



The Global Initiative
for Economic, Social and Cultural Rights

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Committee on the Elimination of Discrimination Against Women

Draft General Recommendation on the Rights of Indigenous Women and Girls

Join Submission by GI-ESCR, ProDESC and CRIN

The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR), the Project on Economic, Social and Cultural Rights (ProDESC), and Child Rights International Network (CRIN) welcome the Committee on the Elimination of Discrimination Against Women's call for comments on its draft general recommendation on the rights of indigenous women and girls. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a fundamental space to continue progressing in the promotion and further development of women's indigenous rights as it is the only international instrument specialized in combating structural conditions of gender discrimination.

This joint submission highlights the importance of protecting, promoting, and realizing the rights of women and girls in the context of a just transition to a low carbon world. It addresses the impacts of the triple planetary crisis and of the commercialization of public services and natural resources on the rights of women and girls, advancing several recommendations as to how the General Recommendation can be strengthened in this context.

The Triple Planetary Crisis and the Advancement of a Just Transition

Much of the human rights concerns have been focused on the direct impacts of climate change, such as sea-level rise, extreme weather events and loss of land and natural resources. We celebrate this general recommendation addresses a broader scope, including the effects of the triple planetary crisis. However, more recent findings show that policy projects and measures aimed at combating the climate breakdown are in turn producing serious human rights abuses, especially in developing countries and on indigenous land and territories.¹ These include displacement of populations to allow for mitigation projects, lack of participation by local communities in project planning and implementation, and failure to incorporate relevant social and environmental safeguards. For instance, large-scale renewable projects, production of biofuels or REDD+ initiatives are commonly implemented on indigenous land without their consent or participation, fostering "green" land grabs that limit their access to key natural resources and entrench preexisting gender inequalities.²

¹ See, for example, Business and Human Rights Resource Centre (BHRC), 'Renewable Energy and Human Rights Benchmark', 2020, [last accessed 28 January 2022], [ss](#). Also see GI-ESCR, Renewable Energy and Gender Justice, 2020, [last accessed 28 January 2022], [ss](#).

² See, for example, UN Department of Economic and Social Affairs (UNDESA), 'Challenges and Opportunities for Indigenous Peoples' Sustainability', 2021, [last accessed 28 January 2022], [ss](#). Also see Center for International Forestry Research



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To ensure that the move towards a sustainable and decarbonized future also creates the conditions for indigenous women and girls to exercise their full range of rights, it is imperative to ensure that climate mitigation and adaptation programs are guided by human rights and gender equality principles, as recognized in the Paris Agreement.³ Proper social and environmental safeguards and a comprehensive human rights-based approach in climate and adaptation programs are crucial to ensure these measures do not exacerbate inequalities and result in indigenous women's and girls' human rights abuses. In this line, we suggested the draft General Recommendation incorporate the following language recommendations:

1. Considering that mitigation measures, notably hydroelectric dams and biodiesel production has raised human rights concerns due to its impact on indigenous land and territories, we suggest including the phrase: "climate mitigation and adaptation programs" in the list of activities that frequently ignore the right to free, prior and informed consent of indigenous populations in **paragraph 11**. This would allow that section of the GR to be read as follows: "*Governments and third-party actors frequently implement investment, development, **climate mitigation and adaptation programs**, tourism, mining, logging, and extraction activities in indigenous territories without undertaking consultation processes designed to secure the consent of the indigenous peoples affected in line with international human rights standards and environmental sustainability.*"

2. We celebrate General Recommendation's recognition of the lack of state action to prevent foreseeable environmental harm as an omission constitutive of discrimination against indigenous women and girls. However, it is also critical to highlight the vulnerabilities that indigenous women face frequently compound with climate mitigation and adaptation programs that are designed without their consent and meaningful participation. We, therefore, suggest including the following phrase in **paragraph 13**: "*The lack of state action to prevent foreseeable environmental harm, and adapt to and mitigate climate change, **as well as states' failure to adopt a human rights-based approach in these efforts** constitutes discrimination against indigenous women and girls. Thus, states should **ensure indigenous women's meaningful and effective participation in the articulation of climate change solutions** and take into consideration indigenous environmental knowledge to preserve biodiversity and a clean, healthy, and sustainable environment, as key to the respect of all human rights of indigenous women and their culture.*"

3. In the same vein, we advise including in **paragraph 76** the phrase: "or to adopt measures to address the triple planetary crisis without a human rights approach", so

(CIFOR), 'REDD+ Potential for Abuses Indicates Need for Indigenous Human Rights-Based Approach', 2017, [last accessed 28 January 2022], [ss](#). Also see Olawuyi, Damilola, 'Implementing a Human Rights-Based Approach to Carbon Finance: Summary for Policymakers' in 'The Human Rights-Based Approach to Carbon Finance', Cambridge University Press, 2016, p. 383.

³ Paris Agreement (adopted on 12 December 2015 and entered into force on 4 November 2016), UNTS 54113, pp.8. Also see United Nations Framework on Climate Change (UNFCCC), 'The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention', FCCC/CP/2010/7/Add.1, 2011, p.8.

the sentence reads: *“The failure of states to take adequate action to prevent, adapt to, and remediate these serious environmental harms or to **adopt measures to address the triple planetary crisis that disregard human rights** constitutes a form of discrimination and violence against indigenous women and girls that needs to be promptly addressed.*

4. In **paragraph 57 (f)** we kindly suggest including the following wording: *“Ensure that economic activities, including logging, development, investment, tourism, extractive, mining, **climate mitigation and adaptation programs**, and conservation projects are only implemented in indigenous territories and protected areas with indigenous women’s free, prior, and informed consent by ensuring their full consultation and meaningful participation in relevant and decision-making processes.”*

5. We also recommend the following phrase to be included in **paragraph 71 (c)** as follows:

*“Require the free, prior and informed consent of indigenous peoples, including women, before authorizing economic, development **and climate mitigation and adaptation projects** on their lands, territories, and using their natural resources.”*

6. Consultation processes undertaken to obtain the free, prior and informed consent of local indigenous populations need to comply with a series of standards and adopt gender-responsive measures to ensure the meaningful participation of indigenous women. For instance, all meetings and assemblies should be held at a time and location that do not compete with housework and caregiving activities and that are otherwise accessible and convenient for women. Consultations should also ensure information has been disseminated in a format and through channels that are understood and frequented by women according to their social practices, literacy levels and languages; foster discussions in forms that are culturally and socially appropriate and that make indigenous women feel safe and comfortable sharing their views and experiences, and the results of the consultation process should give equal importance and weight to the needs and concerns of everyone affected regardless of their gender. Finally, these participatory mechanisms should not be conditioned to the ownership of assets, i.e., land tenure rights, or other requirements that might exclude indigenous women and girls.

In this light, we suggest including the addition “and taking into account their gender differentiated needs” in **paragraph 5**:

*“[.]the right to consultation and to be consulted, through their own representative institutions **and taking into account their gender differentiated needs** in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them, effective participation, and benefit-sharing in matters which concern them.”*

7. Similarly, we recommend adding in **paragraph 28 (a)** the following phrase: “which guarantee the full and effective participation of indigenous women and girls” after “[...] *consultations with indigenous women and girls living in and outside of indigenous territories*” to emphasize that consultation processes must be held in line with human rights and not merely as symbolic gestures, and to add “in all their diversity” after “*indigenous girls*” to emphasize that girls come in many forms, too, as listed with women in this paragraph.

8. We advise emphasizing that indigenous girls play a pivotal role in protecting the environment and the climate, as can be seen within climate change negotiation spaces and grassroots movements across the world. We would thus like to add “and consult with indigenous women and girls on such knowledge” before “[...] *to preserve biodiversity and a clean, healthy, and sustainable environment,*” in **paragraph 13**.

9. In **paragraph 48** we would like to suggest adding “, including environmental human rights defenders” after “and their work as human rights defenders” to strengthen the perception that indigenous peoples work to defend the environment falls within the term human rights defender and to highlight their important contribution to the protection of the environment and human rights related to the environment. Moreover, we would like to add “and climate mitigation and adaptation programs” after “consultation and consent processes over economic”, as many large-scale renewable energy projects are hidden as development activities, while potentially causing the same or similar harm as economic activities.

10. At the end of paragraph 77 we encourage the Committee to incorporate the phrase: “strengthening the capacity of indigenous women to facilitate access to climate finance and encouraging states to include indigenous women and girls in their climate actions” in line with the draft decision on gender and climate change adopted by the Subsidiary Body for Implementation at the UNFCCC CoP26.⁴

The Commercialization, Commodification and Financialization of Public Services, Land and Natural Resources

Public services

Recent decades have seen the increasing commercialization, commodification and financialization of services that are essential for the realization of human rights, such as education, healthcare, water and sanitation, social protection, and housing. This has had significant impacts on human rights. As has been highlighted by human rights bodies and Special Procedures mechanisms in several reports over the past decade,⁵ the

⁴ UNFCCC, ‘Gender and Climate Change, Draft Conclusions proposed by the Chair’, Subsidiary Body for Implementation, FCCC/SBI/2021/L.13, 2021, p. 13.

⁵ See, for example, UN Human Rights Council (HRC) ‘Report of the Special Rapporteur on the right to education, Koumbou Boly Barry, Right to education: the implementation of the right to education and Sustainable Development Goal 4 in the context of the growth of private actors in education’ (10 April 2019) UN Doc

commercialization of public services often results in reduced access, disproportionately impacting on the rights of marginalized groups,⁶ including indigenous women and girls, and thereby increasing inequalities and segregation. International human rights law, therefore, requires that States ensure that services essential for the realization of human rights be provided in a democratic and non-commercial way, with public control, for the public good.⁷ This has been explicitly recognized by a range of United Nations and regional human rights treaty bodies.⁸ Moreover, human rights bodies and Special Procedures mechanisms have further emphasized how public services are essential for the realization of the rights of marginalized groups, including women and girls.⁹

11. In this line, we suggest the following language additions in **paragraphs 56(a) and 56(b)**, to reflect the fact that States have an obligation to provide public education and CEDAW's General Recommendation on the right of girls and women to education, which states that education "should be free and compulsory from preschool through secondary school and progressively made free through the tertiary level":

*Guaranteeing equal access of indigenous women and girls to quality **public** education that is free from pre-school to secondary school and progressively made free through the tertiary level* (in paragraph 56(a))

*Ensure **free**, quality **public** education that is accessible ~~and affordable~~ for all indigenous women and girls, including those with disabilities* (in paragraph 56(b)).

A/HRC/41/37. HRC 'Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston' (26 September 2018) UN Doc A/73/396. HRC 'Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context Leilani Farha' (18 January 2017) UN Doc A/HRC/34/51. HRC 'Report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller: Human rights and the privatization of water and sanitation services' (21 July 2020) UN Doc A/75/208. At the regional level, see also Inter-American Commission on Human Rights 'Report on Poverty and Human Rights in the Americas' (7 September 2017) OEA/Ser.L/V/II.164, and Inter-American Commission on Human Rights, Special Rapporteurship on Economic, Social, Cultural and Environmental Rights 'Report on Business and Human Rights. Inter-American Standards' (November 2019) OEA/Ser.L/V/II.

⁶ See, for example, UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee), 'Concluding observations on the seventh periodic report of Italy' (11 January 2016) CEDAW/C/ITA/7 at [41].

⁷ Sylvain Aubry and Sarah Jameson, 'States' Human Rights Obligations Regarding Public Services: The United Nations Normative Framework', The Global Initiative for Economic, Social and Cultural Rights, 2020 <https://bit.ly/38HpM7g>, accessed 27 November 2020.

⁸ See, for example, UN Committee on Economic, Social and Cultural Rights (CESCR) 'Concluding observations on the fourth periodic report of New Zealand (1 May 2018) UN Doc E./C.12/NZL/CO/4; CESCR 'General Comment No. 13: The Right to Education (Article 13 of the Covenant)' (8 December 1999) UN Doc E/C.12/1999/10, para 48; UN Committee on the Rights of the Child (CRC) 'Concluding observations: Paraguay' (10 February 2010) UN Doc CRC/C/PRY/CO/3; CEDAW, 'Concluding observations on the seventh periodic report of Italy' (21 July 2017) CEDAW/C/ITA/CO/7.

⁹ See, for example, CESCR 'Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights' (22 July 2016) E/C.12/2016/1.

12. We further recommend replacing “affordable services” with “accessible services” in **paragraph 52(e)**, as the term “accessible” works as a broader framework, including not only economic accessibility, but also physical, non-discriminatory, and informational accessibility.

Land and natural resources

Commercialization, commodification and financialization have also been increasing in the context of land and natural resources, raising concerns for the human rights of indigenous women and girls.¹⁰ The commercialization, commodification and financialization of land and natural resources undermine and fuel disrespect for indigenous peoples’ rights to collective use and enjoyment of land and customary land tenure. This in turn impacts on other rights, as the “lives, well-being, culture, and survival [of indigenous peoples] are intrinsically linked to the use and enjoyment of their lands, territories, and natural resources,” as is recognized by the draft General Recommendation in paragraph 69. In many cases, commercialization, commodification and financialization in land is driven by the commercialization, commodification and financialization of natural resources and extractive activities.

We thus welcome the discussion and recommendations regarding the rights to land, territories, and natural resources in **paragraphs 25, 69-71 and 74-75** of the General Recommendation. We suggest adding to this section some additional wording to recognize the impacts of the commercialization, commodification and financialization of land and natural resources on the rights of indigenous women and girls. We suggest the following additions:

13. The addition of “the commercialization, commodification and financialization of land and natural resources” after “their ineffective implementation at the national and local levels” in **paragraph 25**;
14. The addition of “the commercialization, commodification and financialization of land and natural resources” after “the absence of titles to their lands and legal protection of their traditions and heritage” in **paragraph 69**;
15. The addition of a new subparagraph after **paragraph 71(d)**: “Address the commercialization, commodification and financialization of land and natural resources, which undermine the rights of indigenous women and girls to their lands, territories and environment;”
16. The addition of “driven by the commercialization, commodification and financialization of natural resources” after “[t]he implementation of extractive and other economic activities” in **paragraph 74**; and
17. The addition of a new subparagraph after **paragraph 75(a)**: “Address the commercialization, commodification and financialization of natural resources, which

¹⁰ For a detailed discussion on the impacts of the commercialization, commodification and financialization of land and property rights, see U.N. Human Rights Commission (“HRC”) ‘Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context Leilani Farha’ (18 January 2017) UN Doc A/HRC/34/51.



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are having significant and irreversible impacts on land and on the rights of women and girls, particularly the rights to good and water.”

18. We welcome the discussion of the commercialization of seeds (in paragraph 74), and suggest that this language be maintained.

The partner organizations presenting this submission celebrate the adoption of this General Recommendation that will foster the consistent and systematic review of the situation of indigenous women by the Committee and Member States, as well as the opportunity to share our recommendations to bridge the gaps in legal protection of indigenous women’s and girl’s in the context of the transition to low carbon societies and the commercialization, commodification and financialization of public services, land and other natural resources.

- For more information on the work on just transitions you may contact Juliette Wyss and Alejandra Lozano at the following email addresses: Juliette@gi-escr.org and Alejandra@gi-escr.org
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