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**Realizing Indigenous Peoples’ Right to Equality:**

**Addressing Gender and Environmental Violence**

**Submission to the United Nations Committee on the Elimination of Discrimination against Women**

**For the General Day of Discussion on a General Recommendation of the Rights of Indigenous Women and Girls**

Submitted on June 18, 2021 by:

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Realizing Indigenous Peoples’ right to equality requires addressing gender and environmental violence and their intersections. Indigenous women, girls, and two-spirit people are at the epicenter of both gender-based violence (GBV) and the climate crisis. For instance, Native American and Alaska Native women experience sexual assault at a rate 2.5 times higher than other women with 86% of perpetrators non-Native men.[[1]](#footnote-1) In Canada, though Indigenous women make up only 4% of the population, they are 25% of all the female murder victims.[[2]](#footnote-2) Against this backdrop of abuse, the climate crisis is displacing Indigenous communities at increasing rates and leading to economic instability, land disputes, and disruptions in social safety nets, contributing to increased risk of GBV. Moreover, Indigenous leaders have been at the forefront of sounding the alarm on climate change and may also experience GBV as retaliation for their actions as human rights defenders confronting environmental degradation.

Violence against Indigenous Peoples and nature is deeply interconnected. For generations, Indigenous land worldwide has been exploited as a “hunting ground” for natural resources, as well as women. This is an enduring legacy of colonialism, violently displacing Indigenous Peoples from their land and exploiting their resources, “facilitated by … racist and sexist ideologies in which Indigenous people are dehumanized in ways that excuse or even encourage violence against Indigenous girls and women.”[[3]](#footnote-3) Indigenous leaders have highlighted this link between sovereignty over land and bodily autonomy.[[4]](#footnote-4)

The following recommendations seek to address violations of the right to equality of Indigenous Peoples, perpetrated by GBV and environmental violence, which we hope the upcoming General Recommendation on the Rights of Indigenous Women and Girls can highlight. Appendices 1-4 further provide a supporting human rights analysis and case studies focused on Pipelines and Man Camps in the Northern United States; Canada’s National Inquiry into Missing and Murdered Indigenous Women; and Environmental Destruction, Land Dispossession, and Gender-Based Violence Against Indigenous Peoples in Brazil.

**A Focus on Addressing GBV and Environmental Violence**

* Affirm that respecting the equality of Indigenous women, and Indigenous Peoples in general, requires addressing the disproportionate rates of GBV perpetrated against them.[[5]](#footnote-5)
* Recognize that addressing GBV against Indigenous Peoples requires confronting environmental violence, including the climate crisis. Violence against Indigenous Peoples and violence against nature are deeply intertwined.[[6]](#footnote-6) GBV facilitates colonial exploitation of Indigenous land and resources, creating racial and gender hierarchies that enable the “perpetual disappearance of Indigenous bodies for perpetual territorial acquisition.”[[7]](#footnote-7) Additionally, environmental damage contributes to economic insecurity, a risk factor for GBV, increasing dependence and vulnerability.[[8]](#footnote-8)
* Consider rights to freedom from GBV (including rights to equality and non-discrimination, life, health, security of person, privacy, and freedom from cruel, inhuman and degrading treatment), together with environmental justice rights (including rights to a healthy environment, food, and water, as well as rights to protest and safety by environmental defenders), along with Indigenous sovereignty rights (including rights to self-determination, land and resources, cultural life, and access to justice, as well as Indigenous women’s right to shape policy responses). These rights weave together to form a protective web critical to safeguard the fundamental right to integrity of both Indigenous Peoples and the environment. Yet, all too often these rights are considered in isolation, leading to glaring gaps in protection.

**Indigenous-Led Responses**

* Affirm that first and foremost, Indigenous Peoples, including Indigenous women, must shape decisions affecting them and their communities. As one Indigenous leader notes, “Whatever the solutions are to these problems, women need to be decision-makers, not consultants and not as tokens.”[[9]](#footnote-9)
* This requires obtaining the “FPIC”—free, prior, and informed consent—of Indigenous communities on issues affecting them, including the use of Indigenous land and resources.[[10]](#footnote-10)
* Moreover, it is not enough to have consultation with Indigenous communities. FPIC should require consent, which entails the opportunity for Indigenous Peoples to reject proposed developments as they are best able to weigh the costs and benefits to their communities.[[11]](#footnote-11)
* Recognize that Indigenous women can share important lessons in addressing the twin crises of GBV and climate injustice. The CEDAW Committee previously highlighted the importance of women’s leadership in addressing the climate crisis, urging States to prioritize the voices of “women belonging to indigenous and other marginalized groups.”[[12]](#footnote-12) This entails developing programs to support “the participation and leadership by women in political life,” “the equal representation of women in forums and mechanisms on disaster risk reduction and climate change” and the allocation of “adequate resources to building the leadership capacity of women”[[13]](#footnote-13) not just in the formulation of policy, but also in implementation and monitoring at all levels of government.[[14]](#footnote-14)

**Addressing GBV**

* Broadly define GBV beyond a narrow gender binary, to encompass all violence disproportionately impacting individuals based on their gender or due to prevailing gender norms.[[15]](#footnote-15) Many Indigenous Peoples recognize and value community members who do not identify as gender binary, including two-spirit people.[[16]](#footnote-16)
* Define manifestations of GBV to include physical, sexual, psychological, economic, spiritual,[[17]](#footnote-17) and environmental,[[18]](#footnote-18) violence. “Violence against Indigenous communities is both an individual and collective experience, and it is important to address both dimensions.”[[19]](#footnote-19)
* Call on States and international bodies, like the World Health Organization, to collect disaggregated data on GBV in accordance with the multiple identities that Indigenous Peoples carry. Moreover, States should provide law enforcement guidance and trainings, linked to monitoring and accountability mechanisms, that account for intersectional forms of discrimination.[[20]](#footnote-20) States must further investigate and address GBV perpetrated by law enforcement themselves.[[21]](#footnote-21)
* Recognize grave and systemic GBV, including missing and murdered indigenous women, girls, and two-spirit people, forced and coerced sterilization, and the forced separation of children from Indigenous families, as genocide.[[22]](#footnote-22)
* Urge States to provide Indigenous groups authority and resources to address GBV. This entails eliminating jurisdiction loopholes so that Indigenous groups can prosecute non-Indigenous perpetrators within their territories. Moreover, States should provide resources to improve Indigenous infrastructure, including justice services, health care, and support to survivors on Indigenous lands and in urban centers where significant Indigenous populations live.[[23]](#footnote-23) This should include resources not only for accountability and redress, but also for GBV prevention.[[24]](#footnote-24)

**Addressing Environmental Injustice**

* Endorse the right to a healthy environment.[[25]](#footnote-25) This would elevate the urgency of preventing environmental harm and create a coherent framework for environmental protection.[[26]](#footnote-26) Further, respect for this right recognizes the deep and interconnected relationship many Indigenous communities have with nature and the environment.[[27]](#footnote-27)
* Recognize that rights to a healthy environment, food, water, and land have a critical cultural dimension for many Indigenous Peoples. The right to food requires food that is “culturally acceptable,” respectful of cultural traditions and livelihoods.[[28]](#footnote-28) Water is essential to life, and its non-consumptives uses are further crucial to many Indigenous communities, including its centrality in a biological habitat, its spiritual value as a source of healing, and its aesthetic qualities.[[29]](#footnote-29) In many communities, Indigenous women are keepers and teachers of cultural knowledge and thus particularly impacted by the erosion of culture.[[30]](#footnote-30) They “often play an essential role in protecting biodiversity, and are the keepers of seeds and of traditional knowledge about their lands and territories and about the nutritional and medicinal value of plants.”[[31]](#footnote-31)
* Recognize that the impacts of violations of environmental justice are especially severe for Indigenous women, serving in many communities as “providers, caregivers, and resource managers.”[[32]](#footnote-32) Indigenous women and girls, who often collect water for their communities, are particularly affected by water scarcity. Travel over long distances amidst dangerous conditions to obtain water increases risk of GBV.[[33]](#footnote-33) Land appropriation further has gendered effects as women lose access to their traditional livelihoods, like food gathering and agricultural production, and become more vulnerable to abuse.[[34]](#footnote-34) Moreover, in some countries, as a result of proximity to extraction sites and pollution, Indigenous women and girls experience higher levels of birth complications, miscarriages, reproductive problems, and cancer than other women.[[35]](#footnote-35)
* Call on States to refrain from criminalizing Indigenous Peoples who are peacefully defending their land and resources, and take steps to ensure their protection from non-state actors.[[36]](#footnote-36) This requires States to train law enforcement officials and prosecutors on human rights standards that are applicable to human rights defenders, including environmental defenders.[[37]](#footnote-37) States must also ensure that women defenders have a safe environment to exercise their rights, accounting for their specific experience of discrimination and violence, and that these defenders have representation in matters related to their land and resources.[[38]](#footnote-38)
* Urge States to implement policies to address the climate crisis and provide economic assistance to Indigenous groups that have been disproportionately impacted.[[39]](#footnote-39)

**Moving Forward**

* Reinforce that Indigenous peoples must have both equal access to State justice systems, as well as the ability to draw on their own traditional approaches to justice, consistent with human rights standards.[[40]](#footnote-40) This requires ensuring that “all justice systems, both formal and quasi-judicial, be secure, affordable and physically accessible to women, and be adapted and appropriate to the needs” of Indigenous women and communities,[[41]](#footnote-41) including providing translation and legal support.[[42]](#footnote-42)
* Affirm the collective right of Indigenous Peoples, and specifically women and girls, to the truth when it comes to grave and systemic GBV and environmental violence. The Office of the High Commissioner of Human Rights recognized that societies are entitled “to know the truth about serious human rights violations” and that the right to truth serves as a direct mechanism fundamental “to prevent future recurrence of such events.”[[43]](#footnote-43) Former Secretary General Ban Ki-Moon explained that exposing the truth helps “entire societies to foster accountability for violations” and can “provide catharsis and help produce a shared history of events that facilitates healing and reconciliation.”[[44]](#footnote-44)
* Encourage States to engage in a national reckoning with the harms of past and ongoing colonization, impacting Indigenous Peoples, including an open dialogue with Indigenous communities and development of a plan for redress.[[45]](#footnote-45) Although flawed, Canada’s National Inquiry into Missing and Murdered Indigenous Women and Girls, as discussed in the accompanying case study, provides an important precedent and lessons for other national inquiries.

1. Hum. Rts. Council, *Report of the Special Rapporteur on Rights the Rights of Indigenous Women and Girls*, ¶47(d), U.N. Doc. A/HRC/30/41 (2015). [↑](#footnote-ref-1)
2. Katie Scrim, *Aboriginal Victimization in Canada: A Summary of the Literature*, 3 Victims of Crime Res. Dig. 15, 16, (2010) https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd3-rr3/rd3.pdf. [↑](#footnote-ref-2)
3. Sarah Hunt, *Representing Colonial Violence: Trafficking, Sex Work, and the Violence of Law*, 37 Atlantis: Critical Stud. Gender, Culture & Soc. Just. 25, 32 (2015). [↑](#footnote-ref-3)
4. Helen Knott*, Peace River Rising: The Link Between Violence against Indigenous Women and Violence Against the Land* (Mar. 14, 2017), https://www.youtube.com/watch?v=6GbGL7dmEwA. [↑](#footnote-ref-4)
5. Hum. Rts. Council, *Report of the Special Rapporteur on Rights the Rights of Indigenous Women and Girls*, ¶47(d), U.N. Doc. A/HRC/30/41 (2015); American Declaration on the Rights of Indigenous Peoples art. 7(2), AG/RES. 288 (XLVI-O/16), *adopted* June 15, 2016 [hereinafter ADRIP]. [↑](#footnote-ref-5)
6. “Violence against land and violence against women are inextricable.” Interview with Kate Finn, Executive Director, First Peoples Worldwide, University of Colorado Boulder (March 24, 2021). [↑](#footnote-ref-6)
7. Leanne Betasamosake Simpson, As We Have Always Done: Indigenous freedom through radical resistance 45, (2017). [↑](#footnote-ref-7)
8. Int’l Union for Conservation of Nature (IUCN), *Gender-based violence and environment linkages*, 46 (2020). [↑](#footnote-ref-8)
9. Interview with Pamela Palmater, Mi’kmaw citizen and member of Eel River Bar First Nation, Chair in Indigenous Governance, Ryerson University (Mar. 18, 2021). [↑](#footnote-ref-9)
10. United Nations Declaration on the Rights of Indigenous Peoples, art, 32(2), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *adopted* Sept. 13, 2007 [hereinafter UNDRIP]; Hum. Rts. Council, *End of Mission Statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to the United States of America*, ¶10 (2017). [↑](#footnote-ref-10)
11. Interview with Kate Finn, Executive Director, First Peoples Worldwide, University of Colorado Boulder (March 24, 2021); Interview with Chris Foley, Attorney, Indian Law Resource Center (June 29, 2020). *See also* ADRIP, *supra* note 5 art. 29(1) (“Indigenous peoples have the right to maintain and determine their own priorities with respect to their political, economic, social, and cultural development in conformity with their own world view.”). [↑](#footnote-ref-11)
12. CEDAW Comm., General Recommendation No. 37:Gender-Related Dimension of Disaster Risk Reduction in the Context of Climate Change, ¶36 U.N. Doc. CEDAW/C/GC/37 (Feb. 7, 2018). [hereinafter CEDAW Comm., GR No.37]. [↑](#footnote-ref-12)
13. *Id*. [↑](#footnote-ref-13)
14. *Id*. at ¶ 26. *See* *also* UNDRIP *supra* note 10, preamble (“Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment.”). [↑](#footnote-ref-14)
15. As U.N. bodies, have recognized, violence against individuals based on their sexual orientation and/or gender identity as a form of GBV, since they are “driven by a desire to punish those defying gender norms.” Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. Hum. Rts. Council, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, 20, U.N. Doc. A/HRC/19/41 (2011). [↑](#footnote-ref-15)
16. In some North American Indigenous communities, “two-spirit” people occupy an essential social and spiritual role. Indian Health Services; The Federal Health Program for American Indians and Alaska Natives, *Two Spirit*, https://www.ihs.gov/lgbt/health/twospirit/ (last accessed Jun. 12, 2021). [↑](#footnote-ref-16)
17. The Inter-American Commission on Human Rights has identified that “spiritual violence takes place when acts of violence and discrimination against Indigenous women not only harm those women individually, but also negatively impact the collective identity of the communities to which they belong.” Inter-Am. Comm’n on H.R., *Indigenous Women and their Human Rights in the Americas*, OEA/Ser.L/V/II/. Doc. 44/17 *¶*80 (2017); ADRIP *supra* note 5, art. 18(2) (further recognizing the spiritual dimension of collective and individual rights to health.). [↑](#footnote-ref-17)
18. *Indigenous Women and Environmental Violence: A Rights-Based Approach Addressing Impacts of Environmental Contamination on Indigenous Women, Girls and Future Generations*, (2012), https://www.un.org/esa/socdev/unpfii/documents/EGM12\_carmen\_waghiyi.pdf. [↑](#footnote-ref-18)
19. Interview with Kate Finn, *supra* note 11. [↑](#footnote-ref-19)
20. *See* Comm. on the Elimination of Discrimination Against Women (“CEDAW Comm.”), General Recommendation No. 35: Gender-Based Violence Against Women, updating GR 19, ¶ 34 (a), (c), U.N. Doc. CEDAW/C/GC/35 (Jul. 14, 2017) [hereinafter CEDAW Comm. GR No.35: GBV Against Women]; Interview with Kate Finn, *supra* note 11; In Canada, for instance, the Indigenous women are doubly victimized by the criminal justice process as nearly half of their cases remain unsolved. Reclaiming Power and Place: The Final Report of the National Inquiry Into Missing and Murdered Indigenous Women and Girls, Volume 1a, 561 (2019) [hereinafter Final Report]. [↑](#footnote-ref-20)
21. Jaskiran Dhillon, *Indigenous Girls and the Violence of Settler Colonial Policing*, 4 Univ. of Toronto (2015), https://jps.library.utoronto.ca/index.php/des/article/view/22826; Interview with Pamela Palmater, *supra* note 9. [↑](#footnote-ref-21)
22. Convention on the Prevention and Punishment of the Crime of Genocide art. 2, 1249 U.N.T.S. 13; Final Report, *supra* note 20, at 54, 267. [↑](#footnote-ref-22)
23. Interview with Caroline LaPorte, Judicial Advisor, Seminole Trible of Florida, (Jun. 6, 2020);

    Interview with Chris Foley, *supra* note 11; Interview with Kate Finn, *supra* note 11. [↑](#footnote-ref-23)
24. Video Interview with Aimée Craft, Anishinaabe-Métis, Associate Professor, University of Ottawa Common Law (Apr. 15, 2021); Lori Jump, *Domestic Violence: Updates and Perspectives from the Native Community*, StrongHearts Native Helpline (Oct. 29, 2020), https://www.youtube.com/watch?v=vUh\_roj8bcE. [↑](#footnote-ref-24)
25. ADRIP, *supra* note 5, art. 19(1) (“Indigenous peoples have the right to live in harmony with nature and to a healthy, safe, and sustainable environment, essential conditions for the full enjoyment of the right to life, to their spirituality, worldview, and collective well-being.”). [↑](#footnote-ref-25)
26. John H. Knox & Ramin Pejan, Introduction to The Human Right to a Healthy Environment, 18 (2018). [↑](#footnote-ref-26)
27. Glen Sean Coulthard, Red Skin, White Masks: Rejecting the Colonial Politics of Recognition, (2014); Int’l Labour Organization [ILO] *Covid-19 and the world of work: A focus on indigenous and tribal peoples*, 4 (2020). [↑](#footnote-ref-27)
28. Comm. on Eco., Soc., and Cultural Rts. (“CESCR”), General Comment No. 12: The Right to Adequate Food, ¶ 7, U.N. Doc. CESCR/C/12/Rev.12/Add12 (May 12, 1999); Hum. Rts. Council, *Report of the Special Rapporteur on the Right to Food,* ¶ 17 U.N. Doc. A/HRC/7/5 (Jan. 10, 2008);; Bethany Elliot et al., *‘We are not being Heard’: Aboriginal Perspectives on Traditional Food Access and Food Security*, 6 J. Envtl & Pub. Health (2012). [↑](#footnote-ref-28)
29. Julie Nania & Julia Guarino, *Restoring Sacred Waters: A Guide to Protecting Tribal Non-Consumptive*

    *Water Uses in the Colorado River Basin* (Getches-Wilkinson Ctr. for Natural Res., Energy, and the Env’t, Univ. of Colo. Law Sch. 2014); Interview with Ethan Schuth, Water Resources Manager, Choctaw Nation of Oklahoma (September 26, 2020). CESCR acknowledges that water is “essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life).” CESCR, General Comment No. 15: The Right to Water, ¶ 6, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003). [↑](#footnote-ref-29)
30. *Culture, Department of Economic and Social Affairs*, UN.org https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/culture.html (last visited Oct. 20, 2020); Office of the United Nations High Comm’r for Hum. Rts. (OHCHR), *Analytical study on gender-responsive climate action for the full and effective enjoyment of the rights of women*, ¶ 22, U.N. Doc. A/HRC/41/26 (May 01, 2019). [↑](#footnote-ref-30)
31. OHCHR, *supra* note 30, ¶ 22. [↑](#footnote-ref-31)
32. Hum. Rts. Council, *Report of the Special Rapporteur on Rights the Rights of Indigenous Women and Girls*, ¶ 22, U.N. Doc. A/HRC/30/41 (2015). [↑](#footnote-ref-32)
33. United Nations, U.N. Water, Task Force on Gender and Water, *Gender, Water, and Sanitation: A Policy Brief*, 10, 26 (2006), https://www.unwater.org/publications/gender-water-sanitation-policy-brief/; Marni Sommer et al., *Violence, gender and WASH:* *Spurring action on a complex, under-documented and sensitive topic*, 27 Env’t & Urbanization, section 2(a) (2014). [↑](#footnote-ref-33)
34. *Id.* [↑](#footnote-ref-34)
35. Women’s Earth Alliance & Native Youth Sexual Health Network, Violence on the Land, Violence on Our Bodies, 17, 20 (2016), http://landbodydefense.org/uploads/files/VLVBReportToolkit2016.pdf. The framework of Environmental Reproductive Justice, first coined by Mohawk scholar Katsi Cook captures the disparate environmental and reproductive harms borne by Indigenous women and girls. Elizabeth Hoover et al, *Indigenous Peoples of North America: Environmental Exposures and Reproductive Justice* 120(2) Envtl. Health Persp., (2012); Jessica L. Liddell & Sarah G. Kingston, "*Something Was Attacking Them and Their Reproductive Organs”: Environmental Reproductive Justice in an Indigenous Tribe in the United States Gulf Coast*, 18(2) Int’l J. Environ. Pub. Health, 665 (2021). [↑](#footnote-ref-35)
36. Hum. Rts. Council, *Report of the Special Rapporteur on the situation of Human Rights Defenders*, ¶ 114, U.N. Doc. A/HRC/13/22 (2009); Interview with Kate Finn, *supra* note 11. [↑](#footnote-ref-36)
37. Hum. Rts. Council, *Report of the Special Rapporteur on the rights of indigenous peoples*, ¶ 91(g), U.N. Doc. A/HRC/39/17 (2018). [↑](#footnote-ref-37)
38. Hum. Rts. Council, *Report of the Special Rapporteur on the situation of human rights defenders: Situation on women human rights defenders*, ¶ 108(b), U.N. Doc. A/HRC/40/60 (2019). [↑](#footnote-ref-38)
39. Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, FAO, ¶ 17 (Nov. 2004), http://www.fao.org/3/a-y7937e.pdf. [↑](#footnote-ref-39)
40. UNDRIP, *supra* note 10, art. 5 (“Indigenous peoples have the rights to maintain and strengthen their distinct political, legal economic, social, and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.”). [↑](#footnote-ref-40)
41. CEDAW Comm., General Recommendation No. 33: on women’s access to justice, ¶14(c), U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015). [↑](#footnote-ref-41)
42. CEDAW Comm., *supra* note 41, ¶ 13; CEDAW Comm., General Comment No. 34: Rights of Rural Women, ¶ 25(c), CEDAW/C/GC/34 (Mar. 7, 2016); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (“Maputo Protocol”) art. 8, *adopted* July 11, 2003. [↑](#footnote-ref-42)
43. OHCHR, *Economic and Social Council, Promotion and Protection of Human Rights: Study on the Right to Truth,* ¶ 15, 37, U.N. Doc. E/CN.4/2006/91, (Feb. 8, 2006). [↑](#footnote-ref-43)
44. United Nations Secretary-General, *Message on the International Day for the Right to Truth of Victims of Gross Human Rights Violations* (Mar. 24, 2011), https://www.un.org/sg/en/content/sg/statement/2011-03-24/secretary-generals-message-international-day-right-truth-victims. The Inter-American Court on Human Rights likewise emphasized the right to know the truth is “a collective right that ensures society access to information that is essential for the workings of democratic systems.” *Ellacuria v. El Salvador*, Case 10.488, Inter-Am. Ct. H.R., Report No. 136/99, OEA/Ser.L/V/II.106 doc. 3 rev. ¶ 224 (1999). [↑](#footnote-ref-44)
45. Interview with Caroline LaPorte, *supra* note 23; Interview with Kate Finn, *supra* note 11. [↑](#footnote-ref-45)