dimensions.
 - In its individual dimension, indigenous women and girls suffer intersecting forms of discrimination by both state and non-state actors on the basis of their sex, gender, indigenous origin or identity, ethnicity, race, age, disability, language, situation of poverty, and educational level. Racism, discriminatory stereotypes, marginalization, and gender-based violence are inter-related violations experienced by indigenous women and girls. Discrimination and gender-based violence threaten the individual autonomy, personal liberty and security, privacy, and integrity of all indigenous women and girls.
 - In its collective dimension, discrimination and gender-based violence against indigenous women and girls threaten and disrupt the spiritual life, their connection with Mother Earth, cultural integrity and survival, and social fabric of indigenous peoples and communities. As indicated in the preamble of United Nations Declaration on the Rights of Indigenous Peoples (hereinafter "UNDRIP"), collective rights are indispensable for the existence, well-being, and integral development of indigenous peoples and indigenous women and girls. The individual rights of indigenous women and girls should never be neglected or violated in the pursuit of collective or group interests, as the respect of both dimensions of their human rights is essential. The individual rights of indigenous women and girls must always be respected, protected, fulfilled and promoted in the pursuit of collective rights as respect for both individual and collective rights is essential.
 - o The Committee recommends that State parties:
 - Develop comprehensive policies to eliminate discrimination against indigenous women and girls, centered around consultations with indigenous women and girls living in and outside of indigenous territories. This policy should include measures to address intersectional discrimination faced by indigenous women. States parties should collect disaggregated data by age and disability on the forms of gender-based discrimination and violence faced by indigenous women and girls.
- **Access to Justice and Plural Legal Systems**
 - o Indigenous women also tend to be overrepresented in prisons and face discrimination, gender-based violence, inhumane treatment, and forms of torture when they are in conflict with the law.
 - o The Committee underscores the critical role that high courts and other tribunals play in the development of jurisprudence and legal standards which advance the protection of the individual

and collective rights of indigenous women and girls to live free from discrimination and all forms of gender-based violence.

- The Committee recommends that States Parties:
 - Ensure that indigenous women and girls have effective access to adequate non-indigenous and indigenous justice systems that are free from racial and/or gender-based discrimination, bias, and stereotypes.
 - Ensure that indigenous women without sufficient means and whose legal capacity has been removed have access to free legal aid, including in cases of gender-based violence against women. Free legal aid and assistance should be provided to girls. States parties should financially support non-governmental organizations providing free and specialized legal assistance to indigenous women.
 - Adopt measures and policies related to criminal justice that consider the historical conditions of poverty, racism, and gender-based violence which have and still affect indigenous women and girls. States should also conduct studies on the causes and factors that give rise to conflicts of indigenous women and girls with the law. States should ensure that indigenous women and girls in conflict with the law have fair treatment by the justice system, including the availability of specialized defenders to provide needed legal assistance.

- **Prevention of and Protection from Gender-Based Violence Against Indigenous Women and Girls**

- Gender-based violence against indigenous women and girls is a form of discrimination under article 1 and therefore engages all obligations under the Convention. Under article 2, States parties must adopt measures without delay to prevent and eliminate all forms of gender-based violence against indigenous women and girls. The prohibition of gender-based violence against women is a principle of customary international law and applies to indigenous women and girls.
- The Committee highlights the need for States to engage in data collection efforts, in collaboration with indigenous organizations and communities, to understand the scope of the problem of gender-based violence against indigenous women and girls.
- Gender-based violence against indigenous women and girls is drastically underreported and perpetrators regularly enjoy impunity due to indigenous women and girls' extremely limited access to justice and biased or flawed criminal justice systems.
- States parties have a due diligence obligation to prevent, investigate and punish perpetrators, and provide reparations to indigenous women and girls who are victims of gender-based violence. This obligation is applicable to both non-indigenous and indigenous justice systems. Due diligence should be implemented with a gender, indigenous women, intersectional, intercultural, and multidisciplinary perspective as defined in paragraphs 4 and 5 of this General Recommendation, and bearing in mind the gendered causes and impacts of the violence experienced by indigenous women. The effects of the violence suffered by indigenous women and girls severely impact their human rights to life, dignity, personal integrity and security, health, privacy, personal liberty, and to be free from torture.
- Gender-based violence against indigenous women and girls undermines the collective spiritual, cultural, and social fabric of indigenous peoples and their communities.
- States should have an effective legal framework and adequate support services in place to address gender-based violence against indigenous women and girls. This framework must include measures to prevent, investigate, punish perpetrators, and provide assistance and reparations to indigenous women and girls who are victims, as well as services to address and mitigate the harm, of gender-based violence. This general obligation extends to all areas of State action. They require the formulation of legal norms, including at the constitutional level, and the design of public policies, programs, institutional frameworks and monitoring mechanisms, aimed at eliminating all forms of gender-based violence against indigenous women and girls, whether committed by State or non-State actors. States are also obligated under the Convention to adopt and implement

measures to eradicate discriminatory gender stereotypes and negative social attitudes which are the root cause of gender-based-violence against indigenous women and girls. The Committee reiterates that the failure of a state party to act proactively to prevent gender-based violence when its authorities knew of the danger of violence, and to promptly investigate, prosecute, punish, and grant reparations for these acts, may amount to violations of the Convention by acquiescence or omission.

- The Committee recommends that States parties:
 - Adopt and effectively implement legislation prohibiting gender-based violence against indigenous women and girls incorporating a gender, indigenous women and girls, intersectional, intercultural, and multidisciplinary perspective, as defined in paragraph 4 of this General Recommendation.
 - Recognize all forms of gender-based violence against indigenous women and girls, including environmental, spiritual, political, and cultural violence.
 - Ensure that indigenous women and girls have timely and effective access to both non-indigenous and indigenous justice systems, including protection orders and the investigation of cases of missing and murdered indigenous women and girls, free from discrimination and bias.
 - Repeal all laws that prevent or deter indigenous women and girls from reporting gender-based violence, such as guardianship laws; the practice of so-called “protective custody”; restrictive immigration laws; and laws allowing for dual arrests in cases of domestic violence or for the prosecution of women when the perpetrator is acquitted.
 - Ensure that support services, including medical treatment, psychosocial counselling, professional training, as well as reintegration services and shelters are available and accessible to indigenous women and girls who are victims of gender-based violence against women, which are culturally relevant and appropriate. All services should be designed with an intercultural and multidisciplinary approach, as described in paragraph 4 of this General Recommendation.
 - Provide resources for indigenous women and girls survivors of gender-based violence to have access to the legal system to report cases of gender-based violence against women. These can include forms of transportation, legal aid and representation, and access to information in their own indigenous languages.
 - Systematically collect data and undertake studies, in collaboration with indigenous communities and organizations, to assess the magnitude, gravity, and root causes of gender-based violence against indigenous women and girls, particularly sexual violence and exploitation to inform measures to prevent and respond to such violence.

- **Right to Effective Participation in Political and Public Life**

- Indigenous women are at risk of political violence, harassment and other attacks and reprisals for political activism and advocacy work, both offline and online. Indigenous women human rights defenders are particularly targeted due to their leadership; their defiance of socially expected roles; and opposition to particular economic interests. The Committee considers that States parties should adopt immediate gender-responsive measures to publicly recognize, support, and protect the life, liberty, and security of indigenous women human rights defenders, and to ensure safe conditions and an enabling environment for their advocacy work free from discrimination, racism, killings, harassment, and violence.
- The Committee recommends that States parties:
 - Act with due diligence to prevent, investigate, and punish all forms of political violence against indigenous women politicians, candidates, human rights defenders, and activists, at the national, local, and community level.
 - Take proactive and effective steps to recognize, support, and protect the life, integrity, and work of indigenous women human rights defenders and ensure that they conduct their

activities in conditions of safety and in an enabling and inclusive environment. States measures should include the creation of specialized government instances to protect women human rights defenders, with the effective, real, and meaningful participation of women human rights defenders.

- **Right to Nationality**

- Article 9 provides that States parties shall grant all women and girls, including those indigenous, equal rights with men to acquire, change, or retain their nationality and with respect to the nationality of their children.
- The Committee recommends that States parties:
 - Ensure that refugee determination and asylum procedures, resettlement and integration processes integrate a gender, intersectional, indigenous women, and intercultural perspective as defined in paragraph 2 of this General Recommendation.
 - Ensure international protection to indigenous women and girls at risk of persecution and gender-based violence.

- **Right to Education**

- Indigenous women and girls face multiple barriers to enrollment, retention, and completion at all levels of education and in non-traditional fields.
- The Committee recommends that States parties:
 - Ensure that indigenous women and girls fully enjoy the right to education by:
 - Creating support systems for indigenous women and girls to reduce their unequal share of unpaid care work and combat child marriage, and to assist victims in reporting acts of gender-based violence and labor exploitation. Social support systems should be operationally effective, accessible, and culturally responsive.
 - Prevent and eliminate all forms of gender-based violence discrimination and stereotypes against indigenous women and girls in the school environment.

- **Right to Work**

- The Committee recommends that States parties:
 - Take steps to prevent discrimination, racism, stereotypes, gender-based violence, and sexual harassment against indigenous women in the workplace and to establish and enforce effective reporting and accountability mechanisms, including through regular labor inspections.

- **Right to Health**

- Indigenous women and girls have limited access to adequate health care services, including sexual and reproductive health services and information, and face racial and gender-based discrimination in health systems. Health professionals are often insensitive to the realities, culture, and worldview of indigenous women, and rarely offer services respecting their dignity, privacy, informed consent, and reproductive autonomy. Indigenous women are frequent victims of gender-based violence in the health system, including obstetrics violence and coercive practices.
- The Committee recommends that State parties:
 - Adopt steps to prevent all forms of gender-based violence, coercive practices, discrimination, gender stereotypes and racial prejudice in the provision of health services.

- **Right to Equality in Marriage and Family Relations**

- Indigenous women and girls are at a disproportionate risk of gender-based violence by their family members, including domestic violence, forced pregnancies, so-called honor crimes, female genital mutilation, femicide, sexual harassment, rape, and incest. Early and forced marriages also affect indigenous girls, with important negative consequences for their health, autonomy, education,

incursion into the employment sector, and their participation in the public and political life of their communities and countries.

- The Committee recommends that State parties:
 - Prohibit child and forced marriages, without exceptions.
 - Prevent, investigate, and sanction female genital mutilation as a harmful practice against indigenous girls.

- **Right to Culture**

- Indigenous women's cultural rights are linked to their self-determination and their ability to transmit and hold traditional knowledge is under strain due to direct violence, assimilation policies, and structural barriers.

- **Rights to Land, Territories, and Natural Resources**

- Lack of recognition of indigenous land rights can lead to poverty; food and water insecurity; barriers to access natural resources needed for survival; and create unsafe conditions, which facilitate the perpetration of gender-based violence acts against indigenous women and girls.
- The Committee recommends that States parties:
 - Adopt a comprehensive strategy to address discriminatory stereotypes, attitudes, and practices, which undermine indigenous women's rights to land, territories, and natural resources.

- **Rights to Food, Water and Seeds**

- The Committee recommends that States parties:
 - Exercise due diligence to prevent, investigate, and punish gender-based violence against indigenous women and girls when performing agricultural work, procuring food and fetching water for their families and communities; and

- **Right to a Clean, Healthy, and Sustainable Environment**

- The failure of states to take adequate action to prevent, adapt to, and remediate these serious environmental harms constitutes a form of discrimination and violence against indigenous women and girls that needs to be promptly addressed. States should act promptly to support the work of indigenous women and girls who are environmental human rights defenders and ensure their protection and security.
- The Committee recommends that States parties:
 - Ensure the safety and support the work of indigenous women human rights defenders engaged in advocacy for environmental protection and climate justice.

- **Regarding COVID-19 and its effects on Indigenous Women and Girls: The Committee recommends that States parties:**

- Ensure that courts, shelters, domestic violence reporting mechanisms and sexual and reproductive health services are considered essential and remain operational throughout the COVID-19 and during future pandemics.