



Indigenous Persons with
Disabilities Global Network

Submission on the CEDAW Committee's Draft General Recommendation on Indigenous Women and girls

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by

the International Disability Alliance (IDA) and the Indigenous Person with
Disabilities Global Network (IPWDGN)

The **International Disability Alliance (IDA)** is a network of global and regional organisations of persons with disabilities (DPOs) comprising eight global and six regional DPOs. Established in 1999, each IDA member represents a large number of national organizations of persons with disabilities (OPDs) from around the globe, covering the whole range of disability constituencies. IDA thus represents the collective global voice of persons with disabilities counting among the more than 1 billion persons with disabilities worldwide, the world's largest – and most frequently overlooked – minority group. IDA's mission is to advance the human rights of persons with disabilities as a united voice of organisations of persons with disabilities utilising the Convention on the Rights of Persons with Disabilities and other human rights instruments.

The **Indigenous Person with Disabilities Global Network (IPWDGN)** is a network of indigenous organisations and persons with disabilities from across the world.

Submission on the CEDAW Committee's draft general recommendation on indigenous women and girls

1. Introduction

1. IDA and IPWDGN are thankful to the Committee on the Elimination of All Forms of Discrimination against Women (*hereinafter* 'the Committee') and welcome this opportunity to provide comments to the draft general recommendation on indigenous women and girls.
2. This submission addresses key sections of the draft where issues and references on indigenous women and girls with disabilities require improvement to provide better guidance to State Parties to the CEDAW Convention and complements our joint submission for the Day of General Discussion held last June 2021.

2. Human rights language on the right to consultation: contributions from Article 4(3) of the CRPD and of the CRPD Committee requiring giving priority to the views of right holders

3. The IDA and IPWDGN welcome **paragraph 5** of the draft general recommendation highlighting the right to be consulted as conceived in the area of indigenous peoples' rights and in connection to "legislative or administrative measures that may affect them." Indeed, right-holders must be given the opportunity to participate in decision-making impacting their lives and rights.
4. IDA and IPWDGN highlight that Article 4(3) of the Convention on the Rights of Persons with Disabilities (CRPD) includes this right in a binding human rights treaty. Article 4(3) provides that

"In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall **closely consult with and actively involve** persons with disabilities, including children with disabilities, through their representative organizations."

5. Importantly, the CRPD Committee has devoted its general comment no. 7 to this article 4(3) and to the participation of persons with disabilities in monitoring (Article 33(3) CRPD). IDA and IPWDGN believe that **the main elements should be included in regard to women and girls with disabilities** (as rights holders under the CRPD). They could also contribute to strengthen language pertaining to the role of indigenous peoples in decision making and the value accorded to their views, in line with previous developments pertaining the free, prior and informed consent of indigenous peoples, such as the Universal Declaration

on Indigenous Peoples Rights¹ and the Human Rights Committee,² to reinforce standards for cases where consent is not clearly required.³

6. The CRPD Committee has explained that States “should give **particular importance** to the views of persons with disabilities, through their representative organizations, **support the capacity and empowerment of such organizations** and ensure that **priority is given to ascertaining** their views in decision-making processes.”⁴ Furthermore, that Committee required that “[p]ublic authorities should give due consideration **and priority to the opinions and views of organizations of persons with disabilities** when addressing issues directly related to persons with disabilities.”

7. To sum up, IDA and IPWDGN recommends that the CEDAW Committee considers including references **in paragraph 5** to the importance to “support the capacity and empowerment of communities and organizations” and to the need to give priority to the opinion and views of indigenous peoples in general on matters concerning them, especially when full consent may not be required, and of indigenous women and girls with disabilities on issues concerning them (as requested by Article 4(3) of the CRPD).

3. Data collection and disaggregation by disability

8. IDA and IPWDGN welcome **paragraph 10** of the draft that stresses the need for data collection to assess the situation of indigenous women and girls, as well as the forms of discrimination and violence they face. Accurate and comprehensive data collection and analysis is a pre-condition for impactful evidence-based policies.

9. IDA and IPWDGN regret, however, that there is no reference to disability or disability disaggregation in this specific context. Data collection and disaggregation is not only a key issue acknowledged in the text of the CRPD (article 31 CRPD) but it is also essential to enhance the visibility of persons with disabilities, effective planning and allow the development of inclusive policies in the different areas of policy. Aware of this point, the international community has made sure that several Sustainable Development Goals’ Targets refer explicitly not only to age and sex, but also to persons with disabilities.⁵

10. On this regard, IDA and IPWDGN would propose **the explicit inclusion of “disability” as a factor of disaggregation⁶ as well as a reference to the Washing Group on Disability Statistics and its sets of questions on disability**, as the current tools on which there is consensus for its adequacy for the deployment of statistical efforts,

¹ See for instance A/HRC/39/62.

² See A/HRC/39/62, paras. 14 to 19 (para. 18 citing Human Rights Committee, Poma Poma v. Peru (CCPR/C/95/D/1457/2006), para. 7.6, which explains that participation in the decision-making process must be “effective.”

³ See See A/HRC/39/62, paras. 31 and 32.

⁴ See CRPD/C/GC/7, para. 13.

⁵ See for instance, SDG targets 1.3.1, 8.5.1, 10.2.1 and 11.2.1, among others.

⁶ This would of course not be new for the CEDAW Committee. See e.g. CEDAW/C/ATG/CO/4-7, para. 28; CEDAW/C/BWA/CO/4, para. 36(b).

including census and surveys, that has been systematically supported by the CRPD Committee through recommendations under Article 31 of the CRPD.⁷

4. Addressing legal capacity of indigenous women with disabilities under the section "equality and Non-Discrimination with a focus on Indigenous Women and Intersecting Forms of discrimination"

11. IDA and IPWDGN welcome that **paragraph 23**, which addresses legal capacity of indigenous women, also refers specifically that "Indigenous women with disabilities face pernicious obstacles in the area of legal capacity, which is particularly alarming when they are institutionalized." The Committee does very well in acknowledging that women and girls with disabilities face specific barriers in exercising legal capacity.

12. We feel, however, that the reference should be improved to become more concrete, more accurate and more constructive. Indeed, "*pernicious obstacles* in the area of legal capacity" does not do justice in describing the issue accurately. In fact, States' legislation and regulations constitute **explicit normative barriers** to legal capacity as they provide for substituted decision- making regimes that impact mainly persons with intellectual disabilities and persons with psychosocial disabilities, such as "guardianship", "curatorship", "tutelle", "interdiction", etc. Of course, **de facto restrictions to legal capacity** can also happen, e.g. when a financial institution rejects opening a bank account to a blind person, and should be referred explicitly.

13. The more updated legal standard on this area is Article 12 of the CRPD and the specific general comment no. 1 developed by the CRPD Committee, both of which requires States to adopt in legislation and develop in practice supported decision making systems. Persons with disabilities might want to request support for exercising legal capacity and such support should be acknowledged and recognized by the State, even when provided e.g. by friends.

14. IDA AND IPWDGN believes that paragraph 23 of the draft should include a reference to the "current lack of support for persons with disabilities in exercising legal capacity" and to the need to "adopt and develop supported decision making schemes in legislation and practice".

15. Paragraph 23, **paragraphs 28(e) and/or 28(f) should consistently tackle explicitly the legal⁸ and de facto barriers that indigenous women might face on account of disability and call for the provision of supported decision making and for the respect of the will and preferences of the person concerned, in line with Article 12 of the CRPD.**

⁷ See for instance, CRPD/C/FRA/CO/1, para. 63; CRPD/C/EST/CO/1, para. 61; CRPD/C/ALB/CO/1, para. 52(b), among many others.

⁸ See e.g. CEDAW/C/ETH/CO/8, para 50(c), requiring the State to "**Repeal any provisions of the Civil Code** and other legislation that restrict the legal capacity of persons with disabilities;" (emphasis added).

5. Access to justice and plural legal systems

16. IDA and IPWDGN welcome the reference to “procedural adjustments” and “disability” in **paragraph 39(c)** and to “accessible formats” in **paragraph 39(e)**, both of which aim at requiring from the justice system the flexibility necessary to address the needs of the diversity of indigenous women in both the ordinary and the indigenous justice system. Are concerned that the previous text does not tackle directly the needs of indigenous women and girls on the basis of disability.

17. To address this concern, IDA and IPWDGN believe that references could be included throughout **paragraphs 31 to 36**. For instance, when referring to “accessibility”, it would be crucial to add “including for persons with disabilities” to make sure that accessibility is not taken only in geographical terms. In the same vein, when referring to interpreters in paragraph 32, it would be important to have a reference to “sign language interpreters”.⁹ Not including this kind of clarifications throughout the text might contribute to omission of State obligations on guaranteeing accessibility for indigenous women and girls with disabilities.

18. In addition, regarding **paragraphs 39(c) and 39(e)**, it is critical to:

- a. replace “adjustments” with “accommodation” to align with the text of article 13 of the CRPD.¹⁰
- b. To include examples of “procedural accommodation” connected to disability. E.g.: sign language interpretation and other communication support; longer timeframes for submissions.
- c. When referring to “accessible formats” in paragraph 39(e), to include a 2 or 3 examples to make sure the phrase is connected to persons with disabilities. E.g. captioning, Easy to Read language, pictograms, tactile communication.

6. Prevention of and protection from gender-based violence against indigenous women and girls (articles 3, 5, 6, 10 (c), 11, 12, 14, 16)

19. IDA and IPWDGN commend the Committee for recognizing that indigenous women and girls with psychosocial disabilities face heightened risk to gender-based violence, especially in institutions (para 42). Further, IDA and IPWDGN welcome the call to ‘repeal all laws that prevent or deter indigenous women and girls from reporting gender-based violence, such as guardianship laws that deprive women of legal capacity or restrict the ability of women with disabilities to testify in court’ (para. 47(d)).

20. Regarding **paragraph 42**, IDA and IPWDGN are concerned that the reference to indigenous women and girls “with mental illnesses¹¹ and disabilities” is limited to the context of institutions. The UN Special Rapporteur on the Rights of Persons with Disabilities stressed indigenous women and girls with disabilities generally face a higher

⁹ See e.g. CEDAW/C/COL/CO/9, para. 14, explicitly stressing on sign language.

¹⁰ See CEDAW/C/AGO/CO/7, para. 14(a).

¹¹ This terminology is strictly medical and do not reflect the current use of “persons with psychosocial disabilities” anchored in the CRPD and in the practice of the CRPD Committee.

risk of experiencing sexual violence¹², and that while women and girls with disabilities face heightened risk of gender-based violence than others, **deaf, blind and autistic girls, girls with psychosocial and intellectual disabilities and girls with multiple impairments** face multiple and greater risk of gender-based violence.¹³ Similarly, the CRPD Committee recognized that underrepresented groups of women with disabilities specifically ‘deaf and deafblind women and women with intellectual disabilities, may be at an even greater risk of violence and abuse because of their isolation, dependency or oppression.’¹⁴ In this vein, para. 42 should include explicitly the diversity among indigenous women and girls with disabilities including those who are deaf, deafblind, blind, autistic, with psychosocial, with intellectual disabilities and with multiple impairments.

21. Additionally, regarding **paragraph 42**, the scope for various forms of gender-based violence is limited and does not adequately address forms of violence against indigenous women with disabilities. **Certain forms of violence that disproportionately affect them should be highlighted explicitly**, including **bullying, coercion, arbitrary deprivation of liberty, institutionalization, female infanticide, trafficking, forced sterilization and invasive and irreversible involuntary treatments**.¹⁵ The CEDAW committee also recognizes these forms of gender-based violence in General Comment No.35.¹⁶

22. **Para. 43** refers to cases of gender-based violence being underreported. On this, indigenous women and girls with disabilities face additional barriers when reporting gender-based violence cases, including ‘physical and communication barriers,¹⁷ disregarding of evidence especially for women with intellectual disabilities, the risk of being removed from their homes and institutionalized, stigmatization, fears with regard to single parenthood or losing child custody, the absence or inaccessibility of violence prevention programmes and facilities; the fear of the loss of assistive devices and other supports; and the fear of retaliation and further violence by those on whom they are both emotionally and financially dependent.’¹⁸ Consequently, additional references should be included in the draft general comment.

7. Right to education (articles 5 and 10): enhancing language for inclusive education

23. IDA and IPWDGN welcome that the CEDAW Committee recognizes in the draft general recommendation that indigenous girls with disabilities face barriers to their access and retention in education in **paragraph 55** of the draft general recommendation.

¹² A/72/133, para 21.

¹³ A/72/133, para 35.

¹⁴ General comment No. 3 (2016) on women and girls with disabilities, para 33.

¹⁵ A/72/133, para 35;

¹⁶ General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, para 14.

¹⁷ See for instance, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, para 31 (ii).

¹⁸ A/72/133, para 36.

24. Nevertheless, IDA and IPWDGN consider that the **right to inclusive education should be better and explicitly spelled out**, due to the relevance of developing inclusive education systems not only for persons with disabilities but for all groups at risk of marginalization from education. Subsequently, IDA and IPWDGN propose to include in **paragraph 55 a reference to “the lack of proactivity towards developing inclusive education systems” in the enumeration of barriers.**

25. Further, IDA and IPWDGN encourage the CEDAW Committee to utilize the term ‘learners with disabilities’ as opposed to the term “students with special needs” in paragraph 55 *in fine*, as it is outdated and inconsistent with the vision and practice of inclusive education, which is child centered and where the needs of all children should be addressed through the provision of support as required.

26. In the same line, IDA and IPWDGN propose that, throughout **paragraph 56**, references to right to “inclusive education”, “inclusive education system”, and “inclusive education pedagogy and training” are included, in line with previous CEDAW Committee jurisprudence.¹⁹ In **paragraph 56(e)** referring to indigenous women and girls with disabilities, the phrase “including through the provision of individualized support for an inclusive education system” should be added.

8. Right to effective participation in political and public life (articles 7, 8, and 14)

27. IDA and IPWDGN welcome and commend the CEDAW Committee for reiterating the critical role that temporary measures such as electoral quotas play in guaranteeing effective participation of indigenous women in political life (para 50).

28. However, **throughout paras. 48 to 51**, “disability” is not highlighted as an intersectional issue. Consequently, the draft fails to highlight key barriers that contribute to exclusion of indigenous women with disabilities from political and public life, including discriminatory laws that deprive indigenous women with psychosocial disabilities and those with intellectual disabilities their right to vote, physical and communication barriers, among others. Additionally, the draft fails to provide substantive recommendations on measures to be taken to guarantee effective participation in political and public life of indigenous women with disabilities.

29. In their jurisprudence, **the CEDAW and the CRPD Committee stresses that discrimination against women is affected by other factors including disability.**²⁰ Indeed, the CEDAW and CRPD committees during their constructive dialogue with States Parties have raised concern on the lack of participation of indigenous women with disabilities in political and public life. For instance, regarding Australia, both committees have raised concerns ‘about the lack of information on the representation of indigenous women and women with disabilities, particularly Aboriginal and Torres Strait Islander

¹⁹ See e.g. CEDAW/C/ATG/CO/4-7, para. 35(g); CEDAW/C/BWA/CO/4, para. 34.

²⁰ See for instance, General recommendation No. 33, paras. 8 and 9.

women with disabilities, in political and public life.²¹ Both committees have also consistently reminded States to adopt temporary measures such as electoral quotas to accelerate participation of indigenous women with disabilities in political life.

30. , IDA and IPWDGN recommends that the Committee includes “disability” throughout paras. 48-52 among the intersectional issues, highlight the specific barriers that indigenous women with disabilities face and include recommendations on measures that States Parties should take.

9. Right to equality in marriage and family relations (article 16)

31. IDA and IPWDGN welcome the section of the draft on marriage and family relations. We regret, however, that indigenous women and girls with disabilities are not mentioned explicitly, despite the negative implications and consequences that the deprivations of legal capacity have on women and girls with disabilities (see above, section 4) in the area of marriage, family rights and inheritance.

32. In this vein, we recommend that the Committee includes references to indigenous women and girls with disabilities in paragraph 63 and 64, including for instance:

- a. In **para. 63, as 4th sentence**: “Indigenous women and girls with disabilities face additional legal and attitudinal barriers leading to disability based discrimination in the context of marriage, family rights, inheritance and alike, including through the deprivation of legal capacity”.
- b. In **para. 64(b)**, in fine: “Indigenous women and girls with disabilities should not be subject to disability-based discrimination in this context, including through the deprivation of legal capacity based on actual or perceived impairment”.

10. Disaster risk reduction and climate change.

33. IDA and IPWDGN acknowledge that the CEDAW Committee’s concern about the detrimental impact that environmental harm, biodiversity loss, and ecological degradation have on indigenous women and girls (**paragraph 13**). On this regard, IDA and IPWDGN would like to highlight the fact that indigenous women face the consequences of climate change due to their dependence and their relation to the environment and its resources.

34. **However, it is necessary to explicitly recognize in the draft that the impact of climate change and natural disasters have more adverse effects for women and girls with disabilities, who are in a more disadvantaged and less resilient situation facing more barriers in accessing information and resources.** For instance, the extreme weather events and its effects on agriculture, forest and water availabilities largely affect

²¹ CEDAW/C/AUS/CO/8, para. 36; CRPD/C/AUS/CO/2-3, para 54; CRPD/C/AUS/CO/1, para. 52

them and their families, forcing indigenous women and girls with disabilities to spend additional time and energy in managing water, farm, food and energy resources. The hardening of soil due to long spells of dry weather requires more labor to dig and prepare the farms. Besides, the increase of new and aggressive pests both in farms and in storage not only takes their time and energy but also causes loss of food and income. Further, they do not receive related accessible information and resources.²²

35. IDA and IPWDGN welcome the CEDAW Committee in **paragraph 74** of the draft, in which the Committee states that climate change and other forms of environmental degradation also threaten food security and contaminate and disrupt water supplies. IDA and IPWDGN would like to raise the issue that access to fresh and clean water is not ensured to all indigenous women and girls with disabilities. Furthermore, according to the consultation with indigenous persons with disabilities in different regions, their **claims for ensuring accessibility of the water supply are rarely considered by authorities**.

36. On these regards, **the draft should be explicit in requesting the inclusiveness and accessibility of all measures related to disaster risk reduction, climate change and indigenous women and girls**, so that those with disabilities are equally benefited. Disability specific measures might also be necessary to ensure the rights of indigenous women and girls with disabilities in these contexts.

11. The right of indigenous women with disabilities to live independently and be included in the community

37. IDA and IPWDGN acknowledge that the CEDAW Committee, in the **paragraph 57** of the draft, has expressed that indigenous women have limited access to decent, safe and adequately remunerated employment, which undermines their economic autonomy and consequently the chance to develop an independent life plan within the community.

38. On this regard, IDA and IPWDGN would like to highlight that indigenous women with disabilities require both living independently and being included in wider society and in their own indigenous communities, as well as being able to choose to live by their customs and traditions. Assimilation policies often targeted indigenous children by displacing them from their families and communities and placing them in residential school settings or into foster families.

39. Moreover, living in the community for indigenous women and girls with disabilities requires that they can access services responsive to their needs within their communities. Often, the necessary supports do not exist within their own communities, and they are subsequently left without a choice but to leave to access services available in institutional and group home settings, where the physical divide with their community is reinforced by

²² NIDWAN, 2021. Impacts of Climate Change on Indigenous Women with Disabilities: A Rapid Assessment in Nepal, supported by PAWANKA,

lack of support to participate in their community events, and due to the lack of staff with “culturally competent skills” to ensure their continued participation in their community.²³

40. IDA and IPWDGN welcome that the CEDAW Committee included in the **paragraph 79 of the draft** that during the pandemic caused by Covid-19 indigenous women and girls faced barriers to have access to proper healthcare and other related services. On this regard, IDA and IPWDGN highlight that the pandemic affects disproportionately indigenous women and girls with disabilities since they had to faced more and diverse barriers during the Covid-19 pandemic, mostly related to their right to living and being included on the community due to the lack of human support when in confinement and under physical distancing measures. In addition, in Latin America and Africa, they lacked access to key information on the danger of the virus and on-going related events.

²³ Permanent Forum on Indigenous Issues, Study on the situation of indigenous persons with disabilities, with a particular focus on challenges faced regarding the full enjoyment of human rights and inclusion in development, E/C.19/2013/6, February 2013, paras 43-44.

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