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## **Raising Indigenous Women's Voices for Equal Rights and Self-Determination**

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*The United Nations Declaration on the Rights of Indigenous Peoples states that the right to self-determination for Indigenous peoples involves their having the right to freely determine their political status and freely pursue their economic, social, and cultural development. The implementation of this right is linked to the ability and freedom to participate in any decision making that relates to their development. Current laws and practices are considered “unfair to women,” because they sustain traditional and customary patriarchal attitudes that marginalize Indigenous women and exclude them from decision-making tables and leadership roles. Despite the many challenges Indigenous women face in their efforts to participate in decision making and take on leadership roles, cases from the past prove that engaging more Indigenous women in negotiations and initiatives can safeguard their rights and the rights of all peoples.*

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Indigenous peoples are not a homogenous group, and there is no official definition of Indigenous peoples. Informally, they are described as groups of people descending from the original inhabitants of a defined territory who share distinct cultural, social, economic, and political systems and institutions and a will to preserve their identities, which are often linked to a collective relationship to lands and resources.<sup>1</sup> Indigenousness lacks an official definition because the concept “is not capable of a precise, inclusive definition which can be applied the same manner to all regions of the world.”<sup>2</sup> The international community decided, therefore, to adopt a “flexible” version that would not require the adoption of a definition.<sup>3</sup> This decision is reflected in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which established the criterion of self-identification (art. 33).<sup>4</sup> Since then, Indigenous peoples officially have the right to determine their own identity and membership in accordance with their own customs and traditions.

The ability to claim a specific identity has been at the core of Indigenous activism for several years, posing increasing challenges to those states where Indigenous people live and forcing a discussion within the international community. This discussion gained international attention late in the construction of the international human rights architecture. The first significant event within the United Nations occurred in the early 1970s, when the Sub-Commission on Prevention of Discrimination and Protection of Minorities appointed Special

Rapporteur José R. Martínez Cobo to undertake a comprehensive study of the situation of Indigenous peoples. The second significant event took place in 1982, when the UN Social and Economic Council established the Working Group on Indigenous Populations, a subsidiary body of the sub-commission.<sup>5</sup> A lengthy debate about the recognition of Indigenous peoples, and a more complex one on their rights,<sup>6</sup> led to the promulgation of UNDRIP, adopted by the United Nations General Assembly in 2007. The declaration is considered to be the most advanced international instrument dealing with Indigenous peoples' rights and, though it is nonbinding, it constitutes a statement of rights, because it has been proclaimed by a clear majority of member states of the UN General Assembly.

The declaration crystallizes rights that already existed and were compiled in various international human rights instruments. The peculiarity of UNDRIP is the contextualization of human rights to the specific "patterns of Indigenous group identity and association that constitutes them as people."<sup>7</sup> This declaration enshrines Indigenous peoples' right to self-determination and self-identification. Thus, they have the right to establish their own separate systems and institutions and to be consulted and participate in matters that affect them. UNDRIP also includes a wide array of other rights, including the right of Indigenous peoples to practice and revitalize their cultural traditions and customs (art. 11), the right to establish and control their educational systems and institutions (art. 14), the right to determine and develop priorities and strategies for exercising their right to development (art. 23), and the right to the lands, territories, and resources they have traditionally owned, occupied, or otherwise used or acquired (art. 26). Furthermore, article 22 acknowledges that "particular attention shall be paid to the rights and special needs of Indigenous elders, women, youth, children and persons with disabilities" in the implementation of the declaration and that the states, in conjunction with Indigenous peoples, shall take measures "to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination."

The relevance of the declaration for the history of Indigenous peoples' rights can be attributed partly to the uniqueness of its drafting process. "Never before," Alexandra Xhantaki writes, "has the development and adoption of a human rights instrument been driven so much and so successfully by the interested party, in this case the transnational Indigenous movement."<sup>8</sup> Most important, however, was the discussion over the collective dimension of the debated rights and the right to self-determination.

According to Dwight G. Newman, a major premise of the debate that preceded the signing of the declaration was the acknowledgment that several of the rights it aimed to protect were collective, in that they were held by Indigenous groups rather than by individuals. Newman also emphasizes that the jurisprudence under various international and regional human rights provisions, most notably, article 27 of the International Covenant on Civil and Political Rights and the property right provisions in the American Convention on Human Rights, confirmed the idea of that certain Indigenous rights were held collectively.<sup>9</sup> From the moment negotiations on the text began, however, several member states opposed the notion of collective rights, fearing they could potentially undermine individual rights. For instance, the United Kingdom's stance during the debate was to accept only the intermediate category of individual rights "exercised in community with others" because of a concern for the individuals in the groups who might be vulnerable and left without protection.<sup>10</sup>

Another major focus of the drafting process was the paramount right of self-determination and its application to the specific situation of Indigenous peoples. Article 3 of UNDRIP states: "Indigenous peoples have the right to self-determination. By virtue of that right they freely

determine their political status and freely pursue their economic, social and cultural development.”

The right of self-determination in the declaration, Robert T. Coulter notes, represented “the crystallization of a new right for Indigenous peoples as distinct peoples within states, not merely the right to participate in the political life of the country as part of the whole people of the state.”<sup>11</sup> While the concept of self-determination was already well rooted in international law, its implications for Indigenous peoples were not immediately clear.

The concept of self-determination arose in international political discourse during World War II, when President Woodrow Wilson associated the idea of self-determination with Western liberal democratic ideals and the aspirations of European nationalists. Vladimir Lenin and Joseph Stalin “also embraced the rhetoric of self-determination” while viewing it “in accordance with Marxist precepts of class liberation.” When the United Nations was established in 1945, “self-determination of peoples” was included among the organization’s founding principles as outlined in its Charter of the United Nations. It represented “the normative grounds by which the territories of Africa, Asia, and elsewhere broke the formal bonds of colonialism and became independent states.”<sup>12</sup> The right to self-determination was later recognized in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, in their common article 1, which, for the first time, articulates self-determination as a human right.<sup>13</sup>

As enshrined in UNDRIP, the right to self-determination for Indigenous peoples means that they have the right, as a collective, to freely determine their political status and freely pursue their economic, social, and cultural development (art. 3). S. James Anaya identifies two elements of the right to self-determination: substantive and remedial.<sup>14</sup> He further divides the substantive aspect of the right to self-determination into the constitutive and the on-going aspects. The constitutive aspect requires that Indigenous peoples participate meaningfully in the procedures of creation or change in the governmental institutions under which they live. This aspect is in line with the common article 1(1) of the two International Covenants on Human Rights, which gives all peoples, by virtue of their right to self-determination, the right to “freely determine their political status.” The on-going aspect calls for a governing institutional order under which individuals and groups are continually able to make choices in matters touching on all spheres of life, in accordance with common article 1(1) of the two International Covenants on Human Rights, which gives all peoples the right to “freely pursue their economic, social and cultural development.” The remedial aspect of the Indigenous right to self-determination involves remedies for violations of the substantive content of their rights. Such remedies require the alteration of the status quo of the political order under which Indigenous peoples live and that threaten the very identity of the group. The remedies vary with the circumstances and the present-day aspirations of the group.<sup>15</sup>

Another peculiarity of the Indigenous right to self-determination is its interdependency with the right to autonomy or self-government in matters relating to Indigenous peoples’ internal and local affairs, as well as ways and means for financing their autonomous functions (art. 4), and the right of participating in the political, economic, social, and cultural life of the state, while they maintain their distinct political, legal, economic, social, and cultural institutions (art. 5). The relationship between the right to self-determination and participatory rights is one of the most innovative aspects of UNDRIP.<sup>16</sup> Moreover, the drafting history of UNDRIP demonstrates that Indigenous peoples and member states envisioned participatory rights as a means for Indigenous peoples to attain self-determination.<sup>17</sup>

Coulter sees in UNDRIP provisions “a wide range of possible choices or options for Indigenous peoples that they may exercise depending on their desires and circumstances.”<sup>18</sup> Maria Noel Leoni Zardo adds that “self-determination arguably gives a different context to collective rights that have, indeed, been recognized before, for several groups of people, and not exclusively to Indigenous Peoples.” She goes on to explain that the classic liberal approach to human rights is centered on the individual as the only holder of human rights and that approach is based on individualism and universality rather than collectivity. Still, the human rights architecture has now recognized that certain individuals, by belonging to a specific group, such as an ethnic minority, find themselves in a more vulnerable position that is often associated with discriminatory practices. This acknowledgment is visible, for example, in the protection of the right of ethnic minorities, as stated in article 27 of the International Covenant on Civil and Political Rights, to use their native language. Yet, in this instance, the recognition of a collective identity did not define the group as a right holder; nor did it imply recognition of a collective right to self-determination.<sup>19</sup>

As Coulter points out, in the thirty years during which the text of UNDRIP was being negotiated, “the views of states on self-determination for indigenous peoples evolved enormously from rejection and disbelief to widely shared understanding, acceptance, and affirmative support.”<sup>20</sup> Recognition of a right to self-determination did not pass smoothly through the process of legitimization by the member states, which was dominated at first by a concern that the right to self-determination might undermine the territorial integrity of countries where Indigenous groups lived.<sup>21</sup>

Indigenous women have encountered a silence around the violations they have experienced, which do not align with the concerns of the general women’s movement because of the “continued practices and effects of colonialism.”<sup>22</sup> Furthermore, their limited participation and limited voices in the exercise of the Indigenous peoples’ right to self-determination have to be read in the broader context of collective versus individual rights, and the assumption that Indigenous peoples constitute one group with homogenous interests that are notably male-oriented. This assumption led to a global debate in which the concept of Indigenous peoples is taken as a singular entity. Thus, there has been no need to consider what self-determination means to women and what impact the concept has on their existence. As Megan Davis points out, the assumption that Indigenous women do not constitute a separate entity is consistent with the belief among Indigenous groups that in engaging with the state, they can be more successful if their examples are presented collectively.<sup>23</sup> In most instances, the discussions regarding Indigenous rights have focused on the collective nature of their rights and the use of the international legal framework to address these rights, while fundamental protections for individuals within these communities have received no scrutiny and gender equality has not been mentioned. Alas, the right to self-determination in its current application perpetuates certain cultural practices that lead Indigenous women to experience gender inequality.<sup>24</sup>

## **The Role and Challenges of Indigenous Women in Decision Making and Leadership**

In 1995, the UN Fourth Conference on Women identified “women in power and decision-making” as one of the twelve areas of concern in its 1994 Beijing Platform for Action. The conference identified two strategies to address this issue: “take measures to ensure women’s equal access to and full participation in power structures and decision-making” and “increase

women's capacity to participate in decision-making and leadership."<sup>25</sup> Several years later these issues were also addressed in the first-ever international women's bill of rights.<sup>26</sup> The preamble to that bill of rights, the Convention on the Elimination of Discrimination against Women (CEDAW), states that "the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields." CEDAW enshrines women's right to participate in decision making without any type of discrimination. It therefore obliges states to ensure that women have an equal opportunity with men to participate in the public and political life of their country, that is, as stated in article 7, to vote in all elections and to be eligible for election to all publicly elected bodies; to participate in the formulation of government policy and its implementation and to hold public office and perform all public functions at all levels of government; and to participate in nongovernmental organizations and associations concerned with the public and political life of the country. Participation is not limited to the national arena, and CEDAW further obliges states to take appropriate measures to ensure that women, on an equal basis with men, have the opportunity to represent their government at the international level and to participate in the work of international organizations (art. 8).

It is important to note that CEDAW is a nondiscrimination-based treaty that contains a broader definition of discrimination than other international treaties. It covers formal equality (equality of opportunity) and equality of outcome or substantive equality (de facto equality).<sup>27</sup> The convention defines discrimination against women in terms of its impact on women's equal enjoyment of their human rights and fundamental freedoms (art. 1).<sup>28</sup> Article 1 forbids both direct and indirect discrimination. Direct discrimination is "different treatment explicitly based on grounds of sex and gender differences."<sup>29</sup> Indirect discrimination occurs when laws, policies, and programs are gender neutral but unintentionally perpetuate the consequences of past discrimination because pre-existing inequality is not addressed by the neutral measure.<sup>30</sup> In addition, indirect discrimination can exacerbate existing inequalities because of a failure to recognize structural and historical patterns of discrimination and unequal power relationships between women and men.<sup>31</sup> The committee of CEDAW has stressed the need and importance of addressing both forms of discrimination in order to achieve substantive equality. When it comes to women's—and notably, Indigenous women's—right to participation in decision making and leadership at all levels, discrimination falls mostly within the framework of these "neutral laws."

Since the ratification of the Beijing Declaration and Platform for Action twenty-five years ago, women's political participation has increased considerably, though key areas of political decision making are still a challenge.<sup>32</sup> At the various levels of decision making, women's leadership and political participation are restricted.<sup>33</sup> As noted by the UN General Assembly, women in every part of the world continue to be marginalized.<sup>34</sup> Similarly, the committee of CEDAW has denounced on multiple occasions the persistent obstacles that women face in achieving their participatory rights. Economic, social, and cultural barriers, including poverty, illiteracy, languages, and impediments to women's freedom of movement, hinder women's participation.<sup>35</sup> The current, yet outmoded, practices and procedures of participation inadvertently promote men and sustain traditional and customary patriarchal attitudes that discourage women's participation.<sup>36</sup> For instance, the prevailing negative cultural stereotypes concerning women's political participation and the discrimination against women in the family and the community may prevent women from pursuing their participatory rights.<sup>37</sup> To overcome these structural obstacles, states must promote transformative equality in public and political fields, that is, "a real transformation of all public and political institutions as well as society at

large so that gender relations in public and political life are no longer grounded in historically determined male paradigms of power.”<sup>38</sup>

To contextualize participatory rights with regard to Indigenous women, it is important to analyze the various struggles they experience in the exercise of these rights. The structural obstacles to women’s effective participation in decision making are multiplied when various identities intersect. Among many Indigenous women, for instance, the intersections of gender, race, and poverty can amount to a “triple discrimination.”<sup>39</sup> Thus, paraphrasing Kimberle Crenshaw, Indigenous women can experience discrimination in ways that are similar to and different from the ways white women, poor people, and Indigenous people experience it.<sup>40</sup> Adding to that, as the United Nations Human Rights Council (HRC) has noted, “Indigenous peoples are among some of the most excluded, marginalized and disadvantaged social groups.”<sup>41</sup> Indeed, Indigenous women experience a broad, multifaceted, and complex spectrum of mutually reinforcing human rights abuses.<sup>42</sup> Their vulnerability to these abuses is often due to a lack of access to education, health care, and ancestral land and disproportionately high rates of poverty and violence, such as domestic violence and sexual abuse, including in the context of trafficking and armed conflict.<sup>43</sup> To understand the challenges facing Indigenous women in the exercise of their participatory rights all these forms of discrimination have to be analyzed, with special attention to the need to eliminate the “legacy of historical discrimination against Indigenous peoples and against Indigenous women based on their gender.”<sup>44</sup>

UNDRIP vigorously focuses on participatory rights. It contains more than twenty articles affirming Indigenous peoples’ right to participate in decision making at many levels and on a wide range of matters. Participation is considered to be the cornerstone of the right to self-determination. Its importance also rests on the direct impact it has on the full enjoyment of an array of other human rights and basic principles such as equality, property, cultural integrity, and free, prior, and informed consent.<sup>45</sup> The uniqueness of UNDRIP provisions is that they are tailored to the Indigenous context. UNDRIP recognizes the collective element of the Indigenous right to participation, which, it states, “requires the State to enact special measures to ensure the effective participation of indigenous peoples within State political structures and institutions.”<sup>46</sup>

Indigenous participatory rights have an external and an internal dimension. The external dimension refers to Indigenous peoples’ participation in the broader public life of the state (art. 5); participation in decision-making processes that affect Indigenous peoples’ rights and interests (art. 18) and the pivotal principle of free, prior, and informed consent (art. 19); and their involvement in the international arena. In this dimension, Indigenous peoples’ participation in the public life of any state is inadequate and not proportional to their populations.<sup>47</sup> The internal dimension of these rights relates to the Indigenous peoples’ exercise of autonomy and self-government, that is, to their right to “take control of their own affairs in all aspects of their lives and ensure that matters affecting them are aligned with their own cultural patterns, values, customs and world-views.”<sup>48</sup> With respect to this dimension of the right, the former special rapporteur on the situation of human rights and fundamental freedoms of Indigenous peoples has denounced the lack of an adequate consultation with Indigenous peoples on areas that affect their rights and interests.

UNDRIP briefly addresses women’s concerns and urges states to take all necessary measures, jointly with Indigenous peoples, to ensure that women enjoy full protection and guarantees against all forms of discrimination (art. 22) and that all the rights in the declaration are equally guaranteed to their male counterparts (art. 15). The collective approach to participatory rights in UNDRIP “extend[s] the concept and scope of application of indigenous

women's right to political participation." Indigenous women have to be considered individuals and at the same time members or their people, of their community.<sup>49</sup>

Gender equality advocates have long championed women's right to participate in all areas of political and public life because such participation is essential for the full development and advancement of women<sup>50</sup> and because it is a basic means to guarantee women's agency. Similarly, the Indigenous women's movement, seeking to reduce structural factors of discrimination, has demanded political participation for women.<sup>51</sup> The former executive director of UN Women has called women's participation "fundamental to democracy and essential to the achievement of sustainable development and peace."<sup>52</sup> In addition, studies have shown that including women in decision making increases the chances of enacting policies that address issues that exclusively or disproportionately affect women.<sup>53</sup> The greater the representation by different social groups in decision-making processes the more legitimate the processes and the more effectively the results reflect the composition of society as a whole.<sup>54</sup>

Despite the provisions of CEDAW and UNDRIP and their participatory rights stemming broadly from the right to self-determination, Indigenous women are often excluded from decision-making structures in their own communities and at the national level.<sup>55</sup> Indigenous women's participation has been limited in the Indigenous rights movement and in the women's rights movement.<sup>56</sup>

In some Indigenous societies, women continue to play important decision-making roles at the local level, particularly in respect to cultural and ceremonial acts.<sup>57</sup> But the Permanent Forum on Indigenous Issues has charged that traditional roles have been eroded because of the compounding factors of loss of natural resources, depletion of ecosystems, conversion to cash economies, changes in social and decision-making structures, and a lack of recognition of women in state policies.<sup>58</sup>

Indigenous laws continue to be considered "unfair to women," and there is a need for Indigenous laws and practices to be made compatible with internationally recognized human rights standards.<sup>59</sup> Victoria Lucia Tauli-Corpuz, former special rapporteur on the rights of Indigenous peoples, notes that "Indigenous power structures and self-governance agreements tend to be patriarchal and [to] exclude the involvement and perspectives of women."<sup>60</sup> But, as the HRC has underscored, Indigenous women once played a significant role in decision making. That role was abruptly limited with the coming of colonization, which contributed to the establishment of patriarchal structures and the perception of male dominance.<sup>61</sup> Thus, enhancing the participation of Indigenous women in decision making is an issue not only of gender equality but of historical justice.<sup>62</sup>

The percentage of all women who participate in decision making at the national level remains low; that percentage is drastically reduced for Indigenous women, who "often face exceptional impediments" to participation in decision making.<sup>63</sup> The absence of disaggregated data on the political participation of Indigenous women in national institutions, such as parliaments, renders Indigenous women invisible in such spheres, permitting only generalizations, such as the observation that they are significantly underrepresented.<sup>64</sup> A distinction must be made, however, between national bodies and the general structures of the state, such as national Parliaments. In national bodies, the participation of Indigenous women is slightly higher and varies from country to country.<sup>65</sup> For instance, in the state of Oaxaca, Mexico, three-fourths of municipalities elect municipal authorities through custom and tradition rather than secret ballot and universal suffrage, excluding women and Indigenous women in particular from politics.<sup>66</sup> In Ecuador political parties tend to ignore Indigenous women, and at



the same time, Indigenous women are not interested in participating in the traditional political parties because of their exclusionary, hegemonic, and assimilationist practices.<sup>67</sup> Similarly, recent studies have revealed the lack of inclusion of Indigenous women in decisions concerning their land and resources, that is, in the exercise of their right to free, prior, and informed consent<sup>68</sup>; and the fact that they are seldom part of official decision-making authorities.<sup>69</sup>

The challenges Indigenous women have faced in their efforts to achieve their full participatory rights and engage in leadership positions derives from the interplay between the right to self-determination; Indigenous rights, which are collective; and the individual rights of members of the Indigenous communities. In recent years, Indigenous women have brought to the table several issues that have impacted their enjoyment of their rights, pointing out that historically they have been excluded from the decisions and that issues that have specifically impacted them have always received little attention. As the Permanent Forum on Indigenous Issues concluded, Indigenous women's access to political participation has been blocked by racism, patriarchy, and discrimination.<sup>70</sup> To ensure the substantive equality required by CEDAW, these issues need to be addressed by Indigenous women themselves. Only they can shed light on the collective dimension of their rights by participating in decision making, which is an essential condition for the fulfillment of the right to self-determination.

### **Indigenous Women's Voices as Lessons from the Past**

Scholars and policy makers are often reluctant to address the gender dimensions of Indigenous peoples' issues because doing so may be seen as "interfering with culture" or "imposing western values."<sup>71</sup> Indigenous women's rights and Indigenous self-determination are interconnected because self-determination can be achieved only when women's rights are safeguarded. For Indigenous women, self-determination is a condition for sustainable and strong individual and collective self-determination, and "if women are not surviving as individuals in their communities, . . . [their] collective survival as peoples is also inevitably called into question."<sup>72</sup> This relationship suggests that the promotion of Indigenous women's rights and self-determination has a significant impact not only on Indigenous women but on Indigenous communities as a whole.

To achieve gender equality and self-determination, Indigenous women must engage in decision making and leadership. Despite the challenges of a male-dominated patriarchal and mono-ethnic political system that excludes women and diversity of identity,<sup>73</sup> Indigenous women have been organizing at local, national, and international levels. At the United Nations, they have been advocates and leaders since the first year of the Working Group on Indigenous Populations, and they were active participants and contributors during the more than two decades of negotiations over UNDRIP.<sup>74</sup> As the cases explored in the next section prove, engaging more Indigenous women in decision making and leadership can protect their land rights in such areas as gender-based violence, natural resource management, and peace and conflict.

### **Gender-based Violence**

Indigenous women may experience many kinds of violence in times of peace and in times of war, including rape, beatings, forced labor, and forced marriage.<sup>75</sup> The Sepur Zarco trial in Guatemala is a typical case of Indigenous women seeking justice for conflict-related sexual and gender-based violence.<sup>76</sup> During Guatemala's thirty-six-year-long conflict, Indigenous women in the village of Sepur Zarco were victims of systemic rape and exploitation by the Guatemalan

military.<sup>77</sup> In 2011, Q'eqchi' women reported the crimes committed against them and filed criminal charges in an effort to achieve justice. In February 2016, the High-Risk Court of Guatemala convicted two former military officers of crimes against humanity against Q'eqchi' women and became the first national court anywhere in the world to consider charges of sexual slavery during an armed conflict, which is a crime under international law.<sup>78</sup> In its decision, the court noted that gender-based violence against Q'eqchi' women was part of a deliberate strategy by the Guatemalan army.<sup>79</sup> A year later, the eleven surviving Q'eqchi' women created the Jalok U Association to promote the empowerment of women and girls from their communities.<sup>80</sup> Adriana Quiñones, UN Women representative for Guatemala, writes: "The Sepur Zarco case shows how, by breaking the silence and pursuing justice, the Sepur Zarco Grandmothers are restituting their rights and those of their communities and breaking the cycle of violence against women. They have shown what empowerment by women and for women looks like."<sup>81</sup>

### **Land Rights**

Indigenous women once had equal access to and control over collective land and natural resources, but with the gradual loss of collective ownership of lands, they progressively lost their traditional rights to land and natural resources.<sup>82</sup> Land is a critical economic asset; it is tied to culture, heritage, identity, and community; and it is a major cause of gender inequality. Women are estimated to own less than 2 percent of land worldwide.<sup>83</sup> According to Victoria Tauli-Corpuz, the UN special rapporteur on the rights of Indigenous peoples, secure land rights allow Indigenous women to be better equipped to provide for themselves and their families and to continue their vital role in climate change adaptation and mitigation.<sup>84</sup> Even though Indigenous peoples' lives are directly connected with the earth, states have opposed the recognition of their rights and self-determination. State actors have been arguing that recognizing such rights may lead to international instability. Still, it is more likely that states oppose Indigenous claims of self-determination because they fear a loss of control over the valuable natural resources on traditional Indigenous lands.<sup>85</sup>

In Colombia, a branch of the National Association of Rural and Indigenous Women of Colombia, a group of rural women leaders, has been working to identify damages Indigenous communities suffered during conflict and to claim reparations benefits, including access to land.<sup>86</sup> Groups of Indigenous women elsewhere have undertaken initiatives to promote their full participation in customary decision-making processes and institutions.<sup>87</sup> In Tanzania, Maasai women face discrimination from the majority society and within their own community, where cultural practices have restricted their rights to access or own land. One group of Maasai women, through organization and negotiations, were able to gain secure rights to village land held under customary tenure. The women recognized that by acting as a group they were more likely to gain support than by acting alone, taking advantage of positive provisions in the Village Land Act 1999, which grants women and men equal rights to village land. Dagomba women in Ghana gained secure rights to customary land through sustained and collective negotiation, during which they highlighted the collective benefits the community of secure land rights for women.<sup>88</sup>

### **Natural Resource Management**

Although the high levels of biodiversity found in Indigenous peoples' territories suggest that they should be "the guardians of Mother Earth" and despite the continuous efforts of Indigenous

women to protect nature, it is not widely accepted that their traditional natural resource management has led to the preservation of the environment or contributed to the fight against climate change. “On the contrary,” as Mikkelsen points out, “Indigenous peoples’ territories have largely been seen as wastelands, terra nullius, or the world’s last pristine ecosystems.”<sup>89</sup> Research has shown that deforestation rates are dramatically lower in forests managed by Indigenous people and local communities, and in many parts of the world, Indigenous women are those in charge of sustainable resource management.<sup>90</sup> Indigenous women use knowledge passed down through the generations to steward the world’s remaining forests. Their natural resource management shows that they depend on a wide range of ecosystems and natural resources to ensure their families’ health and provide them with food and income.<sup>91</sup>

There are numerous examples of efforts led by Indigenous women to protect the environment, including the case of the Alta River conflict in the late 1970s and early 1980s, which involved a plan by the Norwegian government to build a hydroelectric dam in northern Norway. The dam would have submerged the Sámi village of Máze (Masi) and a considerable portion of important reindeer grassing and calving areas in the heart of the reindeer-herding region. The office of the Norwegian prime minister, Gro Harlem Brundtland, was occupied by fourteen Sámi women in 1981 and the prime minister agreed to meet with the Sámi women but did not consider their concerns worthy of his time and left the meeting after half an hour; the women refused to leave the prime minister’s office. In 2005, the Norwegian Sámi Association recognized the actions of these women and today Sámi women are involved in Sámi politics at all levels.<sup>92</sup> In India, Indigenous women have been fighting for the recognition of Indigenous women’s knowledge to achieve the enhancement of sustainable use of natural resources. In Chhattisgarh state in particular, during the past decades, natural forests have been replaced by teak plantations. The Adivasi Adhikar Samiti (AAS) (Organization for Rights of Indigenous People), an organization of Indigenous women seeking restoration of land and forest rights to the Indigenous communities, has challenged the state through the implementation of numerous strategies. The AAS engaged in efforts to secure health rights, food rights, gender equity, employment, and education rights, the right to participate in local governance, the right to information, and protection against domestic violence by mobilizing village assemblies, monitoring and resisting tree-felling activities, and making representations to government. Members of AAS argued that “it is critical for the lives and well-being of Indigenous communities that natural resources and forests are not commercialized, and a formula for sustainable human development must be found in which women gain greater say and control over decisions about natural resource use, and large-scale resource development projects.”<sup>93</sup> In Ecuador, women have taken leading roles in fights against oil extraction in Sarayaku, and in North Sumatra, Indonesia, women have been resisting against plantations for pulp and paper, and recently, after a long fight, their rights to access to land was recognized. In Brazil, the babassu nut breaker women have led campaigns against the privatization of the babassu forests.<sup>94</sup> In Honduras, Berta Cáceres led a campaign against the construction of the Agua Zara dam on the Gualcarque River, which is considered sacred by the Indigenous Lenca community. Cáceres, who was murdered in 2016, a year after winning the Goldman Prize for her efforts, has become an icon of Indigenous female leadership.<sup>95</sup>

## **Peace and Conflict**

Preventing conflict and striving for peace is directly related to the preservation of Indigenous women’s rights. Inequitable access to land and natural resources, for example, is a driver of

conflict and during periods of conflict, as mentioned earlier, Indigenous women are extremely vulnerable. Indigenous women around the world have sought peace and justice through their participation in truth commissions, reparations schemes, and national criminal proceedings.<sup>96</sup>

In Guatemala, women joined or formed mixed-gender or women-only civil society organizations (CSOs), at first in response to state violence and their frustration with the civil war and later in an effort to end the war. In 1984, Indigenous mothers and wives from the Kaqchikel, K'iché, and Mam groups, seeking justice for the disappeared, created Grupo de Apoyo Mutuo (Mutual Support Group). The organization grew significantly over the years.<sup>97</sup> Negotiations in Havana from 2012 to 2016 between the government of Colombia and the guerrilla group FARC (Fuerzas Armadas Revolucionarias de Colombia: Revolutionary Armed Forces of Colombia) resulted in the signing of a historic peace agreement in September 2016 in which both government and FARC acknowledged that their forces committed serious human rights violations and were committed to having cases investigated and prosecuted.<sup>98</sup> It has been reported that during the Colombian armed conflict, Indigenous women experienced higher levels of sexual violence and internal displacement than men. Sexual violence against women and girls was widespread and included rape, forced prostitution, involuntary pregnancies, and forced abortions. Many of the victims of this violence suffered stigmatization and social rejection by their communities, and often women had to abandon their lands and move to unfamiliar regions. Survivors of violence against women, including Indigenous women and sexual and gender minorities, took part in the Havana talks. Indigenous women also agitated for peace at local levels and successfully lobbied to ensure their participation in the 2013 National Summit of Women and Peace as well as on the Commission for Indigenous Women. The active participation and inclusion of Indigenous voices is reflected in the inclusion in the agreement of a set of principles to guide its implementation in ways that are supportive of gender rights, women's rights, and Indigenous peoples rights.<sup>99</sup>

## **Past and Future: Toward Equal Rights and Self-Determination**

Lessons from the past, when Indigenous women raised their voices and led initiatives, can be used to tackle current obstacles that Indigenous peoples, especially women, face in all spheres and to guarantee their rights, including the right to self-determination. Ensuring Indigenous women's participation in decision making is a "daunting task" because the "dominant gender-neutral conception of equality prevailing in countries where indigenous peoples live has not been adequate in addressing the multiple disadvantages of indigenous women."<sup>100</sup>

Indigenous women are able to make their voices heard and combat human rights violations by addressing their political, social, cultural, and economic development as well as the practices and effects of colonialism. Their efforts should be combined with the introduction of a gender perspective to Indigenous peoples' issues. The introduction of a gender-focused perspective will transform Indigenous women's claims for participation in leadership, land rights, natural resources, nondiscrimination, and self-determination into forceful and compelling instruments that will "not only simultaneously [advance] individual and collective rights, but also explicitly [address] gender-specific human rights violations . . . in a way that does not disregard the continued practices and effects of colonialism."<sup>101</sup>

Indigenous women around the globe have been fighting human rights violations by promoting Indigenous women's leadership at all levels and by demanding recognition of Indigenous women's roles in promoting the rights of their peoples. To ensure the success of

these efforts, the voices of Indigenous women need to be heard at every level, from the community to the international. Claiming the right to self-determination in particular, can be challenging because nowadays the principle of self-determination is not seen solely as a fundamental human right essential for the safeguard of individual freedom; it has been reduced to a weapon of political rhetoric. Over the years, it seems that the international community has abandoned people who are entitled to self-determination, such as Indigenous peoples.<sup>102</sup> Therefore, when Indigenous women are made equal partners, Indigenous peoples' right to self-determination will be recognized and, eventually, inclusive democracies where women's as well as Indigenous women's voices are heard will flourish.

## Notes

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<sup>2</sup> United Nations Human Rights Council (HRC), *Working Paper by the Chairperson-Rapporteur, Mrs. Erica-Irene Daes*, UN Doc. E/CN.4/Sub.2/Ac.4/1996/2, 1996, para 9.

<sup>3</sup> Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1990), 89.

<sup>4</sup> S. James Anaya, *International Human Rights and Indigenous Peoples* (New York: Aspen Publishers, 2009), 97.

<sup>5</sup> See UN Economic and Social Council Resolution 1982/34, UN Doc. E/RES/1982/34, 1982

<sup>6</sup> UN Department of Economic and Social Affairs, United Nations Declaration on the Rights of Indigenous Peoples, accessed February 15, 2018, available at <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>.

<sup>7</sup> S. James Anaya, "The Right of Indigenous Peoples to Self-Determination in the Post-Declaration Era" in Charters and Stavenhagen, *Making the Declaration Work*, 191.

<sup>8</sup> Alexandra Xanthaki, "The UN Declaration on the Rights of Indigenous Peoples and Collective Rights: What's the Future for Indigenous Women?," in *Reflections on the UN Declaration on the Rights of Indigenous Peoples*, ed. Stephen Allen and Alexandra Xanthaki (Oxford: Hart, 2011), 413.

<sup>9</sup> Dwight G. Newman, "Symposium: Lands, Liberties, and Legacies: Indigenous Peoples and International Law," *American Indian Law Review* 31, no. 2 (2006/2007): 275.

<sup>10</sup> *Ibid.*, 277.

<sup>11</sup> Robert T. Coulter, "The Law of Self-Determination and the United Nations Declaration on the Rights of Indigenous Peoples," *UCLA Journal of International Law and Foreign Affairs* 15, no. 1 (2010): 1–27

<sup>12</sup> S. James Anaya, "Contemporary Definition of the International Norm of Self-Determination" *Transnational Law & Contemporary Problems* 3 (1993): 132.

<sup>13</sup> Mathew Saul, "The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Rights?" *Human Rights Law Review* 11, no. 4 (2011): 626.

<sup>14</sup> S. James Anaya, *Indigenous Peoples in International Law* (New York: Oxford University Press, 2004), 103–110.

<sup>15</sup> *Ibid.*

<sup>16</sup> Helen Quane, "New Directions for Self-Determination and Participatory Rights?," in Allen and Xanthaki, *Reflections on the UN Declaration on the Rights of Indigenous Peoples*, 263.

<sup>17</sup> HRC, *Report of the Expert Mechanism on the Rights of Indigenous People*, UN Doc. A/HRC/EMRIP/2010/2, 2012, paras. 30–33.

<sup>18</sup> Coulter, "Law of Self-Determination," 16.

<sup>19</sup> Maria Noel Leoni Zardo, "Gender Equality and Indigenous Peoples' Right to Self-Determination and Culture," *American University International Law Review* 28, no. 4 (2013): 1060, 1072.

<sup>20</sup> *Ibid.*

<sup>21</sup> Coulter, “Law of Self-Determination,” 18–21.

<sup>22</sup> Rauna Kuokkanen, “Self-Determination and Indigenous Women’s Rights at the Intersection of International Human Rights,” *Human Rights Quarterly* 34 (2012): 232.

<sup>23</sup> Megan Davis, “Indigenous Women’s Representation and the Proposal for a New National Representative Body,” *Indigenous Law Bulletin* 7, no. 4 (2008): 6–9.

<sup>24</sup> Zardo, “Gender Equality.”

<sup>25</sup> Beijing Declaration and Platform for Action, 1994,

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<sup>26</sup> Overview of CEDAW, Pooja Khanna and Zachary Kimmel with Ravi Karkara, “Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) for Youth,” UN Women, available at <https://www.unwomen.org/en/digital-library/publications/2016/12/cedaw-for-youth> (accessed <FILL>).>

<sup>27</sup> Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester: Manchester University Press, (2000), 217.

<sup>28</sup> Marsha A. Freeman, Christine Chinkin, and Beate Rudolf, eds., *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary*, Oxford Commentaries on International Law (Oxford: Oxford University Press, 2012).

<sup>29</sup> CEDAW, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/2010/47/GC.2, 2010, para 16, <https://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW-C-2010-47-GC2.pdf>

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[http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf)

<sup>31</sup> CEDAW, *General Recommendation No. 28*.

<sup>32</sup> UN Economic and Social Council, *Study on Indigenous Women’s Political Participation at the International, National, and Local Levels*, UN Doc. E/C.19/2013/10, 2013, para. 4.

<sup>33</sup> “Women’s Leadership and Political Participation,” UN Women, <http://www.unwomen.org/en/what-we-do/leadership-and-political-participation> (accessed September 1, 2018).

<sup>34</sup> UN General Assembly, *Women and Political Participation*, UN Doc. A/RES/66/130, 2012, available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/66/130](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/66/130).

<sup>35</sup> CEDAW, *General Recommendation No. 23: Political and Public Life*, UN Doc. A/52/38, 1997, para. 14.

<sup>36</sup> *Ibid.*, paras 15 and 27.

<sup>37</sup> HRC, *Factors That Impede Equal Political Participation and Steps to Overcome Those Challenges*, UN Doc. A/HRC/27/29, 2014, para 53; CEDAW, *General Recommendation No. 23*, paras. 10–12.

<sup>38</sup> Marsha A. Freeman, Christine Chinkin, and Beate Rudolf, “The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary” *Oxford Commentaries on International Law*, 211.

<sup>39</sup> “Political Participation of Indigenous Peoples in Latin America Still Low,” *UN Report*, 2013, <https://news.un.org/en/story/2013/05/440312-political-participation-indigenous-peoples-latin-america-still-low-un-report>.

<sup>40</sup> See Kimberle Crenshaw, “Demarginalising the Intersection of Race and Sex,” *University of Chicago Legal Forum*, 1989, article 8.

<sup>41</sup> HRC, *Factors That Impede Equal Political Participation and Steps to Overcome Those Challenges*, UN doc: A/HRC/27/29, 2014, para 63.

<sup>42</sup> HRC, *Report of the Special Rapporteur on the Rights of Indigenous Peoples*, UN Doc. A/HRC/30/41, 2015, para. 5.

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<sup>45</sup> UN General Assembly, *Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN Doc. A/65/264, 2010, para. 39, available at <https://undocs.org/A/65/264>.

<sup>46</sup> YATAMA v. Nicaragua, Case, 2005 Inter-Am. Ct. H.R. (ser. C) No. 127.

<sup>47</sup> UN General Assembly, *Situation of Human Rights*, para. 47.

<sup>48</sup> *Ibid.*, para. 46.

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- <sup>60</sup> HRC, *Report of the Special Rapporteur on the Rights of Indigenous Peoples*, para. 38.
- <sup>61</sup> HRC, *Progress Report*, para. 61.
- <sup>62</sup> Davis, "Indigenous Women's Representation."
- <sup>63</sup> HRC, *Final Study on Indigenous Peoples and the Right to Participation in Decision-Making*, UN Doc. A/HRC/EMRIP/2011/2, 2011, para 31 of Annex.
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- <sup>66</sup> Holly Worthen, "Indigenous Women's Political Participation: Gendered Labor and Collective Rights Paradigms in Mexico," *Gender & Society* 29, no. 6 (2015): 914–936.
- <sup>67</sup> Nina Pacari, "The Political Participation of Indigenous Women in the Ecuadorian Congress: Unfinished Business," case study, 2002, 4, <https://www.amherst.edu/media/view/127186/original/pacari-CS-Ecuador.pdf>.
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- <sup>71</sup> *Gender and Indigenous Peoples* (Washington, DC: UN Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the UN Permanent Forum on Indigenous Issues, 2010), 1, [http://www.un.org/esa/socdev/unpfii/documents/BriefingNote1\\_GREY.pdf](http://www.un.org/esa/socdev/unpfii/documents/BriefingNote1_GREY.pdf).
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- <sup>73</sup> Pacari, "Political Participation of Indigenous Women," 2.
- <sup>74</sup> *Gender and Indigenous Peoples*, 1.
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- <sup>76</sup> Jo-Marie Burt and Paulo Estrada, "Court Ratifies Historic Sepur Zarco Sexual Violence Judgment," International Justice Monitor, July 21, 2017, <https://www.ijmonitor.org/2017/07/court-ratifies-historic-sepur-zarco-sexual-violence-judgment/>; see also Kuokkanen, "Self-Determination and Indigenous Women's Rights."



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<sup>79</sup> See the decision by the High-Risk Court of Guatemala in Spanish: *Sentencia del Juicio Sepur Zarco, Emitida el 26 de febrero de 2016 por el Tribunal de Mayor Riesgo A*, [http://media.wix.com/ugd/5e94e8\\_51c3cd8b0e374d05a9a9db7c0f275b49.pdf](http://media.wix.com/ugd/5e94e8_51c3cd8b0e374d05a9a9db7c0f275b49.pdf) .

<sup>80</sup> “Sepur Zarco.”

<sup>81</sup> Ibid.

<sup>82</sup> *Gender and Indigenous Peoples*, 2.

<sup>83</sup> *Women and Natural Resources: Unlocking the Peacebuilding Potential* (New York: United Nations Environment Programme, United Nations Entity for Gender Equality and the Empowerment of Women, United Nations Peacebuilding Support Office and United Nations Development Programme, 2013), 16.

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