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**Contribution to the elaboration of the General Recommendation on Indigenous Women and Girls by the CEDAW Committee**

**Comments on the draft,**

**31 January, 2022**

Dear members of the CEDAW Committee,

I thank the Chair and members of the Working for their important work. The comprehensive draft General Recommendation (dGR) seems to contain all the necessary elements to help guide all stakeholders regarding the right of indigenous women and girls to gender equality and non-discrimination based on sex and/or gender. However, the desire to ground all the recommendations in detailed explanations and justifications has resulted in a text which is too long, making it difficult to suggest meaningful comments, especially on particular paragraphs in view of the shortening that will have to occur. I have nonetheless tried to make a positive contribution to your endeavour. You will see that I suggest that you cut drastically into the explanatory paragraphs and keep the recommendations paragraphs.

1. **Excessive length**

The maximum length for Committees’ documents is of 10’700 words as foreseen by UNGA Resolution 68/268. In comparison, the dGR has 12’629 words without the footnotes and 15’087 with the footnotes. The footnotes represent 2’458 words. Depending on whether the Committee plans to keep or delete them the text is too long by 4’0387, respectively 1’929 words.

As mentioned, due to the length of the dGR, it is difficult to make useful comments on the draft and in particular on some precise paragraphs as one cannot know how the shortening of the dGR will occur: deletion of all the footnotes? Deletion of other parts, respectively of entire paragraphs? Or attempt to shorten a little in all parts?

I would advocate to retain many of the footnotes. From experience with other GR’s such as GR 32, 35 or 37, references in footnotes have proven to be extremely useful both for practitioners and for the standard setting role of the Committee, by giving a solid basis to the analysis and the recommendations. Referring more often, in the text itself and not only in footnotes, to other GR’s such as 33, 34, 36, could help limit the amount of text devoted to describing the problems that indigenous women and girls face.

1. **Structural questions and repetitions**

I note that some elements appear many times in the course of the text, both in the explanations given and in the recommendations. Dealing with these repetitions would already help reduce the word count. However, in order to remain within the maximum length, I believe that some drastic cuts are necessary.

1. *Introduction*

My suggestion would be to shorten the Introduction in the following way:

keep para 1, delete paras 2 to 5 and replace them by para 11. Thus, the Introduction would have only 2 paras. I am aware that the dGR refers to para 4 in many places, but would like to suggest you try and see how you could shorten it and maybe use its content either in Part II or to make recommendations.

The new para 2 (ex 11), would need a bit of rewording at the beginning, to avoid an a-historical perspective. Indeed, the ‘historic absence of effective implementation of their right to self-discrimination’ should be replaced by ‘the historic and continued dispossession of their lands, territories and natural resources.’ It would avoid referring in this way to the right to self-determination which was acknowledged only centuries after colonization, but which must be invoked as central further on. The new para 2 (ex 11), would also need a bit of rewording at the end: the formulation may create a confusion between the self-determination of all indigenous peoples and the right of individual indigenous women and girls with disabilities to be free of discrimination based on sex and/or gender.

1. *Objectives and scope*

I find that the text is far too descriptive, and not focused on what the GR aims to attain. It is also too long and repetitive with the Introduction and with the text that follows. I would suggest this :

Move para 3 into Part II as the first para of this part and add the last sentence of para 1 at the end of para 3. Make clear what the focus of the GR is, for instance in the para 3 reworded : The GR addresses discrimination against women and girls ~~must be understood~~ taking into consideration the multifaceted nature of their identity”. All the paras in this Part II should indicate what the GR attempts to do. You could move para 21 into Part II, with a strong focus on the protection the GR wants to give to the collective and individual rights and move also the second part of para 22 indicating how the GR attempts to protect the legal titles to indigenous peoples’ territories, etc….

Delete para 10 which should go in a new Part VII, for instance with the title of **Collection of data and statistics.**

Address the multiple repetitions and reduce Part II to 4 to 5 paragraphs maximum. Many of the descriptions given there are found again either in Part III or in Part IV, so that they don’t need to be developed in Part II.

1. *Legal Framework*

I believe there is potential for shortening here as well: for instance, by deleting the last sentence of para 15, moving para 16 into Part II, with the focus on dealing with the individual and collective dimensions, deleting para 17 from the second sentence ‘The limited realization of the right to self determination…’.

1. *A. General obligations of States parties in relation to the right of indigenous women and girls*

Here also, I think you could cut a lot without losing the substance. Para 19 to 27 could be reduced by about half, in order to leave room for the recommendations. I believe you should review the explanations and recommendations to ensure that you have no duplication between this part and Part V. In particular, art. 15 should appear under Part V as a new G.

LBTQI women and girls should appear earlier in the dGR, not only in paras 25 and 28 and later in para 62 a). Indeed, the erasure of this theme in the listings appearing in various paragraphs can be seen as giving in to the imposition of the Victorian approach to sexuality (married, heterosexual and monogamous), which erases all other forms of sexualities, seen as non conforming, practiced by populations exposed to colonialism. [[1]](#footnote-1)

1. *B. Access to justice*

I would attempt to reduce to 4-5 the numbers of the explanatory paras, while keeping in any case paras 35 and 36, and addressing the situation of indigenous women and girls facing criminal law, in a stronger way as perpetrators and victims, for instance referring to ‘over-policing and under-protecting Indigenous women and girls; and the criminalization of resistance to colonization and genocide’ as mentioned in the last 2 paras of this link: <https://www.aptnnews.ca/national-news/indigenous-women-make-up-nearly-50-of-prison-population-report/>.

I suggest moving para 38 into para 39, as a recommendation.

In para 39 (d), first line, I suggest writing ‘ordinary justice system’, as I wonder if it is feasible or credible to request indigenous justice systems to include the numbers of professionals listed in letter (d).

*V. State party obligations in relation to specific dimensions of the rights of indigenous women and girls*

Sorry to be so repetitive, but here again, I believe you should reduce the number of paragraphs.

1. GBVAW

Proposals:

Reduce to only 3-4 the explanatory paras instead of 7.

Add women human rights defenders in the recommendations, para 47. In this para, letter b), replace Recognize by Address, to increase the duty of States.

In para 44 first line, delete **due** and replace by direct. In para 44, fourth line, delete Due and start the sentence with It should be…Indeed, here it is the **direct** obligation of States to act. The use of the terms due diligence should be restricted to the cases where the State should or could know that GBVAW was going to be perpetrated by a non-State actor, and didn’t intervene.

1. Right to effective participation

Same remarks as above regarding the need for shortening the explanatory paras.

Transfer the second part of para 50, from ‘State parties should adopt TSM” into para 52 and make a recommendation. The same goes for the last sentence of para 51. In para 52, merge or at least link letters d) and h).

1. Nationality

Link para 53 with para 12. In para 53, add marriage to birth registration in lines 6 and 8 and add it in para 54 b). Add a letter d) for the text in the last part of para 54.

1. Education

I would suggest a strong reference in the text of para 55 to GR 34, indicating that they must be read together, as the detailed analysis and recommendations made for rural women apply for the most part also to indigenous women and girls.

I don’t understand the reference in para 56 to **‘evidence-based**’ sexual education, and the footnote referring to GR 34 para 43. This para doesn’t mention sexual education which is dealt with in paras 34 and 39 f) and g). Letters b) and e) are repetitive

1. Right to work

Move the last sentence of para 57 into para 58 as a recommendation.

F. Right to health

Shorten paras 59 and 60.

New G. Right to equality before the law (article 15)

To be added, by moving the first half of para 23 into the new G and adding

a recommendation, see also para 28 e). You may want to address the repetitions between part IV A and Part V. Following section to receive new letters.

1. Right to equality in marriage and family relations

The first sentence of para 63 should go under the new section on Right to equality before the law.

1. Right to culture

Transfer in these paras the elements that deal with culture from previous parts and make clear reference to these paras in the previous text, to avoid repetitions. In para 68 (c), first line, and in para 68 g(g) first line, delete **due** (same reason as above).

1. Right to land, territories and natural resources

Ibid with adaptation to the issue.

1. Rights to social protection and economic resources

Ibid with adaptation to the issue.

1. Right to food, water and seeds

Ibid with adaptation to the issue.

1. Right to a clean, healthy and sustainable environment

Ibid with adaptation to the issue.

In view of the close connection of sections H, I, K and L, I suggest moving section J immediately after section E. Right to work. This move would help to avoid a break in the flow of sections H, I, K; it would also enable to eliminate the repetitions between E and J, as section E already deals with informal employment and lack of social protection and enable some cuts in the respective paras.

I believe there is potential to shorten the explanatory paras in H, I, K, L as they are so closely intertwined. Maybe the best would be to comb through the previous parts and reduce there what appears in H, I, K, L and is the heart of these rights.

As indicated above, I would add a new **VII with Collection of data/statistics**, taking what concerns this issue in para 10, would delete this para, and would make sure that all issues that concern data are grouped in the same place. And then add the text to what would be Part VIII on Dissemination and Reporting

**Miscellenaous:**

The dGR mentions a future **Executive summary** to be a separate document, which would facilitate the use of the GR : if it is planned as a facilitation for using the GR, maybe a more engaging title would be better.

The linkage the Committee systematically makes during the dialogs and in the Concluding Observations and Recommendations between the Sustainable Development Goals and the CEDAW Convention might be made more visible by the dGR, so that the main principle of the SDG’s, “leave no one behind and reach the furthest behind first” will be recalled also for indigenous women and girls.

I hope my comments will be of use and look forward to the publication of the GR.

Best regards,

Patricia Schulz

1. See Sexuality and Translation in World Politics, ed by Caroline Cottet and Manuela Lavinas Picq, E-International Relations, 2019, pages 1-10 [↑](#footnote-ref-1)