

Reconciling Indigenous Justice and Women's Rights within Legal Pluralism: Challenges under International Human Rights Law

Reconciliação da Justiça Indígena e dos Direitos das Mulheres no Contexto do Pluralismo Jurídico: Desafios no Âmbito do Direito Internacional dos Direitos Humanos

Silvia Solidoro¹

Abstract: The present article examines issues related to indigenous women's right of access to justice within legal pluralist contexts, highlighting the tension between the cultural relevance of traditional systems and the risks posed by patriarchal customary norms. The analysis begins by reviewing the international legal framework recognizing indigenous peoples as distinct rights-holders, with a focus on the 2007

1 PhD in Economic and Market Law, currently holding a Research Fellowship at the Law Department of the University of Salento, Lecce, Italy. Between 2009 and 2016, Dr. Solidoro worked in Washington, DC, USA, as a consultant for the International Finance Corporation of the World Bank Group. She subsequently joined the European University Institute in Florence, Italy, serving as a Research Associate (2016-2021) and later as a Research Fellow (2021-2022) at the Robert Schuman Centre for Advanced Studies. Email: silvia.solidoro@unisalento.it; ORCID: 0009-0009-8230-1141.

UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which reframed the relationship between collective and individual rights. It then examines the evolving practice developed by treaty bodies under relevant universal treaties. Special attention is given to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the only legal instrument that explicitly applies a gender lens. Building on this, the article identifies two main models: one prioritizing women's individual rights, which calls for limiting indigenous jurisdiction, and another adopting a more balanced approach. Finally, it argues that this latter model, mainly advocated by the CEDAW Committee and increasingly supported by UN Special Procedures, reflects an emerging standard that can guide States in adopting legal frameworks that uphold indigenous self-government while simultaneously protecting women's fundamental rights, through a collaborative approach between traditional and national justice systems that actively engages women.

Keywords: Indigenous Justice; Indigenous Women; Legal Pluralism; International Human Rights Law; Gender Equality

Resumo: O presente artigo examina questões relacionadas ao direito das mulheres indígenas de acesso à justiça em contextos de pluralismo jurídico, destacando a tensão entre a relevância cultural dos sistemas tradicionais e os riscos impostos pelas normas patriarcais. A análise começa revisando o quadro jurídico internacional que reconhece os povos indígenas como titulares de direitos distintos, com foco na Declaração das Nações Unidas sobre os Direitos dos Povos Indígenas (2007), que reformulou a relação entre direitos coletivos e individuais. Em seguida,

analisa a prática de órgãos de tratados sob acordos universais, com ênfase na Convenção sobre a Eliminação de Todas as Formas de Discriminação contra as Mulheres (CEDAW), que adota uma perspectiva de gênero explícita. Com base nisso, o artigo identifica dois modelos principais: um que prioriza os direitos individuais das mulheres, exigindo restrições à jurisdição indígena; e outro, mais equilibrado. Este último modelo, defendido principalmente pelo Comitê da CEDAW e cada vez mais apoiado por Procedimentos Especiais da ONU, reflete um padrão emergente que pode orientar Estados na criação de marcos jurídicos que promovam o autogoverno indígena e garantam os direitos das mulheres, por meio de uma abordagem colaborativa entre sistemas tradicionais e nacionais que envolva ativamente as mulheres.

Palavras-chave: Justiça Indígena; Mulheres Indígenas; Pluralismo Jurídico; Direito Internacional dos Direitos Humanos; Igualdade de Gênero

1. Preliminary Remarks on Indigenous Women's Right of Access to Justice

In 2024, through its Report on the Rights of Indigenous Peoples, the UN General Assembly (UNGA) affirmed the critical importance of ensuring the protection of the rights of indigenous peoples, highlighting the need to identify and remove barriers that hinder access to justice, particularly for women.² The right of access to justice is indeed a cornerstone

2 UNGA, 2024, p. 8. In this instance, the UN General Assembly recognized “the importance of access to justice in the promotion and protection of the rights of Indigenous Peoples and individuals and the need to examine and take steps to remove obstacles to justice for Indigenous Peoples, especially for Indigenous women, children, youth, older persons and persons with

of human dignity and equality. In its qualified sense, in international legal doctrine, it refers to every individual's entitlement to effective legal protection and remedy by having their case heard and adjudicated in a court of law, or by other authorities performing dispute settlement functions, through a system that adheres to substantive standards of fairness. Its significance is particularly heightened when applied to indigenous peoples.³

Nevertheless, in ordinary justice systems, indigenous women experience intersectional discrimination,⁴ grounded not only in gender but also in ethnicity, which gives rise to structural, cultural, and linguistic barriers, as well as socio-economic disadvantages—such as poverty, limited availability of healthcare and education, and the denial of their rights to land and natural resources—all of which impede their effective engagement with State institutions. The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), a subsidiary body of the Human Rights Council (HRC), has repeatedly emphasized the need to address these sensitive issues, given the particular vulnerabilities faced by indigenous women.⁵

In contrast, traditional indigenous systems may be more readily available and often represent the sole avenue through which women can exercise their right of access to justice, especially in fragile and conflict-affected areas.⁶ No-

disabilities”.

3 FRANCIONI, 2012, pp. 1; 4.

4 The term was coined more than thirty years ago in legal scholarship: CRENSHAW, 1989, p. 140. For an explanation of the theoretical, conceptual, and doctrinal foundations of intersectional discrimination, see ATREY, 2019.

5 HRC, 2014, para. 35.

6 This represents the main finding of a study commissioned by UN Women, with support from the United Nations Development Programme (UNDP):

tably, in some countries, such systems have been formally recognized as part of the domestic legal framework, through specific provisions typically enshrined in the national constitution or in ordinary legislation, either in a fully autonomous way or with limited application to certain domains, such as land law. At the same time, traditional justice systems may lack adequate mechanisms to address gender-based discrimination, leaving indigenous women exposed to harm within their communities, particularly when governed by patriarchal norms. Such male-dominated structures can in fact restrict indigenous women's effective participation in decision-making processes, which in turn may limit access to justice by impairing their right to bring a case before a court, to receive a fair hearing, and to obtain adequate redress, ultimately undermining their substantive equality.⁷ Against this backdrop, the following sections will focus on indigenous traditional justice systems, critically examining the challenges they pose, particularly within legal pluralist contexts, and considering the extent to which solutions addressing the specific needs of indigenous women may be identified.

2. Gender Equality and Traditional Justice

Indigenous traditional justice systems usually combine both normative and adjudicative functions, which are administered by customary institutions, and primarily tend

UN WOMEN, 2016. In this regard, in 2012, through a declaration adopted during a special high-level meeting convened to reaffirm and strengthen international commitment to the rule of law, the UN General Assembly acknowledged that "everyone, particularly women and those belonging to vulnerable groups, should enjoy full and equal access to these justice mechanisms". See UNGA, 2012, para. 15.

7 IDLO, 2020, p. 7.

to regulate personal matters, including property, family relations, inheritance, cultural practices, as well as territorial issues, such as protection of land and natural resources. Indigenous customary law, the foundation of these systems, is mainly passed down through oral tradition, although it may also be codified. Historically, indigenous justice systems have been subordinated to the national judiciary or even suppressed by domestic legislation. In the contemporary context, the coexistence of multiple justice systems within a single country gives rise to legal pluralism,⁸ reflecting a considerable degree of diversity in the ways these systems interact, as their coexistence may be either formally regulated or occur informally. For instance, in the Andean region there has been a gradual yet increasing recognition of the jurisdictional autonomy of indigenous authorities, particularly following significant constitutional reforms initiated in the 1990s. Colombia was the first to adopt a new constitution in 1991 that recognized formal legal pluralism, followed by Peru in 1993, Bolivia in 1994, Ecuador in 1998, and Venezuela in 1999. Crucially, a second wave of constitutional revisions in **Ecuador (2008)** and **Bolivia (2009)** went beyond earlier formulations by solemnly establishing that these countries are founded on the principle of ethnic plurinationalism.⁹

Against this backdrop, while there is a growing consensus in the region that supports formal acknowledgment of indigenous justice systems as expressions of collective

8 "Legal pluralism" is the term commonly used to describe a situation of normative heterogeneity within a specific legal order, encompassing "a notion of normativity [that does] not correspond to an idealised understanding of law in western thought, necessarily centred upon the state". PROVOST; SHEPPARD, 2013, p. 2; HENDRY; TATUM, 2016, pp. 373-374. For an overview of theoretical approaches to legal pluralism, see INKSATER, 2010.

9 SIEDER, 2012, pp. 103-104.

self-government, in other cases such systems continue to operate outside the national legal framework, therefore functioning in parallel. In particular, in countries where indigenous peoples do not hold any formal legal status, their justice systems also often lack official acknowledgment. In certain instances, the authorities operating within indigenous systems may even face criminalization.¹⁰ Overall, this complex and sometimes fragmented legal landscape has attracted increasing international attention, particularly where there is a risk of perpetuating patriarchal norms that may undermine the individual rights of women. In this context, the present article first examines relevant provisions of international legal instruments specifically targeting indigenous peoples as a distinct group, in order to assess whether, and to what extent, it is possible to reconcile the tension between their collective right to promote, develop, and maintain their traditional systems and the individual rights of women. It then turns to the interpretative practice of UN treaty bodies, which, although initially limited in focus, has gradually evolved to address the specific barriers that indigenous women face in exercising their right of access to justice within traditional systems. In this regard, particular emphasis is placed on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979, the only international legal instrument that explicitly applies a gender lens. The analysis concludes by assessing key trends emerging from the work of the UN Special Procedures, with a view to identifying evolving approaches and potential pathways for addressing the intersection of gender equality and traditional justice systems.

10 HRC, 2025, para. 23.

3. Balancing Collective and Individual Indigenous Rights: The International Legal Framework

The progressive development of international legal instruments directly addressing indigenous peoples' rights has marked a watershed in their protection over the past few decades. The modern version of the Convention, adopted by the International Labour Organization (ILO) in 1989,¹¹ requires that indigenous peoples' custom and institutions be retained (Article 8.2) and that the methods "customarily practised by the peoples concerned for dealing with offences committed by their members" be respected (Article 9.1), provided that they are compatible with the national legal system and international human rights standards. This proviso was sharply criticized by indigenous groups at the time of adoption of the Convention, on the grounds that it could enable governments to pursue an assimilative approach.¹² Nevertheless, it represents a departure from the more protectionist framework provided by its predecessor, Convention No. 107 of 1957, whose primary aim was to promote the integration of indigenous populations into the national mainstream,¹³ and which did not even make direct reference to women, nor to their status within their own communities. In this regard,

11 One of the most important achievements of the Convention was the recognition of the right of indigenous peoples to their own cultural identity. ILO, *Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries*, 27 June 1989 (entered into force on 5 September 1991). In: *United Nations Treaty Series*, v. 1650, p. 383.

12 LAWREY, 1990, pp. 719-720.

13 YUPSANIS, 2010, p. 436. The text of the former Convention allowed indigenous populations to retain their own customs and institutions only where not incompatible with the national legal system or with the objectives of targeted integration programmes, according to Article 7.2: see YUPSANIS, 2012, p. 124.

a key development in the latest version of the Convention is also Article 3, which requires that all provisions be applied without discrimination to both men and women. Despite its innovative approach, ILO Convention No. 169 has not been widely ratified, with only 24 States parties to date.

More recently, with the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)¹⁴ by a large majority in the General Assembly, the protection of indigenous rights has gained broader international consensus. Notably, the Declaration is not technically binding, yet it carries significant legal weight, as at least some of its provisions are widely regarded as part of customary international law.¹⁵

Broadly speaking, the UNDRIP sets out minimum standards to ensure that indigenous peoples worldwide can live with dignity and cultural autonomy. One of the most remarkable aspects of the Declaration is the explicit recognition of the collective right to self-government in matters related to internal and local affairs, as outlined in Article 4. This is commonly understood as an expression of the internal dimension of their right to self-determination, as enshrined in Article 3,¹⁶ providing a framework for a new conceptualization of the relationship between indigenous peoples and the State.¹⁷ Building on this foundation, Article 5 further elaborates indigenous peoples' right to "maintain and strengthen their distinct political, legal, economic, social

14 UNGA, *United Nations Declaration on the Rights of Indigenous Peoples*, doc. A/RES/61/295. United Nations, 2 October 2007.

15 BARNABAS, 2017.

16 QUANE, 2011, p. 260. Nevertheless, according to Weller, the UNDRIP does not feature a great deal of detail on the essential elements of meaningful and genuine autonomy, which would require the inclusion of specific prescriptions regarding extensive competence in relation to judicial functions: WELLER, 2018, p. 144.

17 DOROUGH, 2009, p. 266.

and cultural institutions". Article 34 goes even further by explicitly safeguarding the promotion, development, and maintenance of indigenous "institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards". Thus, the UNDRIP significantly differs from the ILO Convention in that it does not require compatibility with the national legal system but instead mandates alignment solely with international human rights standards.¹⁸ This final aspect represented a historical achievement for indigenous peoples, particularly given that, during the complex two-decade process leading to the adoption of the Declaration, some governments initially expressed reservations about the inclusion of Article 34 under its current terms, arguing that it should not be construed as granting indigenous peoples the right to opt out of the national legal system.¹⁹

Turning specifically to the individual rights of women, the UNDRIP includes several significant provisions. Article 22.1 mandates that States pay particular attention, in implementing the Declaration, to the rights and special needs of vulnerable groups, explicitly including women. Article 22.2 also specifies that States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women receive full protection and guarantees against all forms of violence and discrimination. This is echoed in Article 44, which solemnly holds that "[a]ll the rights and freedoms recognized herein are equally guaranteed to male and female

18 XANTHAKI, 2018, p. 296.

19 As reported by the Working Group responsible for drafting the Declaration, the States that raised concerns in this regard emphasized that juridical traditions and customs should remain consistent with national law, particularly with respect to matters concerning individual human rights. COMMISSION ON HUMAN RIGHTS, 1996, para. 92.

indigenous individuals". It is worth noting that this provision, which clearly reflects established international norms prohibiting gender-based discrimination, was among the least controversial elements of the UNDRIP.²⁰

Crucially, when reading these provisions in conjunction with those on self-government introduced earlier, a two-fold level of protection emerges. Their combined interpretation suggests that States are not only required to recognize indigenous systems and, where necessary, to regulate their coexistence alongside national legal frameworks, but also to ensure that these systems uphold and give due consideration to the individual rights of women. Thus, the UNDRIP may be understood as reconciling collective and individual human rights, affirming their mutual compatibility while also highlighting their interdependence.²¹

In this context, it is noteworthy that, during its 20th session held in New York from 19 to 30 April 2021, the Permanent Forum on Indigenous Issues, which plays a pivotal role in advancing the implementation of the UNDRIP,²² emphasized the Declaration's crucial contribution in establishing a clear framework for both collective and individual rights of indigenous peoples, in line with Sustainable Development Goal 16, which aims to provide access to justice for all²³ and to build effective, accountable, and inclusive institutions at all levels.²⁴

20 PÉREZ-BUSTILLO; HOHMANN, 2018, p. 526.

21 KUOKKANEN, 2012, p. 232.

22 The Forum was originally established in 2000 as a result of the UN International Year for the World's Indigenous Peoples in 1993 and within the framework of the first International Decade of the World's Indigenous Peoples (1995-2004). It serves as an advisory body within the UN System, reporting directly to the UN Economic and Social Council.

23 Cf. DE VIDO, 2021, p. 95, discussing the lack of incorporation of a gender perspective in Sustainable Development Goal 16.

24 Notably, the Forum has increasingly prioritized the rights of indigenous

Notwithstanding these developments, it remains a matter of debate whether certain discriminatory practices within indigenous justice systems, which perpetuate gender inequalities, can be justified under the pretext of protecting communities' collective right to self-government.²⁵

In light of the above considerations, it is argued herein that this position lacks substantial normative support. The UNDRIP provides a framework in which the relationship between collective and individual rights can be reconceptualized in mutually reinforcing terms and, in principle, does not allow for the justification of gender-based inequalities. This view is also supported by prominent scholars, who contend that the inclusion of specific provisions concerning women in the Declaration is intended to challenge the perception that their rights are inherently in conflict with those of indigenous communities as collective subjects. Consequently, these provisions provide an important bulwark against idealized interpretations of the UNDRIP that assume absolute homogeneity among indigenous communities in terms of their needs and aspirations.²⁶

At the same time, since any conflict should be resolved on an *ad hoc* basis, taking into account a range of relevant considerations, even a predetermined prioritization of individual rights over collective rights may constitute an oversimplified solution that risks creating more issues than it resolves. Rather than fostering genuine solutions, this approach may in fact distort the very essence of both sets of rights, undermining the autonomy of indigenous communities while simultaneously failing to adequately address indi-

women in its annual sessions in recent years. See UNPFII, 2021.

25 ZARDO, 2013, p. 1059.

26 PÉREZ-BUSTILLO; HOHMANN, 2018, pp. 525-526.

vidual concerns.²⁷ Therefore, a more nuanced and balanced perspective is needed.²⁸ In practice, safeguarding individual rights within traditional justice systems requires a legally and culturally informed approach, to be pursued through inclusive dialogue, ensuring that the voices of women, in particular, are heard. In this regard, **NGOs and indigenous women's movements** have already made significant efforts to address these concerns, in some cases leading communities to adopt new practices aimed at resolving issues such as marital disputes. These initiatives often involve adapting traditional norms to better protect women's rights while maintaining the cultural integrity and social cohesion of the community.²⁹

4. Interpretation of Universal Human Rights Instruments in UN Treaty Bodies' Practice: A Gendered Perspective

Primarily aimed at eliminating discrimination rather than affirmatively recognizing diversity, and largely expressed in terms of individual rights,³⁰ the International Convention on the Elimination of All Forms of Racial Discrimination, adopted in 1965,³¹ might at first glance appear

27 XANTHAKI, 2011, p. 429.

28 In this regard, prominent scholars emphasized that assessments of cultural practices should give due consideration to the indigenous community's own interpretation when applying universal human rights norms, in the same way that States are afforded such consideration. At the same time, this neither exempts indigenous communities from respecting individual human rights, particularly those of women, nor precludes internal reforms aimed at eliminating discriminatory or other harmful practices. ANAYA, 2004, p. 26.

29 SIEDER, 2012, p. 109.

30 THORNBERRY, 2005, p. 18.

31 UNGA, *International Convention on the Elimination of All Forms of Racial*

to offer limited avenues for proper protection of indigenous rights. Nevertheless, it contains provisions that remain highly significant for the purposes of the present analysis. Moreover, the evolving interpretative practice of its treaty body ensures the instrument's relevance in addressing contemporary challenges faced by indigenous women.

Among its provisions, Article 2.2 requires States to take "special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms", thereby implicitly recognizing a broad scope for safeguarding both collective and individual rights. Notably, in 2009, the Committee on the Elimination of Racial Discrimination (CERD) interpreted this provision within the context of the right of women belonging to certain ethnic groups to freely choose their preferred regime for litigation purposes within a pluralistic legal framework. In its concluding observations adopted in response to the periodic reports submitted by Ethiopia, the CERD indeed noted that, according to the information provided by the State party, the application of customary laws was contingent upon the consent of the individual or group involved.³² The Committee expressed concern about the lack of information regarding the measures put in place by the country to ensure that these practices do not result in racial discrimination against some members, particularly women, given their heightened vulnerability in such contexts, and recommended that Ethiopia address these issues:

Discrimination, 21 December 1965 (entered into force on 4 January 1969). In: *United Nations Treaty Series*, v. 660, p. 195.

- 32 Recent studies indicate that legal pluralism in the country is still a very complex issue. EPPLÉ; ASSEFA, 2020.

The Committee [...] notes that the State party has not provided adequate information on the measures taken to ensure that the application of these [religious and customary] laws does not result in de facto racial discrimination against members of certain ethnic groups. In this regard, the Committee is concerned about the special vulnerability of women in such settings, particularly with regard to their ability to decide freely their preferred choice of legal regime in the process of litigation. (art. 2). The Committee urges the State party to ensure that all citizens are enabled to exercise their free choice of legal system to govern their personal affairs, particularly marginalized and vulnerable persons such as women in traditional societies.³³

This approach clearly reflects CERD's attempt to engage with relevant customary legal systems while also effectively upholding individual rights, particularly those of women.

While earlier clarifications had already established that the Convention applies to indigenous peoples, addressing their specific rights within its broader framework and calling on States parties to recognize their distinct cultures and to ensure that they can exercise their cultural traditions and communal customs,³⁴ CERD's subsequent practice has further developed the approach to these issues. In 2012, in response to the extremely high rates of incarceration of Aboriginal people, particularly women, in Canada, the CERD recommended making adequate use of the federal program developed in 2008 by the government in consultation with indigenous communities, commonly referred to as the "Aboriginal Justice Strategy", which was intended to revitalize indigenous legal traditions and advance transformative reforms of the national criminal justice system.³⁵

33 CERD, 2009, para. 12. See also THORNBERRY, 2016, p. 320.

34 CERD, 1997, paras. 2; 4(a); 4(e).

35 CERD, 2012, para. 12(c).

This recommendation suggests that the direct involvement of indigenous peoples is essential for achieving national reforms that are culturally relevant. Significantly, a more recent and broader initiative of the Department of Justice of the Canadian government, launched in 2021, builds upon the previous strategy by extending its focus to civil matters, including child and family services. Its updated version, released in March 2025, has been developed through consultations with First Nations,³⁶ Inuit, and Métis peoples and incorporates feedback gathered from discussions with indigenous women.³⁷ It should nevertheless be noted that Canada generally recognizes traditional justice systems only to a limited extent. Despite the enactment of legislation in 2019 affirming that the inherent right of indigenous peoples to self-government entails the extension of their jurisdiction over child and family services,³⁸ the establishment of aboriginal courts currently remains contingent upon specific negotiations with the State.³⁹

Significantly, in 2022, the CERD had the opportunity to express its views on how the coexistence of indigenous and

36 First Nations designates one of the three constitutionally recognized groups of indigenous peoples in Canada, as defined by the Constitution Act of 1982, and includes those historically referred to as “Indians”. See IWGIA, 2025, p. 517.

37 The new “Indigenous Justice Strategy” adopts a holistic approach aimed at promoting self-determination of First Nations, Inuit, and Métis peoples through recognition of justice concepts grounded in their cultures, customs, legal systems, and institutions. This includes the acknowledgement of “the different perspectives related to histories, places and relationships with lands and environment, which are central to many Indigenous legal systems”. The text of the strategy is available at: <https://www.justice.gc.ca/eng/csj-sjc/ijr-dja/ijs-sja/tijs-lsja/pdf/IJS_EN.pdf>.

38 *An Act respecting First Nations, Inuit and Métis children, youth and families*, Statutes of Canada 2019, chapter 24, available at: <<https://laws.justice.gc.ca/PDF/F-11.73.pdf>>.

39 CIRNAC, 2023. See also FRYER; LEBLANC-LAURENDEAU, 2019.

ordinary justice systems should be regulated in Ecuador in accordance with the State's plurinational identity. This also resulted in crucial observations regarding the individual guarantees that must be upheld in this context. Specifically, in relation to a communication concerning the State's refusal to recognize an ancestral marriage, the CERD recalled that Article 57.10 of the Ecuadorian Constitution affirms that indigenous peoples hold collective rights to "create, develop, apply and practice their own legal system or common law, *which cannot infringe constitutional rights, especially those of women [italics added]*".⁴⁰ The CERD also referenced Article 171, according to which indigenous authorities shall exercise jurisdictional functions based on their ancestral traditions and legal systems within their own territories.⁴¹ Overall, the CERD concluded that the recognition of marriages officiated by traditional indigenous authorities contributes to fostering coordination with the ordinary justice system.⁴²

In 2024, in its concluding observations on Ecuador's latest periodic report, the CERD went even further by explicitly recommending the prompt adoption of a legislative act concerning the implementation of indigenous justice, specifically "guaranteeing that its main purpose is to regulate and harmonize the functions, powers and responsibilities of the justice system of Indigenous Peoples with those of the ordinary justice system, as well as respect for international human rights law".⁴³ Therefore, while not explicitly addressing gender equality issues under its most recent practice, the CERD's approach appears to support functional coherence

40 *Constitution of the Republic of Ecuador*, 28 September 2008 (entered into force on 20 October 2008), Art. 57.10.

41 Art. 171 of the Constitution.

42 CERD, 2022, paras. 4.4; 4.12.

43 CERD, 2024, para. 35(c).

between the two systems, provided that indigenous justice remain consistent with international human rights law.

Alongside other universal treaties, the 1966 International Covenant on Civil and Political Rights⁴⁴ explicitly affirms in Article 3 that men and women are entitled to the equal enjoyment of the rights it establishes. This provision should be read in conjunction with Article 27, which protects the individual rights of persons belonging to ethnic minorities to enjoy their own culture, in community with the other members of their group, and is often interpreted as extending to indigenous peoples.⁴⁵

In this regard, prominent scholars have argued that the rights set forth therein may be understood, at least in part, as collective rights exercisable individually.⁴⁶ Building on this interpretation, it can be further contended that traditional justice systems, as organized expressions of the collective cultural identity of these communities, can be considered to fall under Article 27. On this basis, it follows that such systems must comply with the overarching principle of non-discrimination, including with respect to gender. General Comment No. 28 (2000) upholds this approach, with the Human Rights Committee (CCPR),⁴⁷ the treaty body established under the Covenant, broadly clarifying in its authoritative guidance on Article 3 that the rights granted under Article 27 cannot be invoked to restrict women's equal enjoyment of the

44 UNGA, *International Covenant on Civil and Political Rights*, 16 December 1966 (entered into force on 23 March 1976). In: *United Nations Treaty Series*, v. 999, p. 171.

45 SCHEININ, 2005, p. 4; STAMATOPOULOU, 2007, pp. 179-183; JOSEPH; CASTAN, 2013, pp. 839-840.

46 JOSEPH; CASTAN, 2013, p. 833.

47 Although the official name of the body is the Human Rights Committee (HRC), UN documents frequently use the acronym CCPR to distinguish it from the Human Rights Council. In the citations that follow, the acronym CCPR is used in accordance with UN practice.

Covenant's guarantees. In the same context, the Committee in fact emphasized that States parties must report on "any legislation or administrative practices related to membership in a minority community that might constitute an infringement of the equal rights of women under the Covenant", as well as on "measures taken to discharge their responsibilities in relation to cultural or religious practices within minority communities that affect the rights of women".⁴⁸

Again, in 2013, the Committee addressed relevant observations to the Plurinational State of Bolivia, whose Constitution considers indigenous and ordinary jurisdictions of equal status.⁴⁹ In that case, the Committee expressed concern – albeit in the context of children's rights – about the absence of an explicit prohibition regarding corporal punishment as a disciplinary measure, whether at home or in institutional contexts, and particularly about its use within the community-based justice system, explicitly referencing Article 27 of the Covenant.⁵⁰ It therefore urged Bolivia to take steps to put an end to corporal punishment in all settings and to promote non-violent disciplinary methods through public awareness campaigns, particularly in indigenous campesino communities, regarding the harmful effects of such practices.⁵¹

48 CCPR, 2000, para. 32. Already in 1994, in its General Comment No. 23 on Article 27 (Rights of Minorities), the Human Rights Committee observed that "none of the rights protected under article 27 of the Covenant may be legitimately exercised in a manner or to an extent inconsistent with the other provisions of the Covenant", while at the same time noting that the "protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned". See CCPR, 1994, paras. 8-9.

49 *Constitución Política del Estado Plurinacional de Bolivia*, 7 February 2009 (entered into force on 1 January 2010), Article 179(II). HAMMOND, 2011; BALDIN, 2018, pp. 371-372; BAGNI; RODRÍGUEZ CAGUANA, 2022.

50 CCPR, 2013, para. 16.

51 On the matter of harmful traditional practices, see BONFANTI, 2024.

Broadly, it is important to note that in its earlier practice the Committee supported the recognition of the jurisdictional authority of indigenous justice institutions only to a limited extent. This is particularly evident in General Comment No. 32 (2007) concerning the right to equality before courts and tribunals and to fair trial outlined in Article 14, which aims to ensure the proper administration of justice and to safeguard the rule of law.

In that instance, the Committee clarified that such rights also extend to courts based on customary law but only when entrusted with judicial functions formally recognized by the State.

Significantly, in its interpretation, the Committee also emphasized that their jurisdiction should be confined only to minor offences, while also adding that the basic requirements of fair trial and other guarantees enshrined in the Covenant must be upheld in relation to their functioning. Furthermore, according to the Committee, their decisions must be validated by national courts and subject to a State-led oversight mechanism in accordance with Article 14 of the Covenant.

In the absence of these essential requirements, the judgments rendered by courts based on customary law are not to be considered legally binding:

It must be ensured that such courts cannot hand down binding judgments recognized by the State, unless the following requirements are met: proceedings before such courts are limited to minor civil and criminal matters, meet the basic requirements of fair trial and other relevant guarantees of the Covenant, and their judgments are validated by State courts in light of the guarantees set out in the Covenant and can be challenged by the parties concerned in a procedure meeting the requirements of article 14 of the Covenant.⁵²

52 CCPR, 2007, para. 24.

In the same context, the Human Rights Committee clarified that these principles do not exempt in any way the State from its overarching obligation to safeguard the rights enshrined in the Covenant for individuals affected by the functioning of customary courts. In other words, it remains the State's responsibility to ensure that these rights are fully protected for all those subject to the jurisdiction of customary courts. This clarification is particularly significant with regard to women, as it provides a clear and authoritative basis for substantiating the State's obligation to guarantee their rights within the context of indigenous justice systems recognized by domestic law.

5. The Role of the CEDAW Committee in Advancing Indigenous Women's Right of Access to Justice within Legal Pluralist Contexts

The obligations of States parties under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979,⁵³ are particularly relevant to the purposes of the present analysis. A systematic reading of this instrument, as interpreted by the respective Committee – the body of independent experts responsible for monitoring its implementation – offers valuable insights

53 UNGA, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979 (entered into force on 3 September 1981). In: *United Nations Treaty Series*, v. 1249, p. 13. It is worth noting that, despite being one of the most widely ratified universal human rights treaties, the effectiveness of the Convention has been significantly weakened by the substantial number of reservations, particularly those concerning the definition of non-discrimination and the provisions on gender equality in marriage and the family (Article 16). These reservations, which are geographically concentrated in certain regions, have, in practice, limited the impact of its near-universal ratification. See VIJEYARASA, 2022, p. 799.

into how it is to be understood, particularly given that it is the only treaty that explicitly incorporates a gender-based perspective. Notably, in General Recommendation No. 28 (2010) on the core obligations of States parties under Article 2, which condemns discrimination in all its forms, the CEDAW Committee emphasized the relevance of intersectionality as a guiding principle for interpreting their scope, particularly where discrimination is compounded by other factors, such as race and ethnicity. As stated by the Committee:

Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men.⁵⁴

With reference to subparagraph (c) of the same article, which requires States parties to ensure the effective protection of women against any act of discrimination through competent national tribunals and other public institutions, the Committee affirmed that national courts must adhere to the principle of equality embodied in the Convention and interpret laws accordingly. Where this is not feasible, courts are expected to bring to the attention of relevant authorities

54 CEDAW, 2010, para. 18. Similarly, in 2016, the Committee addressed the multiple and intersecting forms of discrimination faced by indigenous women under Article 14, as outlined in General Recommendation No. 34 on the rights of rural women. It particularly emphasized that States parties should recognize that rural women are not a homogeneous group, specifically referring to indigenous and Afro-descendant women living in rural areas, who suffer disadvantages “based on their ethnicity, language and traditional way of life”. In this regard, the CEDAW Committee urged States to adopt targeted measures to eliminate all forms of discrimination against them. See CEDAW, 2016, paras. 14-15.

any inconsistency between domestic legislation—including, where applicable, national customary laws—and the obligations arising under the Convention, since “domestic laws may never be used as justification for failures by States parties to carry out their international obligations”.⁵⁵ These statements make it clear that no elements of domestic laws, including those based on formally recognized traditions or customs, may be invoked to justify non-compliance with States parties’ obligations to eliminate discrimination against women. Furthermore, the Committee stressed that, under subparagraph (f), States parties are obliged to take measures to “modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”.⁵⁶

Against this backdrop, the case of Mexico is particularly noteworthy. Since the 2001 reform of the Federal Constitution of 1917,⁵⁷ the country has recognized indigenous peoples’ right to apply their own legal systems to resolve internal conflicts, although the delimitation of the specific scope of this right to self-government, as well as its implementation, is left to the discretion of the legislatures of the 31 States. Special attention is given to the rights of women, as, in accordance with Article 2.A(II) of the Constitution, indigenous systems must ensure respect for human rights, and, above all, their dignity and safety. Nevertheless, in practice, the challenge of balancing indigenous autonomy with gender equality persists in the country. In 2012, in its concluding observations on the periodic report submitted by Mexico, the CEDAW Committee acknowledged the existence of harmful cultural practices rooted in gender stereotypes

55 CEDAW, 2010, para. 33.

56 *Ibid.*, para. 31.

57 For an overview of the debate surrounding the Mexican constitutional reform of 2001, see SIEDER, 2016, p. 1133.

within certain indigenous legal systems, such as the “bride price”. It subsequently recommended that the State party carry out awareness-raising campaigns in indigenous communities, in collaboration with civil society and women’s organizations, with the aim of fostering a more positive and empowering image of women in those communities.⁵⁸

A few years later, in General Recommendation No. 33 (2015) on women’s access to justice, the CEDAW Committee clarified that, when plural legal systems coexist—regardless of whether they are formally recognized as part of the national legal order—States parties remain bound by their obligations under the Convention to protect women from human rights violations perpetrated through any of them.⁵⁹ The same argument has been supported by the Working Group on the Issue of Discrimination Against Women in Law and Practice⁶⁰ in a contemporaneous report, which noted that, even in the absence of recognition of informal legal systems or of explicit delegation of authority to indigenous traditional leaders responsible for resolving disputes, States parties are still obliged to ensure that fundamental rights are upheld within such frameworks.⁶¹

Importantly, the CEDAW Committee also recommended the adoption of a range of strategies to align the functioning of plural justice systems with the standards set

58 CEDAW, 2012, paras. 34-35(c).

59 CEDAW, 2015, para. 61.

60 The Working Group was established by Human Rights Council resolution 15/23 of 8 October 2010, adopted by consensus. On 19 July 2019, under resolution 41/6, its mandate was extended, and the Group’s name was changed from the “Working Group on the Issue of Discrimination Against Women in Law and Practice” to the “Working Group on Discrimination Against Women and Girls”. The mandate was further renewed on 29 July 2022 under resolution 50/18.

61 HRC, 2015, para. 61.

by the Convention. These include, among others: (i) ensuring the general availability of legal aid and local qualified support to facilitate women's access to justice within plural systems; (ii) enacting legislation that clarifies the relationship between different justice systems to reduce the potential for conflict; and (iii) where this is not yet the case, formally recognizing and codifying indigenous systems. Furthermore, the Recommendation referred to (iv) the establishment of State-led review mechanisms that allow decisions rendered by village or community-based courts to be examined by national judicial or administrative bodies.⁶²

More recently, through **General Recommendation No. 39 (2022)** on the rights of indigenous women and girls,⁶³ the CEDAW Committee affirmed that indigenous peoples' right to maintain their own judicial systems is a core aspect of their autonomy and self-determination, as enshrined in Article 34 of the UNDRIP. At the same time, it recommended that both indigenous and ordinary justice systems align with international human rights standards, without imposing any restriction limiting the jurisdiction of the former in favour of the latter.⁶⁴ In this context, the CEDAW Committee noted that the Convention should serve as an important point of reference for addressing cases related to discrimination against women. The Recommendation particularly advocated for justice mechanisms able to offer **appropriate and effective remedies** in order to ensure that indigenous women and girls have equal opportunities to access justice in both indigenous and ordinary systems. Finally, for the purpose of

62 CEDAW, 2015, paras. 63-64.

63 The Recommendation follows an earlier one issued in 2017 regarding gender-based violence against women, which replaced historical General Recommendation No. 19 of 1992. See CEDAW, 2017.

64 CEDAW, 2022, para. 25.

fostering indigenous cultural competence among officials in the ordinary justice system, it emphasized the need for active collaboration with indigenous peoples to understand and respect their distinct conception of justice, which is often rooted in principles of reconciliation and healing aimed at restoring harmony within their territories and communities.⁶⁵

6. UN Special Procedures' Evolving Approach

Over time, the issues addressed by treaty bodies in relation to indigenous women's right of access to justice within legal pluralist contexts have also come under the scrutiny of the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, who provided an interpretation that deserves further examination. As early as 2004, Rodolfo Stavenhagen, the mandate holder at the time, noted that in countries where indigenous law is formally recognized, the delivery of justice tends to be more effective, particularly in the realms of civil and family law, and, in some cases, criminal law. Indigenous systems, he argued, play a crucial role in fostering social cohesion, resolving disputes efficiently, and addressing offences in ways that align with local values and cultural norms.⁶⁶ In this context, Stavenhagen also argued that the claim that indigenous justice fails to safeguard universal individual human rights should not serve as a reason to dismiss it altogether. Instead, it can be seen as an opportunity to refine indigenous systems, thus enhancing their capacity to protect both individual and collective human rights.⁶⁷

65 *Ibid.*, para. 27.

66 COMMISSION ON HUMAN RIGHTS, 2004, para. 67.

67 More precisely, according to the UN Special Rapporteur, some critics contended that indigenous customary law did not provide sufficient

Notably, the subsequent mandate holder, James Anaya, in a 2010 report analyzing the implementation of the constitutional guarantees of the rights of indigenous peoples in Ecuador, made three key recommendations. First, he argued that indigenous jurisdiction should not be confined to the territorial boundaries of specific communities but should extend to encompass broader issues, including those typically handled by ordinary courts.⁶⁸ In the same context, for the purpose of addressing potential jurisdictional conflicts, he suggested creating a flexible decision-making mechanism comprising both indigenous and ordinary jurisdictional authorities, providing a platform for intercultural dialogue and practical resolutions.⁶⁹ Second, Anaya emphasized the need for the State to strengthen both systems to effectively combat impunity within the framework of human rights. Specifically, he proposed assigning a review function to the Constitutional Court or an intercultural body to address concerns regarding the compatibility of both systems with universal human rights.⁷⁰ Third, he called for the revitalization of indigenous knowledge and practices related to dispute resolution. Accordingly, he recommended providing training for indigenous authorities responsible for administering justice, particularly in relation to international human rights principles. Last but not least, he emphasized that indigenous

guarantees for the protection of universal individual human rights. At the same time, “even if this were a true statement based on sufficient evidence, it should not be used to write off indigenous customary law altogether, but rather as a challenge to bring both approaches closer together by making them more effective in the protection of human rights - both individual and collective. Legal pluralism in States is an opportunity for allowing indigenous legal systems to function effectively as parts of or parallel to national legal systems”. *Ibid.*, para. 68.

68 HRC, 2010, para 12.

69 *Ibid.*, para 13.

70 *Ibid.*, para 17.

justice systems, in principle, possess a dynamic character, enabling them to evolve in response to future situations and contexts, in a way that aligns with their cultural, social, and political values.⁷¹

In more recent years, Victoria Tauli-Corpuz, during her tenure as UN Special Rapporteur on the Rights of Indigenous Peoples (2014-2020), expanded upon the considerations made by her predecessor, James Anaya, specifically regarding the case of Ecuador, and applied them to a broader global context. In a 2019 report, after asserting that States have the responsibility to recognize and strengthen the distinct legal institutions of indigenous peoples in accordance with Article 5 of the UNDRIP, she reiterated that, at the same time, indigenous justice systems themselves must act consistently with international human rights norms, based on Article 34 of the UNDRIP. Thus, the Special Rapporteur emphasized that indigenous and non-indigenous justice systems should be seen as complementary, with effective collaboration between their authorities being vital for greater harmonization.⁷² This approach is also crucial for developing strategies that raise awareness about women's rights and their protection. Furthermore, the report underscored the importance of States providing financial and technical assistance to strengthen indigenous justice systems, particularly by restoring traditional knowledge related to dispute resolution. In this context, according to the report, changes aimed at aligning indigenous traditions with international human rights law should ideally be driven from within the indigenous communities themselves as "[s]upporting positive changes within

71 *Ibid.*, para. 10.

72 HRC, 2019, paras. 82-83. A specific example cited in this regard is Timor-Leste, where the government has committed to developing a hybrid justice system that incorporates cultural traditions.

local systems while maintaining their overall integrity, is the most successful and desirable approach”.⁷³

Significantly, the topic has attracted renewed interest in recent months, as the UN Special Rapporteur on the Independence of Judges and Lawyers, Margaret Satterthwaite, presented a thematic report on the rights of indigenous peoples to maintain and develop their justice systems at the 59th session of the Human Rights Council, held from 16 June to 11 July 2025. According to the report, indigenous justice systems not only advance access to justice for indigenous peoples but also do so in ways that are culturally resonant, responsive, accessible, and effective.⁷⁴ The document takes a specific stance on the need for such systems to respect human rights law, explaining that jurisdictional limitations on their functioning can have serious consequences. Such restrictions risk fostering a culture of impunity, potentially exacerbating high rates of rape and other sexual assaults against indigenous women. In fact, particularly when perpetrators are non-indigenous, they are often not held accountable for sexual violence, as their actions fall outside the jurisdiction of tribal courts. At the same time, federal agencies with competence over such cases frequently fail to prioritize them.⁷⁵ In this regard, the report explicitly endorses the innovative approach adopted by the CEDAW Committee, which, rather than restricting indigenous authorities’ jurisdiction, encourages both systems to adopt measures that align with human rights standards. The report also stresses that indigenous women and gender equality advocates must play a central role in shaping this process.⁷⁶ Furthermore, it recommends a

⁷³ *Ibid.*, para. 101.

⁷⁴ HRC, 2025, para. 15.

⁷⁵ *Ibid.*, para. 43.

⁷⁶ *Ibid.*, para. 49.

complete rejection of the subordination of indigenous justice to ordinary systems. Consequently, any State-led review of their decisions should be “limited to that which is strictly necessary to protect human rights”. Broadly, this implies challenging the discriminatory assumption that indigenous justice systems are more prone to human rights violations than those of the State. In this regard, national authorities are encouraged to work cooperatively with indigenous peoples to address the specific needs of women, who frequently encounter discrimination and barriers to accessing justice, without undermining the autonomy of indigenous justice systems.⁷⁷

7. Conclusion

The approach of UN treaty bodies to indigenous women’s right of access to justice within legal pluralist contexts can be broadly categorized into two distinct models. The first model prioritizes women’s individual rights over the collective right of indigenous peoples to self-government. This is exemplified by the practice of the Human Rights Committee, which has been rather cautious in granting full autonomy to indigenous systems, consistently emphasizing that, even when formally recognized, their jurisdiction should be limited to minor offences. The second model can be attributed to the more recent practice of the CEDAW Committee, and, to a lesser extent, due to its limited engagement, that of the CERD. Their perspective appears to have been significantly influenced by the adoption of the UNDRIP in 2007, which marked a turning point by affirming States’ obligations to recognize indigenous justice systems as expressions of

77 *Ibid.*, para. 75.

the collective right to self-government, to be exercised in accordance with international human rights law. Indeed, these treaty bodies have increasingly urged States to adopt legislative frameworks that formally acknowledge the autonomy of such systems. Notably, the CEDAW Committee has also emphasized the need for both indigenous and ordinary systems to align with international human rights law on an equal footing, ultimately promoting a paradigm of harmonization that upholds women's rights within legal pluralist contexts. As this position is consistently reflected in the practice of the UN Special Procedures, it can be seen as indicative of an emerging standard encouraging States to develop inclusive legal frameworks that safeguard both indigenous self-government and gender equality, grounded in a cooperative approach that directly values the engagement of indigenous women. Notably, the most recent report of the UN Special Rapporteur on the Independence of Judges and Lawyers goes even further, affirming that State-led review mechanisms of decisions made by indigenous authorities should be limited to what is strictly necessary to protect human rights, thereby signaling an increasingly robust recognition of the independent jurisdiction of indigenous justice systems. It remains to be seen whether this interpretative trend will gain broader support in the international legal community and how it might influence future developments.

References

ANAYA, James. International Human Rights and Indigenous Peoples: The Move Towards the Multicultural State. *In: Arizona Journal of International and Comparative Law*, v. 21, n. 1, pp. 13-61, 2004.

ATREY, Shreya. *Intersectional Discrimination*. Oxford: Oxford University Press, 2019.

BAGNI, Silvia; RODRÍGUEZ CAGUANA, Adriana. Legal pluralism and intercultural justice: a comparative case study among Bolivia, Colombia and Ecuador. In: *Revista General de Derecho Público Comparado*, v. 31, pp. 1-24, 2022.

BALDIN, Serena. Giustizia indigena e giustizia costituzionale interculturale nell'ordinamento boliviano. In: D'ALESSANDRO, Chiara Antonia; MARCHESE, Claudia (eds.). *Ius Dicere in a Globalized World, A Comparative Overview*. v. 1. Rome: Roma TrE-Press. pp. 359-392, 2018.

BARNABAS, Sylvanus Gbendazhi. The Legal Status of the United Nations Declaration on the Rights of Indigenous Peoples (2007) in Contemporary International Human Rights Law. In: *International Human Rights Law Review*, v. 6, n. 2, pp. 242-261, 2017.

BONFANTI, Angelica. *Diversità culturale, pratiche tradizionali dannose e diritti umani. Un'analisi di diritto internazionale pubblico e privato*. Torino: Giappichelli, 2024.

CCPR, Human Rights Committee of the International Covenant on Civil and Political Rights. General Comment No. 23: Article 27 (Rights of Minorities), doc. CCPR/C/21/Rev.1/Add.5. United Nations, 8 April 1994.

CCPR, Human Rights Committee of the International Covenant on Civil and Political Rights. General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women), doc. CCPR/C/21/Rev.1/Add.10. United Nations, 29 March 2000.

CCPR, Human Rights Committee of the International Covenant on Civil and Political Rights. General Comment No. 32, Article 14: Right to equality before courts and tribunals

and to a fair trial, doc. CCPR/C/GC/32. United Nations, 23 August 2007.

CCPR, Human Rights Committee of the International Covenant on Civil and Political Rights. Concluding observations on the third periodic report of the Plurinational State of Bolivia, doc. CCPR/C/BOL/CO/3. United Nations, 6 December 2013.

CEDAW, Committee on the Elimination of Discrimination against Women. 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, doc. CEDAW/C/GC/28. United Nations, 16 December 2010.

CEDAW, Committee on the Elimination of Discrimination against Women. Concluding observations of the Committee on the Elimination of Discrimination against Women, Mexico, doc. CEDAW/C/MEX/CO/7-8. United Nations, 7 August 2012.

CEDAW, Committee on the Elimination of Discrimination against Women. General recommendation No. 33 on women's access to justice, doc. CEDAW/C/GC/33. United Nations, 3 August 2015.

CEDAW, Committee on the Elimination of Discrimination against Women. General recommendation No. 34 (2016) on the rights of rural women, doc. CEDAW/C/GC/34. United Nations, 7 March 2016.

CEDAW, Committee on the Elimination of Discrimination against Women. General recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 (1992), doc. CEDAW/C/GC/35. United Nations, 26 July 2017.

CEDAW, Committee on the Elimination of Discrimination against Women. General recommendation No. 39 (2022) on the rights of Indigenous women and girls, doc. CEDAW/C/GC/39. United Nations, 31 October 2022.

CERD, Committee on the Elimination of Racial Discrimination. General Recommendation No. 23: Indigenous Peoples, doc. A/52/18, annex V. United Nations, 18 August 1997.

CERD, Committee on the Elimination of Racial Discrimination. Consideration of reports submitted by States Parties under Article 9 of the Convention. Concluding observations of the Committee on the Elimination of Racial Discrimination, Ethiopia, doc. CERD/C/ETH/CO/7-16. United Nations, 7 September 2009.

CERD, Committee on the Elimination of Racial Discrimination. Consideration of reports submitted by States Parties under Article 9 of the Convention. Concluding observations of the Committee on the Elimination of Racial Discrimination, Canada, doc. CERD/C/CAN/CO/19-20. United Nations, 4 April 2012.

CERD, Committee on the Elimination of Racial Discrimination. Opinion adopted by the Committee under article 14 of the Convention, concerning communication No. 61/2017, doc. CERD/C/106/D/61/2017. United Nations, 26 July 2022.

CERD, Committee on the Elimination of Racial Discrimination. Concluding observations on the twenty-fifth periodic report of Ecuador, doc. CERD/C/ECU/CO/25. United Nations, 23 December 2024.

CIRNAC, Crown-Indigenous Relations and Northern Affairs Canada. The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation

of Aboriginal Self-Government. Ottawa: Government of Canada, 2023. Available at: <<https://www.rcaanc-cirnac.gc.ca/eng/1100100031843/1539869205136>>.

COMMISSION ON HUMAN RIGHTS, United Nations Commission on Human Rights. Organization of the work of the session. Report of the Working Group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995, doc. E/CN.4/1996/84. United Nations, 4 January 1996.

COMMISSION ON HUMAN RIGHTS, United Nations Commission on Human Rights. Indigenous issues. Human rights and indigenous issues. Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, doc. E/CN.4/2004/80. United Nations, 26 January 2004.

CRENSHAW, Kimberle. Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics. In: *University of Chicago Legal Forum*, v. 1989, n. 1, pp. 139-167, 1989.

DE VIDO, Sara. La parità di genere nel contesto dell'Agenda 2030 per lo sviluppo sostenibile. In: *Le Nazioni Unite di fronte alle nuove sfide economico-sociali, 75 anni dopo la loro fondazione*. La Comunità internazionale, Quaderno 23. Naples: Editore Scientifico. pp. 81-102, 2021.

DOROUGH, Dalee Sambo. The Significance of the Declaration on the Rights of Indigenous Peoples and its Future Implementation. In: CHARTERS, Claire; STAVENHAGEN, Rodolfo (eds.). *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples*. Copenhagen: International Work Group for Indigenous Affairs (IWGIA). pp. 264-278, 2009.

EPPLE, Susanne; ASSEFA, Getachew (eds.). *Legal Pluralism in Ethiopia. Actors, Challenges and Solutions*. Bielefeld: Transcript Verlag, 2020.

FRANCIONI, Francesco. The Right of Access to Justice under Customary International Law. In: FRANCIONI, Francesco (eds.). *Access to Justice as a Human Right*. Oxford: Oxford University Press. pp. 1-55, 2012.

FRYER, Sara; LEBLANC-LAURENDEAU, Olivier. Understanding Federal Jurisdiction and First Nations. Ottawa: Library of Parliament Background Paper, 2019. Available at: <https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201951E>.

HAMMOND, John L. Indigenous Community Justice in the Bolivian Constitution of 2009. In: *Human Rights Quarterly*, v. 33, n. 3, pp. 649-681, 2011.

HENDRY, Jennifer; TATUM, Melissa L. Human Rights, Indigenous Peoples, and the Pursuit of Justice. In: *Yale Law & Policy Review*, v. 34, n. 2, pp. 351-386, 2016.

HRC, United Nations Human Rights Council. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya. Addendum. Observations on the progress made and challenges faced in the implementation of the constitutional guarantees of the rights of indigenous peoples in Ecuador, doc. A/HRC/15/37/Add.7. United Nations, 17 September 2010.

HRC, United Nations Human Rights Council. Access to justice in the promotion and protection of the rights of Indigenous Peoples: restorative justice, Indigenous juridical

systems and access to justice for Indigenous women, children and youth and persons with disabilities. Study by the Expert Mechanism on the Rights of Indigenous Peoples, doc. A/HRC/EMRIP/2014/3. United Nations, 25 April 2014.

HRC, United Nations Human Rights Council. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Report of the Working Group on the issue of discrimination against women in law and in practice, doc. A/HRC/29/40. United Nations, 2 April 2015.

HRC, United Nations Human Rights Council. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Rights of indigenous peoples. Report of the Special Rapporteur on the rights of indigenous peoples, doc. A/HRC/42/37. United Nations, 2 August 2019.

HRC, United Nations Human Rights Council. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. The right of Indigenous Peoples to maintain and develop justice systems. Report of the Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite, doc. A/HRC/59/52. United Nations, 5 May 2025.

IDLO, International Development Law Organization. Issue brief on “Navigating Complex Pathways to Justice: Women and Customary and Informal Justice Systems”. IDLO, 2020.

INKSATER, Kimberly. Transformative Juricultural Pluralism: Indigenous Justice Systems in Latin America and International Human Rights. In: *The Journal of Legal Pluralism and Unofficial Law*, v. 42, n. 60, pp. 105-142, 2010.

IWGIA, International Work Group for Indigenous Affairs.

Report on "The Indigenous World 2025". IWGIA, 2025.

JOSEPH, Sarah; CASTAN, Melissa. *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*. 3. ed. Oxford: Oxford University Press, 2013.

KUOKKANEN, Rauna. Self-Determination and Indigenous Women's Rights at the Intersection of International Human Rights. In: *Human Rights Quarterly*, v. 34, n. 1, pp. 225-250, 2012.

LAWREY, Andre. Contemporary Efforts to Guarantee Indigenous Rights Under International Law. In: *Vanderbilt Journal of Transnational Law*, v. 23, n. 4, pp. 703-777, 1990.

PÉREZ-BUSTILLO, Camilo; HOHMANN, Jessie. Indigenous Rights to Development, Socio-Economic Rights, and Rights for Groups with Vulnerabilities: Articles 20-22, 24, and 44. In: HOHMANN, Jessie; WELLER, Marc (eds.). *The UN Declaration on the Rights of Indigenous Peoples: A Commentary*. Oxford: Oxford University Press. pp.482-536, 2018.

PROVOST, René; SHEPPARD, Colleen. Introduction: Human Rights Through Legal Pluralism. In: PROVOST, René; SHEPPARD, Colleen (eds.). *Dialogues on Human Rights and Legal Pluralism*. Dordrecht-New York: Springer. pp. 1-11, 2013.

QUANE, Helen. The UN Declaration on the Rights of Indigenous Peoples: New Directions for Self-Determination and Participatory Rights?. In: ALLEN, Stephen; XANTHAKI Alexandra (eds.). *Reflections on the UN Declaration on the Rights of Indigenous Peoples*. Oxford-Portland: Hart Publishing. pp. 259-288, 2011.

SCHEININ, Martin. Indigenous Peoples' Rights under the International Covenant on Civil and Political Rights. In:

CASTELLINO, Joshua; WALSH, Niamh (eds.). *International Law and Indigenous Peoples*. Leiden-Boston: Martinus Nijhoff. pp. 3-15, 2005.

SIEDER, Rachel. The Challenge of Indigenous Legal Systems: Beyond Paradigms of Recognition. In: *The Brown Journal of World Affairs*, v. 18, n. 2, pp. 103-114, 2012.

SIEDER, Rachel. Legal Pluralism and Indigenous Women's Rights in Mexico: The Ambiguities of Recognition. In: *NYU Journal of International Law & Politics*, v. 48, n. 4, pp. 1125-1150, 2016.

STAMATOPOULOU, Elsa. *Cultural Rights in International Law: Article 27 of the Universal Declaration of Human Rights and Beyond*. Boston: Martinus Nijhoff, 2007.

THORNBERRY, Patrick. The Convention on the Elimination of Racial Discrimination, Indigenous Peoples and Caste/Descent-Based Discrimination. In: CASTELLINO, Joshua; WALSH, Niamh (eds.). *International Law and Indigenous Peoples*. Leiden-Boston: Martinus Nijhoff. pp. 17-45, 2005.

THORNBERRY, Patrick. *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary*. Oxford: Oxford University Press, 2016.

UNGA, United Nations General Assembly. Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels, doc. A/RES/67/1. United Nations, 30 November 2012.

UNGA, United Nations General Assembly. Rights of Indigenous Peoples. Report of the Third Committee, doc. A/79/455. United Nations, 26 November 2024.

UNPFII, United Nations Permanent Forum on Indigenous Issues. Report on the twentieth session, doc. E/2021/43-

-E/C.19/2021/10. United Nations, 19-30 April 2021.

UN Women, United Nations Entity for Gender Equality and the Empowerment of Women. Report on "Improving Women's Access to Justice. During and After Conflict: Mapping UN Rule of Law Engagement". UN Women, 2016.

VIJEYARASA, Ramona. Three Decades of CEDAW Committee General Recommendations: A Roadmap for Domestication, Reporting and Stronger Accountability for Women's Rights. In: *Max Planck Yearbook of United Nations Law Online*, v. 25, n. 1, pp. 797-826, 2022.

WELLER, Marc. Self-determination of Indigenous Peoples: Articles 3, 4, 5, 18, 23, and 46(1). In: HOHMANN, Jessie; WELLER, Marc (eds.). *The UN Declaration on the Rights of Indigenous Peoples: A Commentary*. Oxford: Oxford University Press. pp. 115-159, 2018.

XANTHAKI, Alexandra. The UN Declaration on the Rights of Indigenous Peoples and Collective Rights: What's the Future for Indigenous Women? In: ALLEN, Stephen; XANTHAKI Alexandra (eds.). *Reflections on the UN Declaration on the Rights of Indigenous Peoples*. Oxford-Portland: Hart Publishing. pp. 413-432, 2011.

XANTHAKI, Alexandra. Culture: Articles 11(1), 12, 13(1), 15, and 34. In: HOHMANN, Jessie; WELLER, Marc (eds.). *The UN Declaration on the Rights of Indigenous Peoples: A Commentary*. Oxford: Oxford University Press. pp. 273-298, 2018.

YUPSANIS, Athanasios. ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries 1989-2009: An Overview. In: *Nordic Journal of International Law*, v. 79, n. 3, pp. 433-456, 2010.

YUPSANIS, Athanasios. The International Labour Organi-

zation and Its Contribution to the Protection of the Rights of Indigenous Peoples. In: *Canadian Yearbook of International Law*, v. 49, pp. 117-176, 2012.

ZARDO, Maria Noel Leoni. Gender Equality and Indigenous Peoples' Right to Self-Determination and Culture. In: *American University International Law Review*, v. 28, n. 4, pp. 1053-1090, 2013.

Recebido em: 10/12/2025

Aprovado em: 07/05/2026

Silvia Solidoro

E-mail: silvia.solidoro@unisalento.it

