**Inputs to the Committee on the Elimination of Discrimination against Women (CEDAW)**

**for**

**Draft General Recommendation No. 39 on the Rights of Indigenous Women and Girls**

**Submission by:**

**Asia Pacific Forum on Women, Law and Development (APWLD)[[1]](#footnote-0)**

**Monday, 31 January, 2022**

[Asia Pacific Forum on Women, Law and Development (APWLD)](https://apwld.org/) is the leading network of feminist organisations and individual activists in Asia and the Pacific. Our 265 members represent groups of diverse women from 30 countries in the region. Over the past 34 years, APWLD has actively worked towards advancing women’s human rights and Development Justice. We are an independent, non-governmental, non-profit organisation and hold consultative status with the United Nations Economic and Social Council. APWLD fosters feminist movements in Asia and the Pacific to influence laws, policies and practices at the local, national, regional and international levels.

APWLD welcomes the draft General Recommendation no. 39 by the Committee on the Elimination of Discrimination against Women (CEDAW) to particularly address the rights of indigenous women and girls. We highly appreciate the recognition and strong emphasis on the collective rights of indigenous women and girls within their own communities, especially when exercising collective rights as a community. We also commend the strong demands to the Member States as stipulated in the draft General Recommendation. We believe that the document will provide important guidance to Member States to protect the rights of indigenous women and girls, as well as serving as a tool for indigenous women’s movements to hold Member States accountable.

APWLD appreciates the opportunity to provide our inputs and suggestions on the draft General Recommendation. Our inputs focus on the rights of indigenous women and girls granted by CEDAW under Article 12 and 14. More specifically, our input addresses rights to land, territories and natural resources (paras 70 and 71), rights to food, water and seeds (paras 74 and 75), right to a clean, healthy and sustainable environment (para 78), and effects of COVID-19 on indigenous women and girls (para 80).

**Our Recommendations on the Rights to Land, Territories and Natural Resources (Articles 13 and 14)**Land for indigenous women refers not only to the physical soil but includes the resources below and above it and those that enable it to be productive, i.e. water source and is collectively owned by them.[[2]](#footnote-1) Indigenous women’s vital role in the protection of land is often overlooked. One of the major structural barriers impeding indigenous women’s ownership, access to and control over lands, territories and resources is patriarchal customary laws and systems, particularly regarding inheritance and joint ownership of family lands and resources. Land appropriation is not gender neutral.[[3]](#footnote-2) Fundamentally, the lack of recognition of indigenous peoples in national laws and policies is still a constant struggle for many indigenous groups across Asia and the Pacific. In addition to the existing threats, patriarchal and discriminatory land ownership laws, policies and practices deny the rights and control of indigenous women over land and natural resources. The UN Working Group on discrimination against women in law and practices recently confirmed that “women are more harshly affected by land tenure insecurity due to direct and indirect customary laws and practices at the national, community and family levels”.[[4]](#footnote-3) Furthermore, there are also discriminatory governance systems that do not include the voices and meaningful participation of indigenous women who conserve, use and hold knowledge about the management of lands, territories and resources. In the majority of land acquisition projects, women’s voices are silenced and their right to free, prior and informed consent (FPIC) is not respected.

We suggest adding an additional recommendation in the current para 71 to address the patriarchal nature of land ownership and to ensure state provide adequate protection for indigenous women and girls’ land rights:

*“States should ensure that indigenous women have access on an equal basis with indigenous men to ownership and/or use of and control over their lands, territories and resources, including by revoking or amending discriminatory laws, policies, practices and regulations, by protecting them against discrimination and dispossession.[[5]](#footnote-4) States should and ensure that national laws and regulations are in line with international human rights laws and principles.”*

Further, we suggest amending para 71 (a), 71 (c) and 71 (d) as follows:

Para 71(a). “Recognize the rights of indigenous women to collective ownership and control over land and customary land tenure, and develop policies to properly reflect this recognition *[insert “and eliminate gender-based discrimination and inequality”[[6]](#footnote-5)]* in the local and national economies;”

Para 71 (c). “Require the free, prior and informed consent of indigenous peoples including women and girls, [insert *“while ensuring the meaningful participation and representation of indigenous women and girls”[[7]](#footnote-6)*] before authorizing economic and development projects on their lands, territories, and using their natural resources;”

Para 71 (d). “Prevent and regulate activities by *[insert “state and non-state actors, including”[[8]](#footnote-7)]* private actors that may undermine the rights of indigenous women and girls to their lands, territories and [insert “resources”[[9]](#footnote-8)] environment; and”

**Our Recommendations on the Rights to Food, Water and Seeds (Articles 12 and 14)**

Indigenous peoples select, nurture and protect their farming lands, communities, seeds and animal breeds in a dynamic way based on their indiginous knowledge and access to natural resources. The encroachment of big businesses and land dispossession in the absence of land rights and rapidly changing biodiversity due to climate change, among other factors as rightly addressed in para 74, are undermining and interfering with key forms of ancestral farming. The commercialisation of seeds undermines indigenous farmers’ customary right to save, select, exchange and sell seeds as well as use and reuse them. We recommend the inclusion of the following recommendation in current para 75,

*“States should assess and transform economic policies, including free trade and investment agreements that undermine peoples' food sovereignty and indigenous women's right to land and resources.”*

We also recommend amending current para 75 (d) by including references to scientific progress and technological innovation that “*do not cause harm to indigenous peoples’ health, livelihood and environment*.” Further, in line with the framework proposed by the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP),[[10]](#footnote-9) we recommend using the phrase “food security and sovereignty” consistently in the current paras 74 and 75. Indigenous food sovereignty is a specific framework and policy approach that aims to address the underlying issues impacting indigenous peoples’ food system and symbolises indigenous peoples’ sacred responsibility to nurture their healthy and interdependent relationship with their land, territories and natural resources.[[11]](#footnote-10) Food sovereignty also means freedom from dependence on a corporate controlled food system and industrialised economy.

**On Recommendations on the Right to a Clean, Healthy, and Sustainable Environment (articles 12 and 14):**
The global trend of climate injustices have shown us how business vested interests are hidden behind “clean and renewable energy projects”. In the name of tackling climate crises, these measures and actors are destroying environments, forcibly grabbing indigenous lands and displacing indigenous women and their communities from their ancestral lands. Corporate hijack of climate related discourses has been highlighted by feminist and grassroots women movements across the globe as one of the main causes of why the climate solutions have failed to address the issues at hand.[[12]](#footnote-11) The domination of profit-driven interests coupled with lack of political will of many governments, particularly the wealthy countries in owning their historical and ongoing responsibilities has led to rise of false climate ambitions focusing merely on economic growth at the expense of women and the peoples on the ground, including indigenous peoples, women and girls.[[13]](#footnote-12) Community based, indigenous women-led initiatives for climate solutions grounded on the internationally recognised concept of just and equitable transition must be clearly stated as part of the set of recommendations to Member States. Too often, we have witnessed false climate solutions being imposed upon indigenous women and girls without considering their voices and issues. A human rights-based assessment by women including indigenous women and girls of state measures to mitigate climate change is therefore critical to ensure these measures are in line with the principles of “just and equitable” transition away from exploitative economy.[[14]](#footnote-13) Direct access to climate finance also needs to be specifically mentioned as through this modality, indigenous women will be able to exercise their collective rights to self-determined climate actions, Free, Prior and Informed Consent (FPIC), including on how to manage their land, territories and natural resources to tackle climate crises based on their needs and priorities. To address these challenges, we suggest amending the recommendation in current para 78 (f) as follows:

“Ensure the free, prior, and informed consent of indigenous women and girls [insert *and their human rights-based assessment]* of matters affecting their environment, lands, and natural resources. This includes their participation in environmental and social impact assessments; and”

Furthermore, we suggest including the following recommendation after the current para 78(g),

“Protect and support indigenous women and girls’ initiatives for climate solutions that advance just and equitable transition to achieve climate justice. This includes ensuring direct access of indigenous women and girls to climate finance;”

**On Recommendations to Address the Effects of COVID-19 on Indigenous Women and Girls:**

For indigenous peoples, the term “culturally appropriate” has a deep political meaning and has been used by indigenous groups worldwide to demand cultural sensitivity, including to cultures of a specific community based on their own context and distinct identity. Being culturally appropriate means that the outsiders have to comprehensively understand community customs, practices and consequently developing services based upon this awareness and respect. The GR 39 draft has used the term “culturally appropriate” throughout the document. We recommend maintaining consistency and replacing the term “culturally acceptable” with “culturally appropriate” in the current para 80(b). We also recommend including “gender responsive” and “age appropriate” in the current para 80 (b) to ensure it addresses the multi-dimensional nature of these barriers to healthcare.

Indigenous women, children, persons with disabilities and LGBTIQ groups are facing multiple and intersecting discrimination including within their own community. For example, one of our member organisations, Sangsan,[[15]](#footnote-14) have reported that LGBTIQ youth from many indigenous communities in Thailand, particularly those in landless stateless situations are highly vulnerable because of their sexual orientation. LGBTI youth in MaeSamLaep are confined in hostile environments with unsupportive family members or co-habitants. This increases their exposure to violence, as well as their anxiety and depression. Community members regard LGBTIQ people as bringing bad luck to the village and they have been previously blamed for disasters, both manmade and natural, and it is also happening in the context of Covid-19. Among indigenous groups in MaeSamLaep, Maehongson district, children have run out of milk and women are unable to afford sanitary pads due to worsened economic hardship brought about by the crisis. Isolation and spending much more time at home put indigenous children at greater risk of physical, sexual and mental abuse without any access to help during the lockdown.[[16]](#footnote-15) We therefore strongly support the current para 80 (c) and recommend including “mental health care” as well. Further, we recommend including following recommendation after the current para 80 (c),

“Provide culturally appropriate and language accessible information related to COVID-19 and ensure that indigenous women, girls and youth are able to freely access, obtain and fully understand the information; and report disaggregated data on the impacts of the pandemic on indigenous women;

1. For more information, please contact: Samreen Shahbaz, Grounding the Global Programme Officer, Asia Pacific Forum on Women, Law and Development (APWLD) (email: samreen@apwld.org), and Patricia Wattimena, Climate Justice Programme Officer, Asia Pacific Forum on Women, LAw and Development (APWLD) (email: patricia@apwld.org) [↑](#footnote-ref-0)
2. Helen Tugendhat & Eleanor Dictaan-Bang-oa. Realizing Indigenous Women’s Rights: A Handbook on the CEDAW. 2013. Page 47. [↑](#footnote-ref-1)
3. Study of the United Nations Expert Mechanism on Indigenous Peoples, *Right to Land under the United Nations Declaration on the Rights of Indigenous Peoples: A Human Rights Focus*, A/HRC/45/38, July 15, 2020, para. 31 [↑](#footnote-ref-2)
4. OHCHR (2017), UN Working Group on the issue of discrimination against women in law and practice ‘Insecure land rights for women threaten progress on gender equality and sustainable development’, available at <https://www.ohchr.org/Documents/Issues/Women/WG/Womenslandright.pdf> [↑](#footnote-ref-3)
5. Committee on the Elimination of Discrimination against Women, general recommendation No. 34 (2016) on the rights of rural women, available at <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_7933_E.pdf> [↑](#footnote-ref-4)
6. Specific mention of ensuring meaningful participation of women and girls in the exercise of indigenous peoples’ collective right to FPIC is important to address the inequality and discrimination facing indigenous women within their own communities due to patriarchal customary laws and systems in many indigenous communities across the world. For more details, please see [APWLD’s submission to the Study of the Expert Mechanism on the Rights of Indigenous Peoples](https://apwld.org/wp-content/uploads/2020/01/APWLD_submission_EMRIP-study_land_2020_15Jan_FINALLL.pdf) under the Section: *Indigenous women and their right to Free, Prior, and Informed Consent (page 7)*. [↑](#footnote-ref-5)
7. Specific mention of ensuring meaningful participation of women and girls in the exercise of indigenous peoples’ collective right to FPIC is important to address the inequality and discrimination facing indigenous women within their own communities due to patriarchal customary laws and systems in many indigenous communities across the world. For more details, please see [APWLD’s submission to the Study of the Expert Mechanism on the Rights of Indigenous Peoples](https://apwld.org/wp-content/uploads/2020/01/APWLD_submission_EMRIP-study_land_2020_15Jan_FINALLL.pdf) under the Section: *Indigenous women and their right to Free, Prior, and Informed Consent (page 7)*. [↑](#footnote-ref-6)
8. The addition of state and non-state actors will help indigenous women and girls to hold not only private actors but also any state actors accountable when undermining the rights of indigenous women and girls to their lands, territories and resources. [↑](#footnote-ref-7)
9. The term “right to land, territories and resources” is reflected in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as a particular collective right of indigenous peoples. For more, <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> [↑](#footnote-ref-8)
10. Please see, the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, <https://www.right-docs.org/doc/a-hrc-res-39-12/> [↑](#footnote-ref-9)
11. Please see more at the people’s Declaration of Nyéléni, available at <https://nyeleni.org/spip.php?article290> [↑](#footnote-ref-10)
12. Please see, our reflections on COP26 Negotiations, <https://apwld.org/feminist-reflection-on-glasgow-climate-talks-climate-chaos-and-the-urgency-to-right-the-wrongs-and-survive-on-a-boiling-planet/> [↑](#footnote-ref-11)
13. Please see, our reflections on COP26 Negotiations, <https://apwld.org/feminist-reflection-on-glasgow-climate-talks-climate-chaos-and-the-urgency-to-right-the-wrongs-and-survive-on-a-boiling-planet/> [↑](#footnote-ref-12)
14. Please see our specific recommendations on Just and Equitable Transitions here, <https://apwld.org/new-resource-just-and-equitable-transitions-briefer/> [↑](#footnote-ref-13)
15. Sangsan Anakot Yawachon Development Project (Sangsan) – Thailand [↑](#footnote-ref-14)
16. For more case studies of COVID-19 impact on indigienous women, girls and youth, please see APWLD’s submission to the Special Rapporteur on the Rights of Indigenous Peoples to the United Nations General Assembly: Impact of COVID-19 on Indigenous Peoples, in June 2020, available at <https://apwld.org/wp-content/uploads/2020/07/Submission_UNSRIP_covid19_FINAL.pdf> [↑](#footnote-ref-15)