

# THE RIGHTS OF INDIGENOUS WOMEN AND GIRLS

## SUBMISSION TO THE UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN ON THE OCCASION OF THE DAY OF GENERAL DISCUSSION FOR THE ELABORATION OF A GENERAL RECOMMENDATION

Amnesty International welcomes the call of the Committee on the Elimination of Discrimination against Women (CEDAW) for submissions in relation to its day of discussion on the rights of Indigenous women and girls, subsequent to which it will draft a General Recommendation on the issue. The comments below focus on specific issues that we hope the Committee will address in the draft, in relation to the application of an intersectionality perspective, the impact of large-scale resource development projects on Indigenous women and girls, forced evictions, forced and coerced sterilization, and violence, including sexual violence, against Indigenous women and girls. This is not intended to be an exhaustive list of issues facing Indigenous women, girls, transgender and non-binary people, but includes preliminary observations building on the findings from Amnesty International's research that might be of use to the Committee.

### INTERSECTIONAL DISCRIMINATION

CEDAW has done ground-breaking work in identifying intersectional discrimination in its findings on individual cases.<sup>1</sup> Amnesty International believes it would be useful for the Committee to acknowledge that Indigenous women and girls experience multiple and compounded forms of discrimination – as a minimum, as a woman and as an Indigenous person. These forms of discrimination can also intersect, exacerbating each other, along with other grounds of discrimination such as sexual orientation and gender identity and expression, disability, age, etc. Amnesty International has highlighted for example, how in Canada, racial and gender discrimination intersect, resulting in Indigenous women disproportionately being subjected to forced and coerced sterilization,<sup>2</sup> and that “systemic racism, misogyny, homophobia, and transphobia” are factors in the cases of over 1,000 missing and murdered Indigenous women (officially recorded; the actual figure is likely far higher) between 1980 and 2012.<sup>3</sup> The Committee could recommend that states collect data on discrimination disaggregated by both gender and Indigenous identity, and furthermore to analyse how these two (along with other) grounds of discrimination intersect, and that an intersectional analysis must be built into policies and laws which aim to eliminate discrimination against Indigenous women. This could be a starting point in addressing the concerns of Indigenous peoples, discussed in the Committee's concept note, that the rights of Indigenous women and girls have been insufficiently addressed in the Committee's monitoring.<sup>4</sup>

<sup>1</sup> [Maria de Lourdes da Silva Pimentel v Brazil](#), 2011; [Kell v. Canada](#), 2012; [R.P.B. v The Philippines](#), 2014.

<sup>2</sup> Amnesty International Canada: [Submission to Standing Senate Committee on Human Rights Study on Sterilization without Consent](#), 2019, p. 4.

<sup>3</sup> Amnesty International Canada: [No More Stolen Sisters: A Campaign Guide](#), 2021, p. 6.

<sup>4</sup> CEDAW, Concept Note for a General Recommendation on the Rights of Indigenous Women, p. 4.

## FORCED AND COERCED STERILIZATION

In 2016, prosecutors in Peru decided to close a case brought by over 2000 Indigenous and peasant women, denying them their right to remedy for the forced sterilization that they had been subjected to.<sup>5</sup> However, in 2018, the Public Prosecutor's Office reopened the case, seeking to examine the responsibility of former President Alberto Fujimori and a number of officials of the Ministry of Health from the 1990s in the forced sterilizations. Since March of this year, hearings have been taking place; a decision is expected very shortly by the examining magistrate, to determine whether the charges can be upheld.

In Canada in 2018, over 100 Indigenous women alleged that they had been forcibly or coercively sterilized, without their consent and sometimes without their knowledge.<sup>6</sup> The response of the federal government to this human rights crisis has been inadequate; for example, to date no attempt has been made to “meet with survivors and their families as a first step in determining how to compensate survivors for the pain and suffering they have endured”.<sup>7</sup> In 2018, the UN Committee Against Torture took up the issue in its review of Canada, and listed it as one of the priority issues on which it required a report within one year.<sup>8</sup>

In the USA, Amnesty reported that “between 1972 and 1976, thousands of Indigenous women were sterilized when there was no medical necessity and without their free and informed consent. Some women were reportedly coerced to consent to the sterilization by being told that their children would be taken away from them if they refused”.<sup>9</sup>

We urge the Committee to recognise the forced and coerced sterilization of Indigenous women as intersectional discrimination and to emphasize the particular gravity of the physical and psychological harm that it causes, particularly when it is compounded by racial discrimination.<sup>10</sup> Furthermore, as per the CEDAW Committee's General Recommendation no. 35, “Violations of women's sexual and reproductive health and rights, such as forced sterilization [...] are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.”<sup>11</sup> The Committee should make recommendations that states must take all appropriate steps to eliminate the forced and coerced sterilization of Indigenous women, including by issuing mandatory codes of conduct in cases of sterilization, requiring free and informed consent in all cases, recognising that informed consent can never be given during and immediately after labour and delivery.<sup>12</sup> setting up robust monitoring mechanisms, putting in place appropriate sanctions for the violation of the right to informed consent, and providing a transparent, accessible remedy to Indigenous women who have been subjected to forced or coerced sterilization, and comprehensive, culturally appropriate services for physical and psychological rehabilitation.

## FORCED EVICTIONS AND FREE, PRIOR AND INFORMED CONSENT

In Amnesty International's research on the case of the forced eviction of the Sengwer Indigenous people from their lands in Embobut forest, in Kenya, we found that, when government carried out consultations with the Sengwer in the lead-up to the eviction, Sengwer women were explicitly excluded.<sup>13</sup> As a result of the eviction, Sengwer women suffered particular intersectional harms; whereas when they were living in the forest, they

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<sup>5</sup> Amnesty International, [Urgent Action: Over 2,000 Women once again Denied Justice](#), AMR 46/4623/2016

<sup>6</sup> Amnesty International Canada: [Submission to Standing Senate Committee on Human Rights Study on Sterilization without Consent](#), 2019, p. 3.

<sup>7</sup> Amnesty International Canada: [Submission to Standing Senate Committee on Human Rights Study on Sterilization without Consent](#), 2019, p. 5.

<sup>8</sup> [Concluding observations on the seventh periodic report of Canada](#), 21 December 2018, CAT/C/CAN/CO/7, paras 51, 52, 54.

<sup>9</sup> Amnesty International, [Maze of Injustice](#), 2007, p 17.

<sup>10</sup> [Inter-American Court of Human Rights, Case of I.V. v. Bolivia](#), Judgment of November 30, 2016, paras 314, 320, 321.

<sup>11</sup> CEDAW, General Recommendation 35, CEDAW/C/GC/35, 26 July 2017, para. 18.

<sup>12</sup> Amnesty International Canada: [Submission to Standing Senate Committee on Human Rights Study on Sterilization without Consent](#), 2019, p. 6.

<sup>13</sup> Amnesty International, Kenya: [Families Torn Apart: Forced Eviction of Indigenous People in Embobut Forest](#), AFR 32/8340/2018, 2018, p. 38.

participated on a relatively egalitarian basis with men in the socio-economic activities such as the keeping of livestock and bee-keeping, this situation radically changed after the eviction. In many cases men resisted the eviction order and returned to the forest to raise livestock; because of the security situation, some women decided to live outside the forest, deprived of access to their traditional livelihoods; they were forced to attempt to seek work, often working for very low levels of pay on the land of others. As one Sengwer woman stated, “I have been reduced to a beggar. Before, I was self-reliant and fed and paid for my children’s education”.<sup>14</sup>

Sengwer women’s reproductive health was also adversely affected – whereas in the forest they would seek the help of traditional birth attendants known as *chepsakitia*, outside of the forest, they relied on state health services, which in many cases they could not afford, or the services were inaccessible due to distance. The *chepsakitia* themselves – all of whom are women - lost their source of livelihood.<sup>15</sup>

The socio-economic situation of Sengwer women was further exacerbated due to the fact that many did not receive financial compensation. There were many cases of denial of compensation, affecting both men and women, but the majority of those compensated were men.<sup>16</sup>

The Covid-19 pandemic has exacerbated the forced eviction, in particular its impact on Sengwer women and girls. Community leaders reported the burning of homes by the Kenya Forest Service in early May 2021. One affected Sengwer woman interviewed, stated that women and children were forced to flee and seek shelter in a nearby school. The forced evictions occurred after the state had issued a moratorium on all evictions during the pandemic.<sup>17</sup>

States should ensure that Indigenous women and girls are able to effectively participate in all consultations relating to the obtaining of free, prior and informed consent for actions affecting the rights of their peoples. States should carry out a comprehensive assessment of the impact of proposed actions on the rights of Indigenous peoples, including an intersectional analysis of the impact on Indigenous women and girls. Any compensation and benefit-sharing must include Indigenous women and girls.

## **VIOLENCE AGAINST INDIGENOUS WOMEN AND GIRLS**

In Amnesty International’s research into the human rights impact of energy development in Northeast British Columbia, Canada, we found that the rights of Indigenous women and girls were severely impacted. “The large numbers of men who come to the region to work in industry and the way that their economic power emboldens them to express racist and sexist attitudes they might suppress elsewhere”,<sup>18</sup> led to an increase in violence against Indigenous women and girls, including sexual violence. Some women participated in sex work or forms of transactional sex, due to economic insecurity.<sup>19</sup> The influx of workers from outside the region led to distortions in the local economy, forcing prices up, which disproportionately affected Indigenous women who struggled to find housing, childcare, and pay for basic household expenses like rent and food, and were often excluded from jobs in the resource economy.<sup>20</sup> Organizations providing support to women escaping violence were unable to cope with the increased demand.<sup>21</sup>

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<sup>14</sup> Amnesty International, Kenya: [Families Torn Apart: Forced Eviction of Indigenous People in Embobut Forest](#), AFR 32/8340/2018, 2018, p. 53.

<sup>15</sup> Amnesty International, Kenya: [Families Torn Apart: Forced Eviction of Indigenous People in Embobut Forest](#), AFR 32/8340/2018, 2018, p. 53-4.

<sup>16</sup> Amnesty International, Kenya: [Families Torn Apart: Forced Eviction of Indigenous People in Embobut Forest](#), AFR 32/8340/2018, 2018, p. 38.

<sup>17</sup> Kenyans.co.ke, [CS Matiang’i Reveals Action After Outcry in Kariobangi Evictions](#), 11 May 2020

<sup>18</sup> Amnesty International, [Out of Sight, Out of Mind: Gender, Indigenous Rights, and Energy Development in Northeast British Columbia, Canada](#), 2016, p. 51.

<sup>19</sup> Amnesty International, [Out of Sight, Out of Mind: Gender, Indigenous Rights, and Energy Development in Northeast British Columbia, Canada](#), 2016, p. 48.

<sup>20</sup> Amnesty International, [Out of Sight, Out of Mind: Gender, Indigenous Rights, and Energy Development in Northeast British Columbia, Canada](#), 2016, pp. 45-48.

<sup>21</sup> Amnesty International: [Out of Sight, Out of Mind - Executive Summary](#), 2016, p. 6.

States should ensure that impact assessments carried out in advance of resource development projects, which affect the rights of Indigenous peoples, incorporate a comprehensive analysis of the rights of women and girls, the rights of Indigenous peoples, and the intersection of the two. Projects which will result in a significant impact on the enjoyment of the rights of Indigenous women should not proceed without their free, prior and informed consent. Indigenous women must be able to participate effectively in all consultations on projects carried out with the objective of obtaining free, prior and informed consent. Where projects are ongoing and there are human rights harms, states must act urgently to address those harms and provide adequate, culturally appropriate access to remedy without gender discrimination.

In 2007, Amnesty International researched failures in protecting Indigenous women from sexual violence in the USA, and found that jurisdictional disputes between Tribal, State and Federal governments blocked effective prosecutions in many cases;<sup>22</sup> as noted in the Committee's concept note, the overlap between Indigenous and national jurisdictions is an area where more analysis is needed.<sup>23</sup> The report further found that law enforcement agencies, prosecutors and courts were not held accountable for failures to take action;<sup>24</sup> and that there was a failure to address popularly held prejudices against Indigenous women and girls, among other issues.<sup>25</sup> Tribal jurisdictions, which states have a duty to recognise and strengthen,<sup>26</sup> were insufficiently empowered to provide access to justice, being prevented from prosecuting non-Indian or non-Alaska Native offenders or imposing a custodial sentence of more than one year for each offence.<sup>27</sup> Since the release of the report, the US has taken limited steps to address these issues; rates of sexual violence against Native American and Alaska Native women remain unchanged, and are the highest rates of sexual violence in the country.

In 2015, the organization wrote to the Vice-President of the USA with a series of recommendations to implement protocols that standardize post-rape care across Indian Health Service centers, including clear protocols on how health service providers should respond to cases of child survivors of sexual violence.<sup>28</sup> To date, these recommendations have not been implemented.

On June 3, 2021, the government of Canada released the 2021 Missing and Murdered Indigenous Women, Girls, and 2SLGBTQQA+ People National Action Plan: Ending Violence Against Indigenous Women, Girls, and 2SLGBTQQA+ People.<sup>29</sup> Amnesty International criticised the government for taking two years to come up with the plan, after the National Inquiry into Missing and Murdered Indigenous Women and Girls had released its report,<sup>30</sup> and even at this late stage, recognising that the plan was incomplete, noting that short-term priorities and an implementation plan were yet to come.<sup>31</sup>

In relation to Bangladesh (Chittagong Hill Tracts) Amnesty International raised concerns to CEDAW in 2016 about impunity in cases of sexual and gender-based violence towards Indigenous women, citing studies that showed that out of 215 cases in over a two-year period, only nine had resulted in a court case, and none had resulted in convictions.<sup>32</sup>

States should carry out a comprehensive audit of laws, institutions, policies and practices in order to identify barriers to obtaining justice in cases of violence against Indigenous women and girls, including sexual violence

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<sup>22</sup> Amnesty International, [Maze of Injustice](#), 2007, pp. 27-40.

<sup>23</sup> CEDAW, Concept Note for a General Recommendation on the Rights of Indigenous Women, p. 6.

<sup>24</sup> Amnesty International, [Maze of Injustice](#), 2007, pp. 69-71.

<sup>25</sup> Amnesty International, [Maze of Injustice](#), 2007, pp. 15-18.

<sup>26</sup> United Nations Declaration on the Rights of Indigenous Peoples, Arts. 5 & 40.

<sup>27</sup> Amnesty International, [Maze of Injustice](#), 2007, p. 63.

<sup>28</sup> [https://www.amnestyusa.org/wp-content/uploads/2021/06/AIUSA\\_letter\\_to\\_OVP.pdf](https://www.amnestyusa.org/wp-content/uploads/2021/06/AIUSA_letter_to_OVP.pdf)

<sup>29</sup> [2021 National Action Plan \(mmiwg2splus-nationalactionplan.ca\)](#)

<sup>30</sup> [Final Report I MMIWG \(mmiwg-ffada.ca\)](#), 2019.

<sup>31</sup> Amnesty International Canada, [Moving from rhetoric to action to end violence against First Nations, Métis, and Inuit women, girls and two-spirit people](#), June 9 2021.

<sup>32</sup> Amnesty International, [Bangladesh: Submission to the United Nations Committee on the Elimination of Discrimination against Women](#), 2016, p. 7.

and murder, and take immediate action to break down those barriers. They should implement training programmes for law enforcement officials, judges, prosecutors and other actors in the criminal justice system, to ensure they have the knowledge and skills to address violence against Indigenous women and girls. They should ensure that Indigenous peoples' justice systems have the necessary resources, are empowered to ensure access to justice for Indigenous women and girls, and fully comply with human rights standards. They must develop a comprehensive plan, using all appropriate means such as media and the education system, to eliminate discriminatory attitudes among the general public towards Indigenous women and girls.

## ACCESS TO LAND RIGHTS

In Amnesty International's research into the forced eviction of the Sengwer Indigenous people in Kenya, we found that Sengwer women and girls did not have equal access to land with men, partly due to customary practices of the Sengwer people, and partly due to the replication by the state of customary practices common to many if not all peoples in Kenya. As one Sengwer woman activist stated:

*“What we need to remember is that discrimination against women in access to land rights is not unique to the Sengwer; in fact it is the norm among African societies. The Sengwer leadership has recognized this problem and intends to address it; this is a conversation that we are having and which is progressing. Depriving the Sengwer of their land rights has not helped the women, who want the community to get its land rights and then they will work within the community for equality for women.”<sup>33</sup>*

States should carry out a comprehensive audit of laws, policies and practices to ensure that they do not discriminate against Indigenous women and girls in access to land rights. Where there are traditional practices and laws of Indigenous peoples that discriminate against women and girls, states must not use these to justify expropriation of the people's lands or denial of their right to self-determination. Instead, they should work closely with the people in question to empower them to address and eliminate all forms of discrimination.

## IMPACT OF TOXIC CONTAMINATION ON INDIGENOUS WOMEN AND GIRLS' RIGHT TO HEALTH

In 2017, Amnesty International researched toxic contamination in the Indigenous communities of Espinar and Cuninico, in Peru. Both communities were exposed to mercury, lead, arsenic, cadmium and other toxic metals.<sup>34</sup> However, the state has failed to take adequate action to protect their health. Health impacts have included motor dysfunction, loss of vision, dermatitis and rashes, cancer, diabetes, hypertension, memory loss, depression, anxiety, infertility, miscarriages, weakening of muscles and bone fragility.<sup>35</sup>

State failings have included inadequate resourcing and staffing of community health institutions,<sup>36</sup> failure to provide clean water for drinking, cooking and washing,<sup>37</sup> failure to ensure healthcare staff were able to provide culturally appropriate services to the communities.<sup>38</sup>

The health impacts on women have been particularly severe. As one Indigenous resident of Cuninico reported, “Nearly every month you hear of someone who is one, two, three months pregnant, then by month four they're having to go to Maypuco because of bleeding. The next week, another one has the same problem. And we are

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<sup>33</sup> Amnesty International, Kenya: [Families Torn Apart: Forced Eviction of Indigenous People in Embobut Forest](#), AFR 32/8340/2018, 2018, p. 40.

<sup>34</sup> Amnesty International, [A Toxic State: Violations of the Right to Health of Indigenous Peoples in Cuninico and Espinar](#), Peru, p. 32.

<sup>35</sup> Amnesty International, [A Toxic State: Violations of the Right to Health of Indigenous Peoples in Cuninico and Espinar](#), Peru, p. 18.

<sup>36</sup> Amnesty International, [A Toxic State: Violations of the Right to Health of Indigenous Peoples in Cuninico and Espinar](#), Peru, p. 40.

<sup>37</sup> Amnesty International, [A Toxic State: Violations of the Right to Health of Indigenous Peoples in Cuninico and Espinar](#), Peru, p. 40.

<sup>38</sup> Amnesty International, [A Toxic State: Violations of the Right to Health of Indigenous Peoples in Cuninico and Espinar](#), Peru, p. 42.

now known by the doctor at Maypuco for our recurrent miscarriages, the ‘miscarrying women of Cuninico’ because women are going there with this kind of problem so often.”<sup>39</sup>

States should design and implement emergency health plans to address the effects of exposure to heavy metals and other chemical substances wherever they affect Indigenous peoples, with a particular focus on specific impacts on the health of Indigenous women and girls. These plans should be developed, implemented and monitored with the participation of experts in harmful metals and representatives of the affected communities, including women, and should also include specific strategies for communication with and accountability to the Indigenous peoples concerned.

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<sup>39</sup> Amnesty International, [A Toxic State: Violations of the Right to Health of Indigenous Peoples in Cuninico and Espinar](#), Peru, p. 21.