Submission for:

***Call for Comments: Draft General Recommendation on the rights of indigenous women and girls***

**Committee on the Elimination of Discrimination Against Women**

1. Franciscans International welcomes the draft General Recommendation on indigenous women and girls; we note our prior submission to the Committee on the Elimination of Discrimination against Women.
2. We particularly welcome and support references to climate change and the inclusion of the right to a clean, safe, healthy, and sustainable environment throughout the General Recommendation, and underscore the indispensability of this right to the lives and livelihoods of indigenous women.

*General Obligations & the Right to Self-Determination*

1. The draft identifies the “absence of the effective implementation of their right to self-determination” as a root cause of discrimination against indigenous women and girls (para 11) and recognizes self-determination “as a key element to ensure that indigenous women live free from gender-based violence and discrimination […]” (para 17).
2. Given the importance of this right, as a peremptory norm of international law from which no derogation is permitted,[[1]](#footnote-1) the General Recommendation should include a specific recommendation on the right to self-determination. We note that as a peremptory norm, States are required to cooperate and work to bring to an end a breach of this right, and are further required to not recognize as lawful a situation arising from the breach or ‘render aid or assistance in maintaining’ the situation.[[2]](#footnote-2) In its General Comment 12, the Human Rights Committee notes that paragraph 3 of common Article 1 “imposes specific obligations on States parties, not only in relation to their own peoples but vis-à-vis all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination.”[[3]](#footnote-3) Accordingly, we call on the Committee to include a recommendation in section IV “General obligations of States parties […]”, which calls on States parties to take measures to promote and protect the right to self-determination.

*Rights to Land, Territories, and Natural Resources*

1. Franciscans International further welcomes section I. “Rights to land, territories, and natural resources,” and calls on the Committee to reiterate the link between the right to self-determination and rights to land, territories, and natural resources (as noted in paragraph 11) in this section and its recommendations. It would be further important to emphasize that the right to self-determination includes the “right of peoples and nations to permanent sovereignty over their wealth and resources,”[[4]](#footnote-4) and that this right remains vested in the “peoples of colonial and Non-Self-Governing Territories,”[[5]](#footnote-5) as well as peoples under occupation.[[6]](#footnote-6) As already mentioned in the Committee’s draft, such contexts of colonization and foreign control often aggravate discrimination against indigenous women and girls.
2. Accordingly, we also note that issues of control over land, territories, and natural resources are often central causes of armed conflict, including situations of occupation. While the Committee notes that armed conflict, along with other factors have been “catalysts of gender-based violence and discrimination against indigenous women and girls” and notes other rights which may be particularly vulnerable during armed conflict, section I. does not address or provide a specific recommendation on the issue. The General Recommendation should underscore the need for States to adhere to their obligations under international human rights law and international humanitarian law in situations of armed conflict, including provisions related to land and natural resources.

*Humanitarian Access and Protection and Return to land*

1. Our prior submission called on the Committee to include a General Recommendation that would “call on States to ensure humanitarian access for indigenous women and girls as well as others who are displaced by State violence or armed conflict and ensure their return to their land and property.” Such a recommendation would be consistent with international humanitarian law. In particular, the rules of customary international humanitarian law, as detailed by the ICRC, underscore:

* “*Displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.*”[[7]](#footnote-7)
* “*The specific protection, health and assistance needs of women affected by armed conflict must be respected*.”[[8]](#footnote-8)

1. As many conflicts on land are generated or fueled by so-called “mega-projects” or large scale development projects, we also note the Pinheiro Principles which holds that “All refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity.”[[9]](#footnote-9) Similarly, the Basic Principles and Guidelines on Development-Based Evictions and Displacement which underscore the duty and responsibility of authorities “to assist returning persons, groups or communities to recover, to the maximum extent possible, the property and possessions that they left behind or were dispossessed of upon their eviction.”[[10]](#footnote-10) When this is not possible, the Guidelines call for authorities to provide “appropriate compensation or other forms of just reparation.”[[11]](#footnote-11)

*Business and Human Rights*

1. We welcome the inclusion of the principle of free, prior, and informed consent throughout the draft, and urge the Committee to strength language in relation to business and human rights. In paragraph 52(f), we suggest adding at the end “and ensure that these economic activities do not adversely impact human rights, including those of indigenous women and girls.”
2. Similarly, in regard to para. 71 (d), we suggest adding language on accountability and access to remedy so that the subparagraph reads “Prevent and regulate activities by private actors that may undermined the rights of indigenous women and girls to their lands, territories and environment, including by establishing effective mechanisms for monitoring and enforceability.”

1. Report of the International Law Commission, Seventy-fourth Session, A/74/10, Conclusion 23, p.146 [↑](#footnote-ref-1)
2. Responsibility of States for Internationally Wrongful Acts, 2001, Articles 40 & 41, <https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf> [↑](#footnote-ref-2)
3. CCPR General Comment No. 12: Article 1 (Right to Self-determination)

   The Right to Self-determination of Peoples, Adopted at the Twenty-first Session of the Human Rights Committee, on 13 March 1984, Para. 6.

   *See also*: “States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from apartheid , all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination.” Declaration on the Right to Development, Adopted by General Assembly resolution 41/128 of 4 December 1986, Art. 5, https://www.ohchr.org/en/professionalinterest/pages/righttodevelopment.aspx [↑](#footnote-ref-3)
4. General Assembly resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources"; See also: Declaration on the Right to Development, Adopted by General Assembly resolution 41/128 of 4 December 1986, Art. 1(2), which states:

   “The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources” [↑](#footnote-ref-4)
5. Activities of Foreign Economic and Other Interests Which Impede the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Territories Under Colonial Domination, G.A. res. 50/33, U.N. Doc. A/RES/50/33 (1995) [↑](#footnote-ref-5)
6. UN General Assembly Resolution 37/135 of 17 December 1982. [↑](#footnote-ref-6)
7. Rule 132. Return of Displaced Persons, IHL Database Customary IHL, ICRC, <https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1_rul_rule132> [↑](#footnote-ref-7)
8. Rule 134. Women, IHL Database Customary IHL, ICRC, <https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1_rul_rule134> [↑](#footnote-ref-8)
9. Principle 10. The Pinheiro Principles, United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, <https://2001-2009.state.gov/documents/organization/99774.pdf> [↑](#footnote-ref-9)
10. Noting also that forced evictions “invariably affect” indigenous peoples, women, and children, amongst other groups (para. 7).

    Basic Principles and Guidelines on Development-Based Evictions and Displacement, annex 1 of report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18, para. 66, https://www.ohchr.org/documents/issues/housing/guidelines\_en.pdf [↑](#footnote-ref-10)
11. Id. para. 67 [↑](#footnote-ref-11)