

Appendix

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

1. The CEDAW provides a rights-based legal framework to advance gender equality and address discrimination against women.¹
2. In the context of violence against women, the general recommendations of the Committee on the Elimination of Discrimination against Women provide critical guidance, in particular:
 - general recommendation No 35 on gender-based violence against women updating general recommendation No 19 (2017); and
 - general recommendation No.39 on the rights of Indigenous Women and Girls (**General Recommendation 39**).
3. The Committee on the Elimination of Discrimination against Women notes in its 2022 General Recommendation 39 that it 'considers UNDRIP an authoritative framework to interpret state party and core obligations under CEDAW'.²
4. The CEDAW Committee's General Recommendation 39 states '[g]ender-based violence against Indigenous Women and Girls is a form of discrimination under article 1 and therefore engages all obligations under the Convention'.³ Given this explanation, article 2 then creates an obligation on parties to take all appropriate measures to prevent and eliminate gender-based violence against Indigenous women and girls.
5. General Recommendation 39 also highlights articles of the CEDAW which contain obligations to prevent and protect Indigenous women from gender-based violence.⁴ These include the obligations that states parties shall take all appropriate measures to:
 - ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men (Article 3);
 - modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (Article 5);
 - suppress all forms of traffic in women and exploitation of prostitution of women (Article 6);
 - ensure the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education (Article 10);
 - eliminate discrimination against women in the field of employment (Article 11);

¹ *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 20 November 1989, (entry into force 2 September 1990).

² Committee on the Elimination of Discrimination against Women, *General recommendation No.39 (2022) on the rights of Indigenous Women and Girls*, CEDAW/C/GC/39 (26 October 2022), [35].

³ *Ibid* [39].

⁴ Committee on the Elimination of Discrimination against Women, *General recommendation No.39 (2022) on the rights of Indigenous Women and Girls*, CEDAW/C/GC/39 (26 October 2022) [34]-[42].

- eliminate discrimination against women in the field of health care (Article 12);
- eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development (Article 14); and
- eliminate discrimination against women in all matters relating to marriage and family relations (Article 16).

Convention on the Rights of the Child (CRC)

6. The CRC provides a legal framework which includes specific rights reflecting the vulnerability of children. General Comment 11 on Indigenous children and their rights (**General Comment 11**) asserts that the specific references to the needs of indigenous children contained in the CRC demonstrate that Indigenous children 'require special measures in order to fully enjoy their rights'.⁵
7. Article 19 of the CRC specifically stipulates, 'States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse'.
8. Other articles under the CRC relating to the obligations to ensure children's right to safety and welfare include:
 - in all actions concerning children, the best interests of the child shall be a primary consideration (Article 3);
 - a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child (Article 9);
 - states recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (Article 27); and
 - states undertake to protect the child from all forms of sexual exploitation and sexual abuse (Article 34).
9. General Comment 11 further emphasises the specific obligation on states to protect Indigenous children from all forms of discrimination and confirms that states must take all necessary, appropriate and reasonable measures to prevent abuses of indigenous children's rights.⁶

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

10. The ICERD requires states to take special measures to eliminate discrimination on the basis of race.⁷

⁵ Committee on the Rights of the Child, *General Comment No. 11 (2009) on indigenous children and their rights*, CRC/C/GC/11 (30 January 2009).

⁶ Ibid [17].

⁷ *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 1965, 660 UNTS 195 (entered into force 1965) ('**ICERD**').

11. Article 5(b) of ICERD places an obligation on States Parties to prohibit and to eliminate racial discrimination to guarantee the enjoyment of the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.

International Covenant on Civil and Political Rights (ICCPR)

12. The ICCPR requires state parties to protect a diverse range of rights that broadly relate to individual and civic freedoms.⁸
13. The 2020 *Wiyi Yani U Thangani* Report by the Aboriginal and Torres Strait Islander Social Justice Commissioner, Ms June Oscar AO, states 'there is a close connection between discrimination against women, gender-based violence, and the broader human rights and freedoms'.⁹ Such broad intersecting rights under the ICCPR include the right to:
 - life (article 6);
 - not to be subject to torture or to cruel, inhuman or degrading treatment or punishment (article 7);
 - liberty and security of person (article 9); and
 - equal protection under the law (article 26).

International Covenant on Economic, Social and Cultural Rights (ICESCR)

14. The ICESCR recognises the 'right of everyone to the enjoyment of the highest attainable standard of physical and mental health' (article 12).¹⁰ General comment No. 14 of the Committee on Economic, Social and Cultural Rights, specifies that a violation of the obligation under article 12 includes 'the failure to protect women against violence or to prosecute perpetrators'.¹¹ The Committee also encourages parties to integrate a gendered perspective to implementing health strategies with a major objective being to reducing women's health risks, including protecting women from domestic violence.¹²

⁸ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, (entry into force 23 March 1976).

⁹ Australian Human Rights Commission, *Wiyi Yani U Thangani Report* (9 December 2020) <<https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yanu-thangani>>, 123.

¹⁰ *International Covenant on Economic, Social and Cultural Rights*, opened for signature on 24 September 2009, (entry into force 5 May 2013).

¹¹ Committee on Economic, Social and Cultural Rights, *General Comment No. 14 (2000) on The right to the highest attainable standard of health*, E/C.12/2000/4 (11 August 2000), [51].

¹² *Ibid*, [21].