

# CENTER *for* REPRODUCTIVE RIGHTS

**Submission from the Center for Reproductive Rights following the call for submission of the Special Rapporteur on Violence Against Women and Girls on violence against indigenous women.**

**The Center for Reproductive Rights (the Center)—an international non-profit legal advocacy organization headquartered in New York City, with regional offices in Nairobi, Bogotá, Geneva, and Washington, D.C.—uses the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to respect, protect, and fulfill. Since its inception 27 years ago, the Center has advocated for the realization of women and girls’ human rights on a broad range of issues, including on the right to access sexual and reproductive health services free from coercion, discrimination and violence; on the right to bodily autonomy; preventing and addressing sexual violence; and the eradication of harmful traditional practices.**

The Center for Reproductive Rights (the Center) is pleased to provide this submission for report of the Special Rapporteur on Violence Against Women and Girls on violence against indigenous women.

This submission will focus on discrimination, violence, retaliation and persecution suffered by indigenous women and girls and examines the linkages between historical, structural and colonialism that impact them in their access to sexual and reproductive health and rights (SRHR).

## **I. Background**

Indigenous women and girls are particularly vulnerable to suffer from discrimination, acts of violence, retaliation and persecution, including sexual violence and violations of their SRHR. Their intersectional identity, including their culture, sex, gender, ethnicity, socio-economic situation, and languages, among others, places them at the center of systemic and intersectional discrimination.<sup>1</sup> This situation is the product of, and compounded by the historical, structural and enduring colonialism, discrimination and racism found in society and in its laws, policies and institutions.<sup>2</sup> Therefore, violence against indigenous women and girls is closely linked to the continuing colonial dispossession of their peoples’ lands and most commonly involves discriminatory and coercive practices, including acts of sexual abuse and rape.<sup>3</sup> This situation undoubtedly impacts indigenous women human rights defenders and women land defenders in a disproportionate manner, and has impact on their health, including their SRHR.

## **II. International Legal framework**

States have clear legal obligations under current human standards to ensure the respect, protection and fulfillment of SRHR of indigenous women and girls with no discrimination. These obligations require States to guarantee that women and girls not only have access to comprehensive reproductive health information and services, but also that they experience positive reproductive health outcomes, including lower rates of maternal mortality, and have the opportunity to make fully informed decisions about their sexuality and reproductive lives.<sup>4</sup>

### **1) Equality and non-discrimination**

Most of the Treaty Bodies have recognized that gender equality is essential to the realization of human rights.<sup>5</sup> Nevertheless, traditional models have failed to address the historical roots of gender discrimination, gender stereotypes and traditional understandings of gender roles that perpetuate gender and inequality.<sup>6</sup> In its General Comment No. 22, the CEDAW Committee identified “groups as, but not limited to, poor women, persons with disabilities, migrants, indigenous or other ethnic minorities, adolescent, lesbian, gay bisexual, transgender and intersex persons, and people living with HIV/AIDS [as] more likely to experience multiple discrimination.”<sup>7</sup> In the same line, in its General Recommendation No. 28 the CEDAW Committee stated that “States parties should recognize that rural women are not a homogenous group and often face intersecting discrimination” and that “[m]any indigenous and afro-descendent women live in rural settings and experience discrimination based on their ethnicity, language and traditional way of life.”<sup>8</sup> The Committee recommended that “States parties should eliminate all forms of discrimination against disadvantaged and marginalized groups or rural

women”, including indigenous women and ensure that they “are protected from intersecting forms of discrimination and have access to [...] health care”.<sup>9</sup>

The principle of substantive equality seeks to remedy entrenched discrimination by requiring States to take positive measures to address the inequalities that women face, for which States should:

- Address discriminatory power structures.<sup>10</sup>
- Recognize that women and men experience different kinds of rights violations due to discriminatory social and cultural norms, including in the context of health,<sup>11</sup> and that, women may also face multiple discrimination, based on multiple grounds, including race, disability, age or other marginalized statuses.<sup>12</sup>
- Ensure equality of results.<sup>13</sup>

The Committee on the rights of the Child (CRC Committee), the CEDAW, the Committee on Economic, Social and Cultural Rights (ESCR Committee), the Committee on the Rights of Persons with Disabilities (CRPD Committee) and the Human Rights Committee have urged States to address both *de jure* and *de facto* discrimination in private and public spheres, adopt measures to eliminate gender stereotypes towards women, and address practices that disproportionately impact women.<sup>14</sup> This translates by the fact that States should take positive measures to create an enabling environment that improves social conditions, including poverty and unemployment, factors that have an impact on women’s right to equality in healthcare.<sup>15</sup>

Treaty Bodies have also called on States to ensure positive reproductive health outcomes, in addition to ensure access to reproductive health services.<sup>16</sup> They are also recognizing the interlinkages between the realization of a range of human rights and of women’s reproductive health, often called social and other determinants of health,<sup>17</sup> which refer to the conditions in which people are born, grow, live, work and age, which are shaped by power structures and resource distribution at the local, national and global levels.<sup>18</sup> These determinants impact the choices and meaningful agency that individuals can exercise with respect to their sexual and reproductive health.<sup>19</sup> These determinants impact the choices and meaningful agency that individuals can exercise with respect to their sexual and reproductive health.<sup>20</sup>

Treaty Bodies recognized that the failure to provide women with quality maternal health services violates the rights to equality and non-discrimination, since these are services that only women need to meet their specific health needs.<sup>21</sup> The Committees have also specifically recognized that intersectional discrimination can hinder women’s access to reproductive health services<sup>22</sup> and have recommended to States to place a particular focus on the maternal health needs of marginalized groups of women, including adolescents, poor women, minority women, rural women and women with disabilities.<sup>23</sup>

In this context, marginalized populations, including *inter alia*, racial, indigenous minorities and other ethnic communities, as well as migrant and rural women and women deprived of their liberty have long experienced the disproportionate impact of restricted access to comprehensive reproductive health care and the COVID-19 has exacerbated the existing inequities.<sup>24</sup>

## **2) Access to sexual and reproductive health information and services**

The right to the highest attainable standard of physical and mental health includes the access to reproductive health information and services. In its General Comment No. 14, the ESCR Committee establishes four interrelated and essential elements of the right to health, finding that health facilities, goods and services must be available, accessible, acceptable and of good quality.<sup>25</sup> The element of acceptability means that “[a]ll sexual and reproductive health facilities, goods and services must be [...] culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities”,<sup>26</sup> which also applies for indigenous women and girls.

In General Comment No. 22, the ESCR Committee applies these principles to the right to sexual and reproductive health. Other Treaty Bodies have used this framework with respect to reproductive health and services<sup>27</sup> and reiterates the States’ obligation “to adopt appropriate legislative, administrative,

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budgetary, judicial, promotional and other measures to ensure the full realization of the right to sexual and reproductive health”.<sup>28</sup> In relation to the provision of reproductive health services, there are minimum core obligations that States must fulfil regardless of resource constraints, which are, among others, to ensure that individuals are free from gender discrimination in the provision of health services<sup>29</sup> and to avoid all retrogressive measures that would perpetuate existing, or establish new oppressions.<sup>30</sup> General Comment No. 22 of the ESCR Committee also indicates that States must eliminate or remove all laws and policies that undermine the ability of certain individuals and groups to obtain the full range of reproductive health information, goods and services.<sup>31</sup>

### **3) Access to abortion**

WHO has established access to legal and safe abortion services as essential services<sup>32</sup> and Treaty Bodies indicated that restrictive laws on abortion violate a series of human rights, including the rights to health, life, privacy and the right to live a life free of discrimination based on gender or on gender stereotypes and the right to live a life free from cruel, inhuman and degrading treatment.<sup>33</sup> The CEDAW Committee has established that the criminalization of abortion, the denial or delay of safe abortion and the post-abortion care and the forced continuation of a pregnancy are forms of discrimination and gender-based violence.<sup>34</sup>

Treaty Bodies have long recognized the connection between restrictive abortion laws, high rates of unsafe abortion, and maternal mortality.<sup>35</sup> In General Comment No. 36 on the right to life, the Human Rights Committee has reaffirmed that States have a duty to ensure that women and girls do not have to undertake unsafe abortions as part of preventing foreseeable threats to the right to life and that States parties may not regulate pregnancy or abortion in all other cases in a manner that runs contrary to their duty to ensure that women and girls do not have to undertake unsafe abortions.<sup>36</sup>

The provision of post-abortion care is a long standing human rights obligation and denying of abortion and post-abortion care can pose a risk to physical, mental, and emotional health and safety, risks that are heightened during a pandemic.

The Treaty Bodies recognize that abortion must be decriminalized, legalized at a minimum on certain grounds, and services must be available, accessible, affordable, acceptable, and of good quality and that any regulation of abortion must not force women and girls to undergo unsafe abortion.<sup>37</sup> The Human Rights Committee indicated that States must provide safe, legal and effective access to abortion, *inter alia*, “when carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering”.<sup>38</sup> The Treaty Bodies recommend that States should liberalize their abortion laws to improve access and remove legal, financial, and practical barriers that deny effective access by women and girls to safe and legal abortion, including medically unnecessary barriers to abortion and third-party authorization requirements.<sup>39</sup>

States are required to eliminate laws and policies that undermine autonomy, integrity and right to equality and non-discrimination in the full enjoyment of the right to sexual and reproductive health.<sup>40</sup>

### **4) Freedom from violence in maternal health facilities**

In 2015, WHO condemned “outright physical abuse, profound humiliation and verbal abuse, coercive or unconsented medical procedures (including sterilization), lack of confidentiality, failure to get fully informed consent, refusal to give pain medication, gross violations of privacy, refusal of admission to health facilities, neglecting women during childbirth to suffer life-threatening, avoidable complications, and detention of women and their newborns in facilities after childbirth due to an inability to pay”.<sup>41</sup> The organization also recognized that “such treatment not only violates the rights of women to respectful care, but can also threaten their rights to life, health, bodily integrity and freedom from discrimination.”

Treaty Bodies recognized that States must guarantee women the right to be free from violence when seeking maternal health services.<sup>42</sup> The Special Rapporteur on violence against women, its causes and consequences recognized that “[m]istreatment and violence against women not only violates the rights

of women to live a life free from violence but can also threaten their rights to life, health, bodily integrity, privacy, autonomy and freedom from discrimination” and added that “[i]nformed consent for medical treatment related to reproductive health services and childbirth is a fundamental human right”.<sup>43</sup>

In 2015, several UN and regional human rights experts called on the States to “address acts of obstetric and institutional violence suffered by women in health care facilities” and “to take all practical and legislative measures to prevent, prohibit, and punish such acts and guarantee redress”.<sup>44</sup> At the regional level, the Committee of Experts of the Follow-up Mechanism of the Belém do Pará Convention recognizes obstetric violence as a human rights violation.<sup>45</sup>

### **III. Regional examples (focus on the LAC region)**

#### **1) Violence against indigenous women and girls**

The Special Rapporteur on the rights of indigenous peoples indicated that indigenous peoples in **Honduras** are directly drawn into an exacerbated situation of violence and general insecurity of the country, especially when they seek to defend their lands and exercise their rights as human rights defenders.<sup>46</sup> She also found an alarming prevalence of cases of assault, attempted homicide and sexual violence against indigenous women defenders.<sup>47</sup> Similarly, data from 2014 reveals that approximately 38% of indigenous women in **Ecuador** and **Peru** had suffered physical or sexual violence and, although the figures are lower in **Guatemala** (24%) and **Paraguay** (20%),<sup>48</sup> the trend is alarming. Reports from 2020 reveal that 59.5% of indigenous women in **Mexico** have experienced at least one form of sexual violence in their lives.<sup>49</sup> In addition, indigenous women face several obstacles in accessing justice and impunity, which perpetuates and normalizes this type of violence.<sup>50</sup>

The situation described above is further exacerbated by the limited and inadequate access of indigenous women and girls to sexual and reproductive health information, education and services, including in cases of rape.<sup>51</sup>

#### **2) Access to SRHR and maternal mortality**

Indigenous women suffer higher rates of unintended pregnancy, unsafe abortion<sup>52</sup> and maternal mortality<sup>53</sup> than non-indigenous women. Approximately two of 10 adolescents in the LAC region become mothers, which is considerably higher among adolescents belonging to indigenous peoples.<sup>54</sup> According to UNICEF “indigenous adolescents in **Bolivia, Guatemala, Ecuador, and Nicaragua** had a larger unmet need for family planning than non-indigenous youth”.<sup>55</sup> In addition, Economic Commission for Latin America and the Caribbean (ECLAC) reported that indigenous households in LAC tend to have higher fertility rates.<sup>56</sup>

#### **3) No incorporation of an intercultural approach**

The criminalization of indigenous midwifery and the imposition of giving birth outside their ancestral land contributes to the overall feeling of insecurity and the distress of pregnant women during childbirth.<sup>57</sup> Sexual and Reproductive Health Services (SRHS) generally do not incorporate an intercultural approach, nor do they consider indigenous knowledge and worldview.<sup>58</sup> On the contrary, indigenous women’s sexual and reproductive rights, including their right to autonomy and personal integrity, have been historically and severely violated.<sup>59</sup> The Inter-American Commission on Human Rights (IACHR) has documented “[e]xamples of obstetric violence [faced by...] indigenous women includ[ing of women] being forced to give birth in a supine position rather than a vertical position; coerced sterilizations procedures,<sup>60</sup> [and forced abortions in the context of armed conflict<sup>61</sup> ...], among others”.<sup>62</sup>

The two emblematic cases presented further, will illustrate this alarming context.

##### **a) The case of Fausia**

On 13 November 2016, Fausia,<sup>63</sup> an indigenous woman human rights and indigenous land defender from Honduras was raped by two mestizo men as a form of retaliation for her work as a community leader and defender of her ancestral land. As a result, Fausia faced a forced pregnancy. Given Honduras’

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severe restrictions on access to reproductive information and healthcare, including the complete ban on access to the emergency contraceptive pill<sup>64</sup> and a complete ban and criminalization of abortion in all circumstances,<sup>65</sup> including rape, Fausia was not able to prevent and undergo an abortion, as she wished to. Therefore, she was forced into an unwanted pregnancy and maternity.

Fausia's search for justice for the sexual violence she suffered, led to threats, attacks, and other forms of retaliation against her and her family by the aggressors. Consequently, she and her family were forced to flee their home and ancestral land and, due to fear of reprisals and lack of adequate protections measures by the State, they have been forcibly displaced at least eight times. This has severely impacted her and her family's physical and mental health, life, and integrity, as well as their right to cultural heritage and tradition, to self-sufficient livelihood, collective property, and ownership, possession and use of their ancestral territory. To this day, Fausia has yet to access justice and reparations for these crimes, nor has she and her family been able to return to their land, even though they have pursued three different recourses – all ineffective. Fausia and her family continue to live in hiding and fear, in a situation of extreme vulnerability, which has been further aggravated by the COVID-19 pandemic.

Fausia's case is emblematic because it illustrates the systemic use of sexual violence against women in Honduras as form of power and gender-based discrimination and violence, which disproportionately impacts indigenous, poor, and rural women, but also because it illustrates how rape was (and is) used as a form of direct retaliation for the work of indigenous women who are also land and human rights defenders, in complete disregard of the right to sexual autonomy, privacy and integrity. In this context, the rape was an instrument of retaliation against her work in the context of a territorial dispute with the view of forcibly displacing her and her family.

Moreover, Fausia never had access to information regarding her sexual and reproductive rights, including the healthcare she needed as a survivor of rape, and she was thus forced, after an already traumatic experience, into a forced pregnancy and an undesired maternity. As such, Fausia's case also exposes the implications that the restrictions and denial of women's reproductive rights, have on rural, indigenous, poor women, particularly those who are victims of sexual violence.

## **b) The case of Eulogia and her son, Sergio vs. Peru**

Eulogia,<sup>66</sup> a *campesino* woman descendant from the original Quechua people of Peru, did not have access to adequate prenatal controls, healthcare, and information due to the physical and cultural inaccessibility of these services, during her sixth pregnancy. On 10 August 2013, when she went into labor, instead of respecting her decision of having a homebirth (as she had done so for her other five children), she was forced to go to a health center, under the threat of both a monetary fine and the withholding of the birth certificate of her child. Once at the health center, instead of receiving the obstetric care she needed, which included her right of having a vertical birth, Eulogia was not provided with assistance in her language, despite being a Quechua-speaking woman, and was left without receiving any care. Only when her delivery was imminent, medical personnel approached her and she was violently and physically forced to give birth in a horizontal position against her ancestral customs and, as a result, her son Sergio was hit in the head at the moment of birth. After this violent birthing, Eulogia not only was denied information regarding her son's health status, but she was also forced to shower with cold water against her own will and against her people's cosmovision that considers cold water as a wound to the body that has just given birth. As a result of the injury Sergio suffered at birth, he had severe health problems and ultimately died at the age of 12.<sup>67</sup>

Eulogia's case reveals, a system of institutionalized gender-based violence that perpetuates discriminatory stereotypes against indigenous peoples, in particular, indigenous women, and *campesino*, Quechua-speaking and poor women. Specifically, Eulogia's treatment during and after birth evidences the commission of acts of violence, discrimination and obstetric violence amounting to torture due to the serious impacts to her integrity, all of which was aggravated by her condition as pregnant, indigenous, Quechua-speaking peasant and poor woman. The severe and serious impacts that the violence Eulogia suffered before, during and after giving birth were prolonged and intensified

during Sergio's life, not only constituting serious human rights violations but also evidencing the inter-generational impact of these violations.

#### **IV. Suggested recommendations**

We respectfully suggest that the Special Rapporteur's report include clear and specific language and recommendations recognizing:

##### **Rights to equality, health, and to be free from violence and discrimination**

- The participation of indigenous peoples, in particular women in the development of culturally sensitive laws, policies and programmes.
- Women's right to maternal healthcare, by addressing the root causes of maternal mortality and morbidity, including gender and other forms of inequality, and strive towards the fulfilment of other human rights, including the rights to health and education.
- Sensitization of healthcare services providers to the cultural differences and development of guidelines and protocols in the health sector that focuses on indigenous peoples and their right to autonomous decision making.
- The incidence on sexual abuse of indigenous women, forced pregnancies and forced motherhood, because of the lack of access of sexual and reproductive health services, in particular emergency contraception and abortion services.
- The prevalence of obstetric violence, forced sterilizations and forced medication interventions, due to the lack of information about women's health options and the denial and disregard of their autonomy and decision-making capacities, which is a product of the still prevalent gendered, racial and colonial stereotypes.
- How indigenous women with intersecting identities – indigenous women and girls, women human rights defenders, indigenous women leaders and activists, living in rural areas and/or with low socio-economic background, having no access to information, education or reproductive health services – are impacted and suffer disproportionately and in cumulative ways the consequences of all forms of violence and discrimination, in particular sexual violence, reproductive violence, and lack of access to sexual and reproductive health services.
- States' obligation to guarantee access to comprehensive SRHS and rights that is culturally sensitive, including:
  - o Emergency contraception, abortion services, access to contraceptives and access to maternal healthcare, with particular care for indigenous women survivors of rape;
  - o The implementation of measures, such as telemedicine and other alternative routes for the provision of services that can enable access to SRHS in remote, rural areas or areas with difficult access to technology.

##### **Access to justice, reparations and protection**

- The severe consequences and human rights violations resulting from acts of sexual violence, reproductive violence, including obstetric violence, and forced displacement of indigenous women to their and their family's right to life, health, reproductive health, autonomy, privacy, integrity, not to be subjected to torture or cruel and inhumane treatment, and not to be subjected to violence and discrimination.
- States' obligations to guarantee the right to justice, protective measures and comprehensive rehabilitation, restitution and reparation measures to indigenous women, in particular for those who have been dispossessed and displaced from their territories, had to flee violence, and / or have been victims of rape, obstetric violence, and forced pregnancies, among others.
- The prevalence of obstetric violence, forced sterilizations and medication interventions, due to the lack of information about the women's health options and the denial and disregard of their autonomy and decision-making capacities, which is a product of the still prevalent gendered, racial and colonial stereotypes.

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## Land rights

- The prevalence of sexual violence against women as a tool of power and a form of retaliation to install fear and displace indigenous women, leaders and defenders of the land from their ancestral lands and territories.
- The multi-layered impact of forced displacement for their life, integrity, health<sup>68</sup> and livelihood of indigenous women and their families and communities.
- States' obligation to ensure and guarantee the political participation and informed consent of indigenous women in all decisions related to the exercise of collective property, which includes a duty to ensure the right of indigenous women to restitution, ownership, possession and use their ancestral lands and territories.

<sup>1</sup> Inter-American Commission on Human Rights. *Indigenous Women*. OEA/Ser.L/V/II. Doc. 44/17. 2017. para 39, available at: <http://www.oas.org/en/iachr/reports/pdfs/IndigenousWomen.pdf>; See also: Inter-American Commission on Human Rights *Indigenous Women – Brochure* (2017), p. 1 <https://www.oas.org/es/cidh/indigenas/docs/pdf/Brochure-MujeresIndigenas.pdf>

<sup>2</sup> Inter-American Commission on Human Rights. *Indigenous Women*. OEA/Ser.L/V/II. Doc. 44/17. 2017. Paras 9, 10, 42, available at: <http://www.oas.org/en/iachr/reports/pdfs/IndigenousWomen.pdf>

<sup>3</sup> Working Group on discrimination against women and girls. *Women's and girls' sexual and reproductive health rights in crisis*. A/HRC/47/38, para. 64; See also: Inter-agency support group on indigenous peoples' issues. *Thematic paper towards the preparation of the 2014 World Conference on Indigenous Peoples. Elimination and responses to violence, exploitation and abuse of indigenous girls, adolescents and young women*. 2014. p. 1. Additionally, in Peru, for example, sexual violence against women was widespread and used as a weapon of war during the Peruvian armed conflict, where 75% of the victims of the conflict were indigenous peoples. Inter-American Commission on Human Rights. *Indigenous Women*. OEA/Ser.L/V/II. Doc. 44/17. 2017. para 97, available at: <http://www.oas.org/en/iachr/reports/pdfs/IndigenousWomen.pdf>

<sup>4</sup> Center for Reproductive Rights, *Breaking Ground 2018: Treaty Monitoring Bodies on Reproductive Rights*, 2018, available at: <https://reproductiverights.org/breaking-ground-2018-treaty-monitoring-bodies-on-reproductive-rights/>

<sup>5</sup> *Ibid.* See also: Convention on the Elimination of All Forms of Discrimination against Women, adopted Dec. 18, 1979, art. 1, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46, U.N.T.S. 13 (entered into force Sept. 3, 1981); International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, art. 3, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976); International Covenant on Economic, Social and Cultural Rights, adopted Dec. 16, 1966, art. 3, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (1966) (entered into force Jan. 3, 1976); Convention on the Rights of Persons with Disabilities, adopted Dec. 13, 2006, art. 6, G.A. Res. A/RES/61/106, U.N. GAOR, 61st Sess., U.N. Doc. A/61/611, (entered into force May 3, 2008); Convention on the Rights of the Child, adopted Nov. 20, 1989, art. 29(1)(d), G.A. Res. 44/25, annex, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (entered into force Sept. 2, 1990), Human Rights Committee, Concluding Observations: Cape Verde, para. 8, U.N. Doc. CCPR/C/CPV/CO/1 (2012); Human Rights Committee, Concluding Observations: Jordan, para. 7, U.N. Doc. CCPR/C/JOR/CO/4 (2010); Human Rights Committee, Concluding Observations: Canada, para. 20, U.N. Doc. CCPR/C/79/Add.105 (1999); CEDAW Committee, Gen. Recommendation No. 25, para. 10; CRC Committee, Gen. Comment No. 15, para. 10; CPRD Committee, Concluding Observations: United Kingdom, U.N. Doc. CRPD/C/GBR/CO/1 (2017).

<sup>6</sup> Center for Reproductive Rights, *op. cit.*, note 4.

<sup>7</sup> CESCR Committee, Gen. Recommendation No. 22, para. 30.

<sup>8</sup> CEDAW Committee, General Recommendation No. 34, para. 14.

<sup>9</sup> *Ibid.*, para. 15.

<sup>10</sup> CEDAW Committee, General Recommendation No. 25: Article 4, para. 9; CESCR, General Comment No. 20, paras. 8, 9 & 39.

<sup>11</sup> CRC Committee, General Comment No. 15, para. 9.

<sup>12</sup> CPRD Committee, General Comment No. 6, paras. 19 and 21; CEDAW Committee, Gen. Recommendation No. 25, para. 12; CEDAW Committee, Gen. Recommendation No. 28, para. 18; ESCR Committee, Gen. Comment No. 20, para. 17; Human Rights Committee, General Comment No. 28, para. 30; CPRD Committee, General Comment No. 3, paras. 3, 4, 38.

<sup>13</sup> CEDAW Committee, Gen. Recommendation No. 25, paras. 8-10; ESCR Committee, Gen. Comment No. 3, para. 10; Human Rights Committee, Gen. Comment No. 28, para. 3; CEDAW Committee, Gen. Recommendation No. 28, para. 20.

<sup>14</sup> Human Rights Committee, Concluding Observations: Cape Verde, para. 8, U.N. Doc. CCPR/C/CPV/CO/1 (2012); Human Rights Committee, Concluding Observations: Jordan, para. 7, U.N. Doc. CCPR/C/JOR/CO/4 (2010); Human Rights Committee, Concluding Observations: Canada, para. 20, U.N. Doc. CCPR/C/79/Add.105 (1999); CEDAW Committee, Gen. Recommendation No. 25, supra note 3, para. 10; CRC Committee, Gen. Comment No. 15, supra note 4, para. 10; CPRD Committee, Concluding Observations: United Kingdom, U.N. Doc. CRPD/C/GBR/CO/1 (2017).

<sup>15</sup> Human Rights Committee, Concluding Observations: Kyrgyzstan, para. 13, U.N. Doc. CCPR/CO/69/KGZ (2000); CRC Committee, Gen. Comment No. 15, supra note 4, paras. 10, 24.

<sup>16</sup> CEDAW Committee, Concluding Observations: Argentina, paras. 34-35, U.N. Doc. CEDAW/C/ARG/CO/7 (2016); CEDAW Committee, Concluding Observations: Thailand, para. 39, U.N. Doc. CEDAW/C/THA/CO/6-7 (2017); CEDAW Committee, Concluding Observations: Congo, para. 36(f), U.N. Doc. CEDAW/C/COG/CO/6 (2012); CRC Committee, Concluding Observations: Central African Republic, para. 55, U.N. Doc. CRC/C/CAF/CO/2 (2017); CRC Committee, Concluding Observations: Nigeria, paras. 37-38, U.N. Doc. CEDAW/C/NGA/CO/7-8 (2017); ESCR Committee, General

Comment No. 16, para. 29; ESCR Committee, Concluding Observations: Namibia, para. 65 (a), U.N. Doc. E/C.12/NAM/CO/1 (2016).

<sup>17</sup> See, e.g., CEDAW Committee & CRC Committee, Joint General Recommendation No. 31 & General Comment No. 18, paras. 68-9. See also CRC Committee, Concluding Observations: Mongolia, para. 51(a), U.N. Doc. CRC/C/MNG/CO/3-4; ESCR Committee, Concluding Observations: Australia, para. 28, U.N. Doc. E/C.12/AUS/CO/4 (2009).

<sup>18</sup> WHO, About social determinants of health (2017), available at: [http://www.who.int/social\\_determinants/sdh\\_definition/en/](http://www.who.int/social_determinants/sdh_definition/en/).

<sup>19</sup> *Ibid.*

<sup>20</sup> ESCR Committee, Concluding Observations: Australia, para. 28, U.N. Doc. E/C.12/AUS/CO/4 (2009); WHO, About social determinants of health, *op. cit.* note 18.

<sup>37</sup> *Ibid.*

<sup>21</sup> Alyne da Silva Pimentel Teixeira v Brazil, CEDAW Committee, Commc'n No. 17/2008, paras. 7.6- 7.7, U.N. Doc. CEDAW/C/49/D/17/2008 (2011); CRC Committee, Gen. Comment No. 20, para. 59.

<sup>22</sup> Center for Reproductive Rights, *op. cit.* note 4.

<sup>23</sup> See, e.g., CEDAW Committee, Concluding Observations: Thailand, paras. 42-43, U.N. Doc. CEDAW/C/THA/CO/6-7 (2017); Lesotho, paras. 32-33, U.N. Doc. CEDAW/C/LSO/CO/1-4 (2011).

<sup>24</sup> Working Group of Experts on People of African Descent, *Statement on COVID-19: Racial equity and racial equality must guide State action*, 6 April 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25768>; Special Rapporteur on extreme poverty and human rights, *US COVID-19 strategy failing the poor, says UN expert*, April 16, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25798&LangID=E>; Treaty Monitoring Bodies Chairs' statement, *UN Human Rights Treaty Bodies call for human rights approach in fighting COVID-19*, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25742&LangID=E>; OHCHR Factsheet, *COVID-19 and Women's Human Rights*, 15 April 2020, [www.ohchr.org/Documents/Issues/Women/COVID-19\\_and\\_Womens\\_Human\\_Rights.pdf](http://www.ohchr.org/Documents/Issues/Women/COVID-19_and_Womens_Human_Rights.pdf); Compilation of Special Procedures' statements, <https://www.ohchr.org/EN/HRBodies/SP/Pages/COVID-19-and-Special-Procedures.aspx>.

<sup>25</sup> ECSR Committee, General Comment No. 14, para. 12.

<sup>26</sup> UNFPA, The Danish Institute for Human Rights, OHCHR, *Reproductive Rights are Human Rights: A Handbook for National Human Rights Institutions*, 2014, p. 84, available at: [www.ohchr.org/documents/publications/nhrihandbook.pdf](http://www.ohchr.org/documents/publications/nhrihandbook.pdf)

<sup>27</sup> See CRC Committee, Gen. Comment No. 15; CEDAW Committee, Gen. Recommendation No. 24.

<sup>28</sup> ESCR Committee, Gen. Comment No. 22, para. 45.

<sup>29</sup> *Ibid.* para. 43(a); CEDAW, art. 12; CEDAW Committee, Gen. Recommendation No. 24, para. 2; CRC Committee, Gen. Comment No. 15, para. 8.

<sup>30</sup> ESCR Committee, Gen. Comment No. 22, para. 38.

<sup>31</sup> ESCR Committee, Gen. Comment No. 22, paras. 34, 41.

<sup>32</sup> WHO, [www.who.int/health-topics/abortion#tab=tab\\_1](http://www.who.int/health-topics/abortion#tab=tab_1).

<sup>33</sup> Human Rights Committee, *Mellet v. Ireland*, Communication No. 2324/2013, paras. 7.6, 7.7, 7.8, UN. Doc. CCPR/C/116/D/2324/2013, 2016, <https://undocs.org/es/CCPR/C/116/D/2324/2013>; Human Rights Committee, *Whelan v. Ireland*, Communication No. 2425/2014, paras. 7.7 - 7.9, 7.12, UN. Doc. CCPR/C/119/D/2425/2014, 2017, <https://undocs.org/CCPR/C/119/D/2425/2014>; Human Rights Committee, *K.L. v. Peru*, Communication No. 1153/2003, UN. Doc. CCPR/C/85/- D/1153/2003, 2005, [www.undocs.org/CCPR/C/85/D/1153/2003](http://www.undocs.org/CCPR/C/85/D/1153/2003); CEDAW Committee, *L.C. v. Peru*, Commc'n No. 22/2009, para. 8.15, UN. Doc. CEDAW/C/50/D/22/2009, 2011, [https://www2.ohchr.org/english/law/docs/CEDAW-C-50-D-22-2009\\_en.pdf](https://www2.ohchr.org/english/law/docs/CEDAW-C-50-D-22-2009_en.pdf); CESCR Committee, General Comment No. 22, para. 10; CEDAW Committee, *Alyne da Silva Pimentel Teixeira v. Brazil*, Communication No. 17/2008, Doc. UN. CEDAW/C/49/D/17/2008, 2011,

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2F49%2FD%2F17%2F2008&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2F49%2FD%2F17%2F2008&Lang=en); CAT Committee, Concluding Observations : El Salvador, para. 23, Doc. UN, CAT/C/SLV/- CO/2, 2009, <https://undocs.org/CAT/C/SLV/CO/2>; CAT Committee, Concluding Observations: Nicaragua, para. 16, Doc. UN, CAT/C/NIC/CO/1, 2009, <https://undocs.org/CAT/C/NIC/CO/1>.

<sup>34</sup> CEDAW Committee, General Recommendation No. 30; CEDAW Committee, General Recommendation No. 24, paras. 11, 14.

<sup>35</sup> CESCR Committee, Gen. Comment No. 22, paras. 10, 28; Human Rights Committee, Gen. Comment No. 36, para. 8 and Human Rights Committee, Gen. Comment No. 36, para. 8.

<sup>36</sup> Human Rights Committee, Gen. Comment No. 36, para. 8.

<sup>37</sup> CESCR Committee, Gen. Comment No. 22, paras. 11- 21.

<sup>38</sup> Human Rights Committee, Gen. Comment No. 36, para. 8.

<sup>39</sup> *Ibid.* See also: Human Rights Committee, Gen. Comment No. 28, paras. 10-11; CESCR Committee, Gen. Comment No. 22, paras. 28, 34, 40, 41, 45, 49(a), 49(e), 57; CEDAW Committee, Gen. Recommendation No. 24, para. 14; CEDAW Committee, Gen. Recommendation No. 35, para. 29(c)(i); CEDAW Committee, Gen. Recommendation No. 34, para. 39(c); CRC Committee, Gen. Comment No. 20, para. 60 U.N. Doc. CRC/C/GC/20 (2016); CRC Committee, Gen. Comment No. 15, paras. 31, 70, U.N. Doc. CRC/C/GC/15 (2013); Human Rights Committee, Concluding Observations: Angola, paras. 21- 22, U.N. Doc. CCPR/C/AGO/CO/2 (2019); CESCR Committee, Concluding Observations: Cameroon, para. 59, U.N. Doc. E/C.12/CMR/CO/4 (2019); CEDAW Committee, Concluding Observations: Colombia, paras. 37-38, U.N. Doc. CEDAW/C/COL/CO/R.9 (2019); CRC Committee, Concluding Observations: Bahrain, para. 38, U.N. Doc. CRC/C/BHR/CO/4-6 (2019).

<sup>40</sup> CESCR Committee, Gen. Comment. No. 22, para 34; CESCR, Concluding Observations, Ecuador, para 52(f), U.N. Doc. E/C.12/EQU/CO/4 (2019).



<sup>41</sup> World Health Organization (WHO) statement, “The prevention and elimination of disrespect and abuse during facility-based childbirth”, WHO/RHR/14.23 (2015). See also: Special Rapporteur on violence against women, its causes and consequences, *A human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence*, 11 July 2019, UN. Doc. A/74/137.

<sup>42</sup> Center for Reproductive Rights, *op. cit.* note 4.

<sup>43</sup> Special Rapporteur on violence against women, its causes and consequences, *op. cit.* note 41.

<sup>44</sup> Joint statement by United Nations experts in the field of human rights on the 2030 Agenda for Sustainable Development (Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on violence against women, its causes and consequences, and Chair of the Working Group on discrimination against women in law and in practice), experts of the African Commission on Human and Peoples’ Rights (Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa and Special Rapporteur on Rights of Women in Africa) and expert of the Inter-American Commission on Human Rights (Rapporteur on the Rights of Women), available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16490&LangID=E>.

<sup>45</sup> Follow-up Mechanism to the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (MESECVI), Declaration on Violence against Women, Girls and Adolescents and their Sexual and Reproductive Rights, 19 September 2014, OEA/Ser.L/II.7.10, MESECVI/CEVI/DEC.4/14, available at:

<http://www.oas.org/es/mesecvi/docs/cevi11-declaration-en.pdf>

<sup>46</sup> United Nations, General Assembly, Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Honduras*. UN Doc. A/HRC/33/42/Add.2. July 21, 2016, par. 19 and 20.

<sup>47</sup> *Ibid.*, para 20 and 21.

<sup>48</sup> ECLAC. *Mujeres indígenas: nuevas protagonistas para nuevas políticas*. 2014, p. 18, available at:

<https://www.cepal.org/fr/node/21228>.

<sup>49</sup> Instituto Nacional de Mujeres. *Violencia en mujeres*. 2020, available at:

[http://estadistica.inmujeres.gob.mx/formas/tarjetas/Violencia\\_indigenas.pdf](http://estadistica.inmujeres.gob.mx/formas/tarjetas/Violencia_indigenas.pdf)

<sup>50</sup> Inter-American Commission on Human Rights. *Access to justice for Women Victims of Sexual Violence in Mesoamerica*. OEA/Ser.L/V/II. Doc. 63. 2011. para. 24, 53, 85, 97, available at:

<https://www.oas.org/en/iachr/women/docs/pdf/women%20mesoamerica%20eng.pdf>.

<sup>51</sup> Inter-American Commission on Human Rights. *Indigenous Women*. OEA/Ser.L/V/II. Doc. 44/17. 2017. paras 25, 27, available at: <http://www.oas.org/en/iachr/reports/pdfs/IndigenousWomen.pdf>.

<sup>52</sup> Castro A, Savage V, Kaufman H. *Assessing equitable care for Indigenous and Afrodescendant women in Latin America*. *Rev. Panam Salud Publica (Literature review)*. 2015, p. 101, available at:

<https://iris.paho.org/bitstream/handle/10665.2/10044/v38n2a02.pdf?sequence=1&isAllowed=y>.

<sup>53</sup> ECLAC, *The Impact of COVID-19 on indigenous peoples in Latin America (Abya-Yala): Between invisibility and collective resistance*, p. 33.

<sup>54</sup> ECLAC; Gender Equality Observatory for Latin America and the Caribbean; UNFPA. *Risk of the COVID-19 pandemic for the exercise of women’s sexual and reproductive rights*. 2020, p.2, available at:

[https://oig.cepal.org/sites/default/files/c2000905\\_web.pdf](https://oig.cepal.org/sites/default/files/c2000905_web.pdf)

<sup>55</sup> UNICEF; Tulane University School of Public Health and Tropical Medicine. *Health Equity Report 2016. Analysis of reproductive, maternal, newborn, child and adolescent health inequities in Latin America and the Caribbean to inform policymaking*. 2016. Pg. 14. Available at: <https://www.unicef.org/lac/media/386/file/Publication.pdf>

<sup>56</sup> Economic Commission for Latin America and the Caribbean (ECLAC). *The Impact of COVID-19 on indigenous peoples in Latin America (Abya-Yala): Between invisibility and collective resistance*. 2021, p. 20, available at:

<https://www.cepal.org/en/publications/46698-impact-covid-19-indigenous-peoples-latin-america-abya-yala-between-invisibility>.

<sup>57</sup> Working Group on Discrimination against women and girls, *Women’s and girls’ sexual and reproductive health rights in crisis*. UN Doc. A/HRC/47/38, para 65.

<sup>58</sup> Working Group on Discrimination against women and girls. *Women’s and girls’ sexual and reproductive health rights in crisis*. A/HRC/47/38. Pr.64. Available at: <https://undocs.org/en/A/HRC/47/38>; see also: Inter-agency support group on indigenous peoples’ issues. *Thematic paper towards the preparation of the 2014 World Conference on Indigenous Peoples. Elimination and responses to violence, exploitation and abuse of indigenous girls, adolescents and young women*. 2014, p. 6, available at:

[https://www.un.org/en/ga/69/meetings/indigenous/pdf/IASG%20Thematic%20Paper\\_%20Violence%20against%20Girls%20and%20Women%20-%20rev1.pdf](https://www.un.org/en/ga/69/meetings/indigenous/pdf/IASG%20Thematic%20Paper_%20Violence%20against%20Girls%20and%20Women%20-%20rev1.pdf)

<sup>59</sup> Inter-American Commission on Human Rights. *Indigenous Women*. OEA/Ser.L/V/II. Doc. 44/17. 2017. paras 109. Available at: <http://www.oas.org/en/iachr/reports/pdfs/IndigenousWomen.pdf>

<sup>60</sup> See for example, IACHR, Report No. 71.03. Petition 12.191. Friendly Settlement. María Mamérita Mestanza (Peru), October 22, 2003.

<sup>61</sup> Inter-American Commission on Human Rights. *Indigenous Women*. OEA/Ser.L/V/II. Doc. 44/17. 2017. paras 20 (referring that in “its judgment in the case of *Massacre of Río Negro*, the Inter-American Court also took into consideration the specific effects that the practices of rape, the killings of pregnant women, and the induction of abortions had on indigenous women in the context of the massacres perpetrated during the internal armed conflict in Guatemala”, available at: <http://www.oas.org/en/iachr/reports/pdfs/IndigenousWomen.pdf>

<sup>62</sup> Inter-American Commission on Human Rights. *Indigenous Women*. OEA/Ser.L/V/II. Doc. 44/17. 2017. paras 80, 119, 120, available at: <http://www.oas.org/en/iachr/reports/pdfs/IndigenousWomen.pdf>. For example, there have been reports of shackling of indigenous women deprived of liberty during labor, and indigenous women in Mexico being denied medical

attention when they arrive at hospitals while pregnant, incidents of medical malpractice, and violations of their right to access to information, among others.

<sup>63</sup> Fausia is the pseudonym chosen by the victim. At the express request of the represented party and in order to preserve the victim's right to confidentiality and her need for protection and security, the pseudonym is and should always be used to when referring to the victim in any communications related to the case. No reference shall be made either to the real names of the members of her family and details regarding her city of origin and the indigenous peoples to which she belongs, as well as other specific information about her case, will be omitted to avoid her identification.

<sup>64</sup> Since 2009 Honduras institute a total prohibition on the promotion, use, purchase, and sale of the emergency contraception pill. See, Honduras *Health Secretariat*, Ministerial Accord No. 2744-2009. See too, Center for Reproductive Rights. *Corte Suprema de Honduras reafirma prohibición de venta, distribución y uso de PAE*, Feb. 29, 2012,

<https://www.reproductiverights.org/es/centro-de-prensa/corte-suprema-de-honduras-reafirma-prohibici%C3%B3n-de-venta-distribuci%C3%B3n-y-uso-de-pae>

<sup>65</sup> Honduras is one of the six countries in Latin America the criminalizes abortion under all circumstances, not even providing, as a minimum, an exceptions-based framework. Honduras Criminal Code. Decree 130-2017, article 196.

Available at: [https://www.tsc.gob.hn/web/leyes/Decreto\\_130-2017.pdf](https://www.tsc.gob.hn/web/leyes/Decreto_130-2017.pdf)

<sup>66</sup> Eulogia and her son Sergio's case are currently before the Inter-American Commission on Human Rights' merits stage. The Admissibility Report was issued on April 4, 2014. See, Admissibility Report, No. 35/14, Petition No. 1334-09, April 4, 2014. OEA/Ser.L/V/II.150. Available at: <http://www.oas.org/es/cidh/decisiones/2014/PEAD1334-09ES.pdf>

<sup>67</sup> PROMSEX. *Eulogia, Hechos del Caso*. Available at: <https://incidenciainternacional.promsex.org/2020/06/23/eulogia/>

<sup>68</sup> Working Group on Discrimination against women and girls. *Women's and girls' sexual and reproductive health rights in crisis*. A/HRC/47/38, par. 65.