****

**To:** CEDAW Committee

**From:** Santa Clara University – International Human Rights Clinic

**Date:** June 18, 2021

**Re:** Written Submission for the 79th Session Day of General Discussion on “The Rights of Indigenous Women and Girls”

1. **INTRODUCTION**

 The International Human Rights Clinic at Santa Clara University invites the CEDAW Committee to consider the contributions and developments from the Inter-American Human Rights System regarding the rights of indigenous women and girls, as this Committee considers interpreting CEDAW and drafting a General Recommendation addressing this vulnerable population. The Inter-American Commission on Human Rights (IACHR) has identified several key contexts of discrimination and violence where indigenous women and girls are especially vulnerable.[[1]](#footnote-1) This submission will focus on the following three contexts: 1) targeted violence against indigenous women and girls, including violence in armed conflicts and in extractive projects,[[2]](#footnote-2) 2) lack of access to justice,[[3]](#footnote-3) and 3) lack of access to education, labor, healthcare, and basic necessities[[4]](#footnote-4). Finally, we ask the Committee to declare that the political, social, and economic marginalization of indigenous women and girls is the result of intersecting and interdependent forms of discrimination and violence that must be addressed in an equally intersectional manner.

1. **TARGETED VIOLENCE AGAINST INDIGENOUS WOMEN & GIRLS**

**According to the IACHR, violence remains one of the “most alarming problems faced by indigenous women in this hemisphere.”[[5]](#footnote-5)** The IACHR has defined “violence against women” according to Article 1 of the Convention of Belém do Parà: “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”[[6]](#footnote-6) While the Convention uses very broad language, the IACHR has interpreted this provision to also include obstetric and spiritual violence because of their widespread occurrence in the Americas.[[7]](#footnote-7)

**The two contexts of targeted violence outlined here highlight how non-indigenous forces effectively buoy the historical colonization of indigenous lands.** Whether it is in the context of an armed conflict or in the context of development projects in indigenous territories, state and non-state actors continue to seek control over indigenous lands, which inflames the vulnerability to human rights violations already suffered by indigenous women and girls.[[8]](#footnote-8)

***Violence in Armed Conflicts***

**Indigenous women and girls are often the target of violence in armed conflicts that seek to establish control over indigenous territories and economic resources therein.**[[9]](#footnote-9) For example, in Guatemala, indigenous Mayan women and girls comprised about 25 percent of the direct victims of brutal human rights violations during the armed conflict, including rape, torture, amputations, and massacres.[[10]](#footnote-10) In fact, the Guatemalan Commission for Historical Clarification noted that “the loathing and debasement of indigenous women in military parlance during the armed confrontation reached such extremes that women came to be regarded as *meat.*”[[11]](#footnote-11) These brutalities were inflicted by military members upon indigenous Mayan women as part of a broader campaign to destroy this community’s social order and cultural identity.[[12]](#footnote-12)

The IACHR has documented similar violent acts, induced by armed conflict, against indigenous women and girls in Colombia, Peru, and El Salvador.[[13]](#footnote-13) In those contexts, State actors and criminal organizations alike use deadly force to establish control over indigenous lands.[[14]](#footnote-14) Increased paramilitary presence in these areas, for example, expose indigenous women to rape, forced prostitution and sexual slavery.[[15]](#footnote-15)

***Violence in Extractive Projects***

**While the IACHR has observed a “noteworthy growth” in efforts to protect indigenous people against human rights violations in the context of extractive projects, these ventures still lead to violence that disproportionately affects indigenous women and girls.**[[16]](#footnote-16) Reports of such devastations have been noted in several States in the region—from Suriname, where mercury, used by gold mining companies without robust dumping procedures, have caused health problems in pregnant women and children,[[17]](#footnote-17) to Guatemala, where dozens of indigenous women reported acts of sexual violence committed by men employed by the developers of the Inter-Oceanic Canal[[18]](#footnote-18).

1. **LACK OF ACCESS TO JUSTICE**

 **Indigenous women’s geographic isolation and lack of interpreters, basic legal education, and monetary resources often prevents them from having access to justice mechanisms.**[[19]](#footnote-19) Indigenous women and girls are often located far from cities where they could file a complaint, forcing them to walk several days to reach a courthouse.[[20]](#footnote-20) Once an indigenous woman reaches a courthouse, she often will not speak the local language and may not have access to a court interpreter.[[21]](#footnote-21) States must make the effort to hire interpreters according to Article 8(2)(a) of the American Convention and Article 12 of ILO Convention 169 and utilize the standards provided in Article XXII Section 3 of American Declaration on the Rights of Indigenous Peoples so that indigenous women can have equal access to justice.[[22]](#footnote-22)

***Multidisciplinary Approach***

**We suggest that the Committee recommend that States adopt a multidisciplinary approach to ensure access to justice for indigenous women and girls, meaning that professionals such as health care workers and translators should be informed of the particular needs and circumstances of indigenous women**. Specifically, justice workers must be educated on cultural norms, languages, and customs of indigenous women to ensure they are able to access the proper resources they need to file complaints.[[23]](#footnote-23) There are differences in culture when it comes to indigenous women reporting sexual violence, for example. Indigenous women and girls may face ostracization and shame from their communities for a heinous act that took away their bodily autonomy.[[24]](#footnote-24) Anthropological experts can explain to courts the norms of a specific indigenous woman, and interpreters can ensure that the woman is able to participate fully and competently in her legal action.[[25]](#footnote-25) Having this multidisciplinary approach is imperative, as indigenous women cannot be properly represented if the court does not understand their language and culture. States must provide comprehensive training to all those involved in the legal system to allow indigenous women to file complaints with culturally competent professionals.

***Reparations***

**The Committee should also recommend that States allow indigenous women to actively participate in the determination of forms of reparations for their human rights violations.** These reparations must take into account the culture and worldview of indigenous women, with the goal of eliminating the discrimination and stereotypes that perpetuate violence against indigenous women.[[26]](#footnote-26) Participation by the victim in determining reparations is crucial so women can take back control of their personal and bodily autonomy.[[27]](#footnote-27)

Further, reparations should aim to dismantle the systemic violence that indigenous women face.[[28]](#footnote-28) In the *Cotton Field* case, the Inter-American Court found that “when there is a situation of structural discrimination, reparations must be designed to change this situation, so that their effect is not only of restitution, but also reflection.”[[29]](#footnote-29) This type of reparation ensures that greater societal and cultural transformations occur, not simply at the level of the individual victim. Further, injustices against indigenous women could become less repetitive through structural reparations.[[30]](#footnote-30) To achieve structural change, States must adopt transformative and participatory reparations that combat historical discrimination and stereotypes of indigenous women.

1. **LACK OF ACCESS TO EDUCATION, LABOR, HEALTHCARE, AND BASIC NECESSITIES**

 **Indigenous women and girls suffer from high rates of poverty, limited access to proper infrastructure, and minimal consideration of their culture, languages, and needs, which affects their access to education, labor opportunities, healthcare, and basic necessities.[[31]](#footnote-31)**

***Insufficient Education Programs are Limiting Labor Access***

 **States must take affirmative measures to address the pervasive illiteracy that exists amongst indigenous women and girls.** In Guatemala, for example, 58.3% of indigenous women are illiterate, and that number rises to up to 87% in some indigenous communities.[[32]](#footnote-32) In Paraguay, 41.7% of women and girls above 15 years old are illiterate, and 34.4% of Mexico’s indigenous women are illiterate compared to just 8.1% of their non-indigenous women.[[33]](#footnote-33) According to the IACHR, some of the contributing factors for this pervasive illiteracy include discriminatory poverty, governmental failures to implement sustained and secure funding, limited infrastructure, and considerations for indigenous cultures, traditions, and languages.[[34]](#footnote-34)

The IACHR has acknowledged that better access to primary education for indigenous women and girls is necessary for them to have access to better wages, social benefits, and labor opportunities, which will lower the levels of poverty among this population.[[35]](#footnote-35) According to the UN, such educational opportunities for indigenous women and girls must “integrate their own perspectives, cultures, beliefs, values, and languages.”[[36]](#footnote-36)

A significant number of countries still report fewer than 10% of indigenous women are completing high school.[[37]](#footnote-37) States such as Costa Rica and Panama, for example, report that school attendance increased from 20% to 88% and 92%, respectively, among 6- to 11-year-old indigenous girls, but many of these girls often leave school before graduation.[[38]](#footnote-38) Instead, they are expected to undertake caregiver responsibilities, domestic chores, or begin early motherhood.[[39]](#footnote-39) These positions as unpaid workers in turn prevent access to social security benefits.[[40]](#footnote-40) States must therefore aim to adopt measures that ensure that indigenous girls stay in school and have access to more labor opportunities.

***Failures to Address Cultural Needs are Limiting Healthcare Access***

**Indigenous women often lack access to adequate healthcare due to appalling low levels of infrastructure addressing their physical, mental, and spiritual needs**.[[41]](#footnote-41)Health centers are often either far away from indigenous communities, culturally inappropriate, or lacking interpreters.[[42]](#footnote-42) These disparities in access to quality healthcare disproportionately affect indigenous communities as a whole but are especially damaging for women and girls.

In Brazil, for example, the indigenous populations suffer from high rates of poor health, malnutrition, dengue fever, malaria, hepatitis, tuberculosis, and parasites.[[43]](#footnote-43) Women in these communities further suffer from frequent instances of cervical cancer, limited postnatal care, and high levels of suicide.[[44]](#footnote-44) Indigenous women in both Peru and Columbia also report difficulty accessing proper care largely because of geographic social isolation.[[45]](#footnote-45) In Mexico, indigenous women have a nine-times higher maternal mortality rate compared to their non-indigenous counterparts.[[46]](#footnote-46) In Brazil, the highest rates of infant mortality are also among indigenous women and correlated with limited access to food and water.[[47]](#footnote-47) Furthermore, a disregard for the cultural and language needs of indigenous women has led to other health and human rights violations, including widespread sterilization without consent.[[48]](#footnote-48) Therefore, States must develop a comprehensive and culturally appropriate strategy that ensures indigenous women and girls have access to healthcare and proper educational support.

1. **Conclusion**

 We invite the CEDAW Committee to consider this information in its discussion towards a potential General Recommendation on the rights of indigenous women and girls. We ask that the Committee take note of the intersectionality of these contexts of discrimination and violence. We further ask that the Committee recommend States to adopt integral measures that address discrimination and violence against indigenous women and girls in an equally intersectional manner.

In solidarity,

Prof. Francisco J. Rivera Juaristi

Director, Santa Clara University – International Human Rights Clinic

FJRivera@scu.edu, IHRC@scu.edu

\_\_\_\_/s/\_\_\_\_\_\_\_\_\_\_ \_\_\_\_/s/\_\_\_\_\_\_\_\_\_\_ \_\_\_\_/s/\_\_\_\_\_\_\_\_\_\_

Sophie McEvoy, Student Ellen Wesly, Student Cassandra Wilkins, Student

1. IACHR, *Indigenous Women and their Human Rights in the Americas*, OEA/Ser.L/V/II. Doc.44/17, April 17, 2017 (IACHR Indigenous Women Report), para. 131. [↑](#footnote-ref-1)
2. *Id.* at para. 78-131. [↑](#footnote-ref-2)
3. IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc.65, December 28, 2011 para. 199. [↑](#footnote-ref-3)
4. IACHR, *Indigenous Women Report*, at para. 227. [↑](#footnote-ref-4)
5. *Id.* at para. 66. [↑](#footnote-ref-5)
6. Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, “Belém do Parà Convention,” article 1. [↑](#footnote-ref-6)
7. IACHR, *Indigenous Women*, OEA/Ser.L/V/II, Doc. 44, April 17, 2017, para. 79-80. [↑](#footnote-ref-7)
8. IACHR, *Access to Justice of Women Victims of Sexual Violence: Education and Health*, OEA/Ser.L/V/II., Doc. 65, December 28, 2011, para. 69. [↑](#footnote-ref-8)
9. *Id*. [↑](#footnote-ref-9)
10. Commission for Historical Clarification, *Guatemala Memory of Silence*, report of the Commission on Truth and Reconciliation, para. 29. [↑](#footnote-ref-10)
11. IACHR, *Application filed with the Inter-American Court of Human rights in the case of Maria Tiu Tojin (Case 10,686) against the Republic of Guatemala*, 2007, para. 90. [↑](#footnote-ref-11)
12. Commission for Historical Clarification, *Guatemala Memory of Silence*, report of the Commission on Truth and Reconciliation, para. 85-88, 91. [↑](#footnote-ref-12)
13. IACHR Indigenous Women Report, at para. 93-98. [↑](#footnote-ref-13)
14. IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 36. [↑](#footnote-ref-14)
15. UN Department of Economic and Social Affairs, *State of the World’s Indigenous Peoples*, ST/ESA/328, 2009, p. 226: discussing the rape of two indigenous women by Mexican military members, posted in the area surrounding the victims’ homes. [↑](#footnote-ref-15)
16. *Id.* at para. 99-108. [↑](#footnote-ref-16)
17. *Id.* at para. 101. [↑](#footnote-ref-17)
18. *Id.* at para. 103. [↑](#footnote-ref-18)
19. United Nations, Human Rights Council, *Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities.* [↑](#footnote-ref-19)
20. Study by the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/EMRIP/2014/3/Rev.1, June 25, 2014, paras. 36-37. [↑](#footnote-ref-20)
21. IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc.65, December 28, 2011 para. 199 and para. 305. [↑](#footnote-ref-21)
22. IACHR, *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II., Doc.43/15, December 31, 2015., para. 408. [↑](#footnote-ref-22)
23. *Id* para. 98, 305. [↑](#footnote-ref-23)
24. Information provided by the Office of the United Nations High Commissioner for Human Rights – Guatemala in its responses to the questionnaire *Indigenous women’s rights in the Americas* prepared by the IACHR. [↑](#footnote-ref-24)
25. Information provided by Abogadas y abogados para la Justicia y los Derechos Humanos, in its response to the questionnaire *Indigenous Women’s Rights in the Americas,* prepared by the IACHR. [↑](#footnote-ref-25)
26. IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 11; Díaz Gómez, Catalina; Nelson Sánchez, Camilo; Uprimny Yepes, Rodrigo (eds.), *Reparar en Colombia: los dilemas en contextos de conflicto, pobreza y exclusión*, International Center for Transitional Justice and Center for the Study of Law, Justice and Society (DeJuSticia), 2009, p. 51. [↑](#footnote-ref-26)
27. IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, paras. 107 and 110. [↑](#footnote-ref-27)
28. Díaz Gómez, Catalina; Nelson Sánchez, Camilo; Uprimny Yepes, Rodrigo (eds.), *Reparar en Colombia: los dilemas en contextos de conflicto, pobreza y exclusión*, International Center for Transitional Justice and Center for the Study of Law, Justice and Society (DeJuSticia), 2009, p. 51. [↑](#footnote-ref-28)
29. IA Court. *Case of González et al (“Cotton Fields”) v. Mexico*, Preliminary Objection, Merits, Reparations and Costs*,* Judgment November 16, 2009, Series C No. 205, para. 450. [↑](#footnote-ref-29)
30. IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, recommendation 27. [↑](#footnote-ref-30)
31. IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights,* OEA Ser.L/V/II/143 Doc.59, November 3, 2011, para. 210. [↑](#footnote-ref-31)
32. Indigenous Women’s Ombudsman’s Office (Defensoria de la Mujer Indigena), El Acceso de las Mujeres Indígenas al Sistema de Justicia Oficial de Guatemala, segundo informe. Guatemala 2007, p. 27-28. [↑](#footnote-ref-32)
33. Information provided by the State of Paraguay in its response to the questionnaire *The Rights of Indigenous Women in the Americas*, prepared by the IACHR. [↑](#footnote-ref-33)
34. Id. [↑](#footnote-ref-34)
35. IACHR, *Indigenous Women Report*, at para. 188. [↑](#footnote-ref-35)
36. United Nations, *Expert Mechanism on the Rights of Indigenous Peoples, Advice No. 1 on the right of indigenous peoples to education*, A/HRC/12/33, 2009, para. 3. *See also*, IACHR, *Indigenous Women Report*, at para. 198. [↑](#footnote-ref-36)
37. ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013; p. 92. [↑](#footnote-ref-37)
38. *Id* at 82-83. [↑](#footnote-ref-38)
39. *Id*. [↑](#footnote-ref-39)
40. *Id* at p. 186. [↑](#footnote-ref-40)
41. *Id* at p. 190. [↑](#footnote-ref-41)
42. IACHR, *Situation of discrimination against indigenous women in the Americas*, 144 POS, March 28, 2012. See also: information received from the participating organizations as a follow-up to the hearing. [↑](#footnote-ref-42)
43. IACHR, *Indigenous Women Report*, at para. 188. [↑](#footnote-ref-43)
44. *Id*. [↑](#footnote-ref-44)
45. ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013, p. 66. [↑](#footnote-ref-45)
46. *Id.* [↑](#footnote-ref-46)
47. Human Rights Council, *Report of the Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples*, James Anaya. Addendum. Report on the situation of human rights of indigenous peoples in Brazil, A/HRC/12/34/Add.2, August 26, 2009, para. 63. [↑](#footnote-ref-47)
48. IACHR, *Access to information on reproductive health from a human rights perspective*, OEA/Ser.L/V/II. Doc. 61, November 22, 2011, paras. 7 and 53. [↑](#footnote-ref-48)