23 June 2021

Dear Gladys,

On behalf of the Committee on the Rights on Persons with Disabilities (CRPD), we welcome the development by the Committee on the Elimination of Discrimination Against Women (CEDAW) of a General Recommendation on the Rights of Indigenous Women and Girls.

The CRPD has recently established a standing working group on the rights of women and girls with disabilities, and we see an opportunity for our working group to be able to collaborate and inform the work of CEDAW, including in relation to this General Recommendation. This would contribute to the harmonisation of treaty body jurisprudence and practice and prevent the fragmentation of international human rights law as it pertains to women and girls.

I note that both our Committees (CRPD and CEDAW) have addressed human rights issues and concerns for Indigenous women and girls in our respective jurisprudence. These issues are significant to CRPD, and we would like to highlight the following points to contribute to CEDAW’s work on the General Recommendation.

**Indigenous women and girls with disabilities**

Approximately 15% of the world’s population are persons with disabilities,[[1]](#footnote-1) and from this, it has been estimated that there are 28 million Indigenous women with disabilities out of the 185 million Indigenous women worldwide.[[2]](#footnote-2) This is likely to be an underestimation given the lack of reliable disaggregated data. [[3]](#footnote-3) Available studies demonstrate a higher prevalence of impairment among Indigenous peoples [[4]](#footnote-4) due to several reasons, “including higher levels of poverty, increased exposure to environmental degradation, the impact of large projects such as dams or mining activities and the higher risk of being victims of violence”. [[5]](#footnote-5) Many Indigenous peoples experience psychosocial disability because of the intergenerational trauma caused by colonisation with its forced assimilation, forced displacement and forced child removal laws, policies and practices.[[6]](#footnote-6)

This higher incidence of impairment is exacerbated for Indigenous women and girls with disabilities due to gender-based norms, gender discrimination, lack of access to sexual and reproductive health services, exposure to violence and harmful practices and the disproportionate care burden.[[7]](#footnote-7) When gender, race and disability intersect, poverty, injustice and marginalization are compounded.[[8]](#footnote-8)

**Normative framework**

All human rights and fundamental freedoms apply to Indigenous women and girls with disabilities. These are set out in the International Bill of Human Rights and subsequent thematic treaties and human rights instruments. In focusing on Indigenous women and girls with disabilities, the principles and standards established in Convention on the Elimination of All Forms of Discrimination against Women (UN CEDAW), Convention on the Rights of Persons with Disabilities (UN CRPD) and the Declaration on the Rights of Indigenous Peoples (UN DRIP) are central to responding to intersecting forms of discrimination.

Although these standards are all deeply inter-related, UN CEDAW and UN CRPD are core human rights treaties and distinctly different from UN DRIP. Both UN CEDAW and UN CRPD are binding thematic human rights treaties that set out the rights of individuals. UN DRIP is a non-binding declaration that articulates rights that constitute minimum standards for survival, dignity and well-being of Indigenous peoples.

Like all human rights treaties, UN CEDAW and UN CRPD set out the rights of individuals. UN DRIP delineates and defines individual and collective rights of Indigenous peoples. Article 1 of UN DRIP states: “Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms”. [[9]](#footnote-9) This means that UN DRIP emphasises respect and the strengthening of collective cultural connections, knowledge, traditions and identities of Indigenous peoples.

For Indigenous women and girls with disabilities, the individual rights set out in UN CEDAW and UN CRPD can only be realised within the context of the application of the collective standards articulated in UN DRIP. Measures taken to realise individual rights must recognise the collective context of the individual’s Indigenous identity. This means States Parties need to ensure that Indigenous communities and peoples are also supported in their self-determination to maintain and strengthen their cultural traditions, knowledge and identities in line with UN DRIP.

UN DRIP gives UN CEDAW and UN CRPD obligations a normative framework for the realisation of the rights of Indigenous women and girls with disabilities. In this sense, UN DRIP provides the binding normative standards for States Parties to UN CEDAW and UN CRPD as they relate to women and girls with disabilities.

**UN CRPD and intersectionality**

The human rights model of disability is at the core of the UN CRPD. The Committee has outlined how earlier international law and policies relating to disability are based on an individual or medical model of disability that reduces persons with disabilities to their impairments and where discriminatory treatment and the exclusion of persons with disabilities is legitimised. [[10]](#footnote-10) The UN CRPD embeds a human rights model of disability that recognises that persons with disabilities are of equal worth and value in their humanness, and they are entitled to the human rights and fundamental freedoms due to all human beings without discrimination and on an equal basis with others.

The human rights model recognises “that disability is a social construct and that impairments must not be taken as a legitimate ground for the denial or restriction of human rights”. [[11]](#footnote-11) This is the basis of contemporary human rights norms and standards in relation to disability.

The denial or restriction of human rights underpins many existing approaches to disability, which legitimise segregation, loss of autonomy and inequality in the guise of the care, treatment and protection of persons with disabilities. This results in segregated systems, such as ‘special’ schools, segregated employment and institutional living arrangements, and substitute decision-making arrangements, compulsory mental health detention, forced treatments and indefinite detention through justice diversions provisions. This disproportionately impacts on Indigenous women and girls with disabilities.[[12]](#footnote-12)

The human rights model of disability recognises “that disability is one of several layers of identity”. [[13]](#footnote-13) Different layers of identity have been recognised in other international human rights treaties, but the first explicit and comprehensive mechanism to address intersectional discrimination is found in the UN CRPD.[[14]](#footnote-14)

Intersectional or multiple discrimination is explicitly outlined in the Preamble paragraph (p):

“Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple and aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, Indigenous or social origin, property, birth, age or other status.”[[15]](#footnote-15)

The Preamble frames the principle of intersectionality, which is articulated in article 6 *Women with disabilities* and article 7 *Children with disabilities*. These two articles address the higher incidence of multiple discrimination experienced by women with disabilities and children with disabilities. They are cross-cutting articles and need to be specifically applied across all substantive rights in the UN CRPD. The CRPD has stressed that article 6 and article 7 must be regarded as illustrative of intersectionality and not exhaustive. [[16]](#footnote-16) This makes it clear that measures to implement the UN CRPD must recognise the “lived realities and experiences of heightened disadvantage of individuals caused by multiple and intersecting forms of discrimination”.[[17]](#footnote-17)

To realise the rights of Indigenous women and girls with disabilities, it is critical to recognise all layers of identity and respond to the resulting intersectional discrimination.

**UN CRPD and participation and consultation**

The UN CRPD obligates States Parties to closely consult and actively involve persons with disabilities through their representative organisations in the development and implementation of laws and policies and other decision-making processes, and in UN CRPD implementation and monitoring processes. These obligations respond to the historical and ongoing segregation of persons with disabilities that has resulted in their marginalisation and exclusion from law and policy development, political participation and community life in general.

Organisations of persons with disabilities is a distinct form of civil society organisation in that they are “led, directed and governed by persons with disabilities”. [[18]](#footnote-18) States Parties need to prioritise the views of organisations of persons with disabilities and support their establishment, capacity and development.

The CRPD has emphasised that women and girls with disabilities have fewer opportunities to establish their own organisations. [[19]](#footnote-19) This requires States Parties to directly engage with women and girls with disabilities to obtain their views and perspectives as well as promote the establishment and participation of their own organisations. [[20]](#footnote-20)

These provisions in UN CRPD are similar to those in UN DRIP which sets out the right of Indigenous peoples to participate through representatives that they choose, and to maintain and develop their own Indigenous decision-making institutions. [[21]](#footnote-21) The combination of these provisions makes it essential that Indigenous women and girls with disabilities can participate and be involved in decision-making processes through their own representative organisations. States Parties should support the development and maintenance of such organisations.

In conclusion, the rights of Indigenous women and girls with disabilities needs to be understood and addressed through the principles and standards of the UN CRPD, along with UN CEDAW and the minimum standards of UN DRIP. The General Recommendation must recognize the multiple layers of identity by taking an intersectional approach. It should not be disability neutral, nor should disability be limited to the status of ‘other vulnerable or marginalized groups’.

We welcome an opportunity to engage further on the issues raised in this letter to meet our mutual objective of promoting and protecting the rights of Indigenous women and girls with disabilities.

Yours sincerely,

Rosemary Kayess

Chairperson

Committee on the Rights of Persons with Disabilities

1. World Health Organization and World Bank (2011), *World Report on Disability*. Geneva. [↑](#footnote-ref-1)
2. International Disability Alliance, Indigenous Peoples with Disabilities Global Network, UN Women, ‘[Indigenous Women with Disabilities](https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/fact-sheet-on-indigenous-women-with-disabilities-en.pdf?la=en&vs=5640)’ (Fact Sheet). [↑](#footnote-ref-2)
3. Permanent Forum on Indigenous Issues, ‘Study on the situation of indigenous persons with disabilities, with a particular focus on challenges faced with regard to the full enjoyment of human rights and inclusion in development’, UN Doc E/C.19/2013/6 (5 February 2013) para 3. [↑](#footnote-ref-3)
4. Human Rights Council, ‘Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz’, UN Doc A/HRC/30/41 (Thirtieth session August 2015); Dwayne Mamo (ed), ‘The Indigenous World 2021’(International Work Group for Indigenous Affairs, April 2021) p. 703. [↑](#footnote-ref-4)
5. Permanent Forum on Indigenous Issues, op. cit., para 7. [↑](#footnote-ref-5)
6. Ibid. p. 11. [↑](#footnote-ref-6)
7. International Disability Alliance, Indigenous Peoples with Disabilities Global Network, UN Women, op.cit. [↑](#footnote-ref-7)
8. Ibid. [↑](#footnote-ref-8)
9. *United Nations Declaration on the Rights of Indigenous Peoples*, UN Doc A/RES/61/295 (2 October 2007). [↑](#footnote-ref-9)
10. Committee on the Rights of Persons with Disabilities, ‘General comment No. 6 (2018) on equality and non-discrimination’, UN Doc CRPD/C/GC/6 (26 April 2018), para 8. [↑](#footnote-ref-10)
11. Ibid para 9. [↑](#footnote-ref-11)
12. Human Rights Council, op. cit.; Committee on the Rights of Persons with Disabilities, ‘General Comment No. 3 (2016) on women and girls with disabilities’, UN Doc CRPD/C/GC/3 (25 November 2016); Permanent Forum on Indigenous Issues, op. cit. [↑](#footnote-ref-12)
13. Committee on the Rights of Persons with Disabilities, ‘General comment No. 6 (2018) on equality and non-discrimination’, op. cit., para 9. [↑](#footnote-ref-13)
14. Theresia Degener, ‘Disability in a Human Rights Context’, Laws 2016, 5(3), p. 35. [↑](#footnote-ref-14)
15. *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) Preamble (p). [↑](#footnote-ref-15)
16. Committee on the Rights of Persons with Disabilities, ‘General comment No. 6 (2018) on equality and non-discrimination’, op. cit., para 36; Committee on the Rights of Persons with Disabilities, ‘General Comment No. 3 (2016) on women and girls with disabilities’, op. cit., para 36. [↑](#footnote-ref-16)
17. Committee on the Rights of Persons with Disabilities, ‘General Comment No. 3 (2016) on women and girls with disabilities’, ibid, para 16. [↑](#footnote-ref-17)
18. Committee on the Rights of Persons with Disabilities, ‘General Comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention’, UN Doc CRPD/C/GC/7 (9 November 2018) para 11. [↑](#footnote-ref-18)
19. Committee on the Rights of Persons with Disabilities, ‘General Comment No. 3 (2016) on women and girls with disabilities’, op. cit., para 23. [↑](#footnote-ref-19)
20. Committee on the Rights of Persons with Disabilities, ‘General Comment No. 3 (2016) on women and girls with disabilities’, op. cit.; Committee on the Rights of Persons with Disabilities, ‘General Comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention’, op. cit. [↑](#footnote-ref-20)
21. *United Nations Declaration on the Rights of Indigenous Peoples*, op. cit., art 18. [↑](#footnote-ref-21)