Indigenous Peoples’ Right to Self-Determination and Violence Against Indigenous Women, Girls and Gender Diverse People

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# Opening

Mihi: I am from 4 iwi|nations centred in the North Island of Aotearoa|New Zealand.

We are descendants from Hawaiki, our ancient homeland in the world’s largest ocean: Te Moana a Kiwa, the Pacific.

To [name Ministers], and especially our Indigenous sisters here today.

Thanks to all for the honour of being invited to speak today.

# Introduction

I focus my comments today on Indigenous peoples’ self-determination and violence against women, girls and gender diverse people from:

1. An Aotearoa New Zealand perspective: how we are attempting to tackle violence against our wāhine Māori within a wider movement for greater Māori self-determination;
2. A global perspective, with reference to developing international law and jurisprudence;
3. I attempt to draw some conclusions that might support the crucial work that is needed also in Canada, Mexico and the United States to eliminate violence against Indigenous women, girls and all gender diverse people, and support Indigenous peoples’ self-determination.

My overarching themes are that:

* Indigenous peoples’ experience of colonisation and “loss” [not a set of keys] of self-determination has contributed to violence against Indigenous women by non-Indigenous people and degradation of the fabric of Indigenous societies, which has also aggravated violence against Indigenous women by Indigenous men; and
* Understanding the role of colonsation, and given empirical evidence in support, addressing violence against Indigenous women, girls and gender diverse people is best achieved through Indigenous peoples exercising our right to self-determination, albeit in ways that allow us to confidently to reassert ourselves – as men, women, and gender diverse people – in accordance with our own cultures and legal systems.

I acknowledge our Indigenous women’s matauranga|knowledge with respect to your own communities and experiences, with deep respect, and I look forward to learning from you over the coming day. While I have at times looked at these issues in Canada and the United States especially, usually from a legal perspective, I won’t address them here, in recognition of the far greater experience in this room.

# Aotearoa New Zealand

## Historic Overview

### Arrival in Aotearoa New Zealand

[Pwrpt: map of Aotearoa New Zealand with tribes/boundaries demarcated]

* Māori arrived in Aotearoa circa the 9th century in waves of migration from Polynesia.

[We refer to ourselves as ‘tangata whenua’ meaning ‘people of the land’, in recognition that Papatūānuku – our Earth Mother – is our mother and giver of life. For Māori, our entire identity, spirituality, worldviews and laws arise from our relationship with the land. This meant the dispossession of land for Māori through colonisation was devastating spiritually, physically, psychologically and economically.]

### Colonisation

* Captain James Cook was the first European to land on the islands in 1769, and settlement began in earnest in the 1830s.
* The Treaty of Waitangi was signed between the British Crown and some Māori chiefs in 1840. Māori retained sovereignty but the Crown was granted the right to govern settlers. It is considered the founding constitutional document of Aotearoa New Zealand, even if it lacks any legal force and has been continuously breached within a few years of it being signed.

[Aotearoa New Zealand’s coat of arms with Māori and the Queen].

* The impact of colonisation on Māori has been devastating. Māori have lost – via confiscation, fraudulent land deals and the individualisation of collective property – 96% of our lands, most of it within the first 50 years of European arrival.[[1]](#footnote-1)
* The British Crown assumed full sovereignty – by force – shortly after 1840. Under our inherited constitutional tradition, the Crown is the sole and absolute sovereign, meaning there was, and is, no space for an recognition of ongoing Māori self-governance or self-determination, contrary to the Treaty of Waitangi. [Just last week, the Prime Minister made the claim that Māori ceded sovereignty, contrary to all accounts – legal, political etc – it beggars belief.[[2]](#footnote-2)]
* Today, Māori are the unhealthiest, the poorest, the least housed, and the least educated peoples in Aotearoa and experience ongoing discrimination. Over 50% of the national prison population is Māori, in a country which incarcerates its people more than any other Western nation after the United States.

# Introduction to Violence against Women and Girls in Aotearoa New Zealand

While Aotearoa New Zealand is often perceived internationally as a exemplar of human rights compliance and harmonious Indigenous-non-Indigenous relations, the reality is somewhat different, especially for Māori women.

* By percentage, and taking into account that Aotearoa New Zealand has one of the highest rates per capita of incarceration in the world,[[3]](#footnote-3) “Wāhine Māori are one of the most incarcerated women in the world, making up 63% of the female prison population in Aotearoa.”[[4]](#footnote-4)
* Up to 80% of wāhine Māori will experience family violence in their lifetime and they are “three times more likely to be killed by a partner than non-Māori” women. [[5]](#footnote-5)

Violence against Māori women is part of a bigger picture of discrimination against wāhine Māori:[[6]](#footnote-6)

* The life expectancy of wāhine Māori is 77.1 years, compared with 84.4 years for non-Māori women,[[7]](#footnote-7) and have greater barriers to health care;[[8]](#footnote-8)
* The Māori women unemployment rate is dramatically higher than the national rate[[9]](#footnote-9) and we are significantly underpaid for our work;
* Wāhine Māori experience high rates of discrimination and bias, including in the workplace.[[10]](#footnote-10)

# Tikanga Māori Perspectives on Violence against Māori Women

* Violence against women is violence against whakapapa – our genealogy (see Ani Mikaere notes)
* “Whānau violence is inter-generational and directly impacts on whakapapa. It has taken several generations of learned behaviour and practice to entrench whānau violence as the most devastating and debilitating of social practices. It will take time for whānau violence to be unlearned.
* “Whānau violence is a labyrinth because it is often housed inside ‘impostor’ tikanga (the illusion) that has been purposely designed to validate its practice, to confuse and to prevent escape of victims. It also resists change or transformation which makes whānau violence considerably more difficult to treat and heal.
* “There are layers of protections that are built up around abuse. Some of these are the rationalisation of violence as tikanga. Too many accept violence within the whānau as ‘normal’ and valid. The irony is that violence is the most profound expression of powerlessness that is sustained by the entrenched belief that we cannot change the circumstances that lead to the perpetration of violence within ourselves.
* “To know about whānau violence is no longer good enough. To do something about whānau violence is what is needed. Violence is a weapon with victims at each end.”[[11]](#footnote-11)

# What was the impact of colonisation and, specifically, the “loss” of self-determination on Māori women?

Leading Māori woman scholar Ani Mikaere has examined in some depth the role of colonisation on the breakdown of Māori society and social fabric that precipitated the devastating impacts on our women, girls and gender diverse people.

Her work is reflected in the powerful but devastating film “Once Were Warriors”. In that film, many of the Māori men are portrayed as having lost “mana” – a Polynesian concept reflecting your status, your authority and, in this case, your self-worth. That powerlessness, stemming from colonisation, is reflected in many ways, including violence against women, children and gender diverse people.

[Picture of Jake the Mus: Temuera Morrison]

* Māori society pre-colonisation valued women highly and did not attach greater significance to male roles over female roles. More important was whakapapa/genealogy – your ancestral line. Some key points Mikaere makes about the nature of Māori society and women pre-colonisation include:
* The concept of balance is central between women and men. Equal but different roles.
* The Māori language does not distinguish gender in pronouns, reflecting no hierarchy between sexes – both the singular personal pronoun ‘ia’ as well as possessive pronouns.
* Women retained their names upon marriage and their children could identify with lineage from both parents.
* Māori cosmology and oral traditions feature many powerful women figures, e.g. Maui acquires the fish bone from his kuia, Mahuika, and Papatūānuku, the earth mother, is very important.
* Women were described positively as “whare tangata” (house of humanity) and associated with life-giving roles.
	+ Violence against women was considered extremely serious in the community.
	+ Women had sexual and reproductive freedom, with no stigma attached to children born outside of marriage, nor to divorce.
	+ Women performed important leadership roles - military, spiritual and political. Women were signatories to te Tiriti o Waitangi. Many hapū and whare tupuna were named after women.
	+ The flexible whānau (extended family) structure allowed women to take on diverse roles beyond just child-rearing.

 “The whānau was a woman's primary source of support. Her ‘marriage’ did not entail a transferral of property from her father to her spouse. She remained a part of the whānau. Even if she went to live with her husband’s whānau, she remained a part of her whānau, to whom her in-laws were responsible for her well-being. They were to ensure that she was well-treated and to support her.”[[12]](#footnote-12) [Put this quote in the powerpoint, with a photo of Ani]

## Māori women under colonial New Zealand

Mikaere emphasises that this legal status of women under English law was significantly inferior to the status of women in traditional Māori society, and that the imposition of these legal concepts through colonisation had devastating effects on Māori women:[[13]](#footnote-13)

* Under English common law, the husband/father was in control of the household.
* Women and children were considered chattels (property) to be used and abused by the paterfamilias (male head of the family) as he chose.
* As girls reached adulthood and married, they changed from being the property of their fathers to being the property of their husbands
* Any property a wife brought to a marriage was immediately vested in the husband, who could do with it as he liked.
* Women either had no legal personality at all or were considered incapacitated, only partial persons.
* Mothers had no rights whatsoever to their children. Male ownership of children was absolute.
* A wife had virtually no legal means of ending a marriage in a way that would allow her to keep her children, regain any former property, or get any support for herself or her children.
* Until 1985 in New Zealand, rape could not be perpetrated by a husband against his wife under the law, stemming from the notion of the wife being his property.

The impact of colonisation reshaped Māori society and culture, diminishing the role of women. This included the rewriting of Māori cosmology to emphasize male characters and to invisibilise wāhine Māori e.g. the misperception of Māori women as property or sexual objects, and their exclusion from important political processes like Treaty negotiations where colonizers primarily dealt with Māori men, largely ignoring women in Treaty of Waitangi signings.

## Stories from evidence to the Waitangi Tribunal

* “The level of economic and political power in the hands of wahine [sic] Māori was unconscionable to colonial perspectives of the time. Even though women were significant landholders and political leaders right up to the signing of the treaty, the inability of colonial mindsets to accept such equitable power distribution was reflected in the fact that wahine leaders and landholders were in many cases disallowed or discouraged from signing Te Tiriti o Waitangi by the men who were charged with collecting signatures. One such example of this is the story of Hine Aka Tioke, of Kahungunu, who was refused the right to sign Te Tiriti because the officials at the time believed that women had no constitutional power to sign contracts.”[[14]](#footnote-14)
* Story about Hinemoa – name of the wharenui, changed to Tutanekai in the 1960s. [picture of Tutanekai marae]
* Misperception of Māori women: They were viewed either as wives and children (property of Māori men) or as potential sexual partners for white men. Their autonomy was interpreted as immorality. Introduction of Christian values emphasized women's roles as subservient wives and mothers. Māori girls were trained to be good wives in nuclear family situations, discouraging academic pursuits.
* Destruction of whānau (extended family) structure: this undermined the traditional support system for Māori women. Imposition of the nuclear family model: this isolated women from their wider support networks and made them dependent on husbands as breadwinners.
* Colonisation process affected Māori women's perceptions of themselves, leading to the acceptance of male-dominated leadership as the norm.
* Implementation of adoption laws: these laws disrupted traditional Māori child-rearing practices and often separated Māori children from their culture.
	+ [Traditional Māori practices: Māori had no institution paralleling English adoption. It was common for children to be raised by someone other than birth parents, but this didn't involve substitution of parents. The child remained a child of the whānau . Children had an absolute right to know their whakapapa. These arrangements (called whāngai) were often temporary and carried no stigma. Whāngai children were often considered especially fortunate or blessed.
	+ Imposition of English adoption laws: initially, Māori whāngai arrangements were recognized as valid adoptions. The Native Land Act 1909 required formal adoption orders to create legal relationships. From 1915, the law moved towards closed adoption, though Māori were initially exempted. The 1955 Adoption Act brought most adoptions under a uniform scheme of closed adoption. By 1962, all adoptions had to go through the magistrates' courts process.
	+ Impact on Māori: closed stranger adoption conflicted with Māori values of openness and maintaining connections. It often resulted in Māori children being placed with non-Māori families, disconnecting them from their culture. Birth mothers, often young and urban, were pressured to give up their children. The shame associated with illegitimacy was used to convince women not to inform their whānau. Māori babies were often matched with "marginal" adoptive parents or ended up in foster care.
	+ Long-term consequences: loss of generations of irreplaceable taonga (treasures) to the iwi. Stripping of cultural identity for adopted children and their descendants. Denial of the rights and responsibilities of whānau, hapū, and iwi regarding their children.

## What does Mikaere say is the position of Māori women today?

* Colonisation continues. Māori women continue to face the dual challenges of patriarchy and colonialism.
* Law fails to recognise that Māori women have particularly pressing issues, even when it recognises, for example, the Treaty of Waitangi.
* Some women remain isolated from their whānau. Isolation from whānau support makes Māori women particularly vulnerable to overwork, ill health, and domestic violence.
* Public perception of Māori women’s issues is often distorted through racism. The legacy of colonisation has negatively affected Māori women’s perceptions of themselves and their roles.
* Can’t equate Māori women’s issues with those of other feminists because Pākehā feminists are part of the colonial system that had such a devastating impact on Maori women. Leah Whiu: “what affinity can we share with white women if they refuse to acknowledge and take responsibility for their colonialism?”[[15]](#footnote-15)
* May be some use in joining forces, however.
* Some gains: practice of shutting up men speaking by singing over them.
* Building a greater understanding of tikanga.

## How does Mikaere propose the problems for Māori women should be resolved?

Realisation of Māori self-determination by reasserting Māori law, which challenges Aotearoa New Zealand’s fundamental constitutional basis in mono-legalism, under which recognition of another – Indigenous – legal system is impossible. This is a structural impediment.

To transfer power back to Māori, to rediscover and reassert tikanga, and to understand that “an existence where men have power and authority over women and children is not in accordance with tikanga Māori. Such an existence stems instead from an ancient common law tradition which has been imposed upon us, a tradition with which we have no affinity and which we have every reason to reject.”[[16]](#footnote-16)

Reclaiming and reasserting tikanga Māori: Mikaere emphasizes the need for Māori, both women and men, to rediscover and reaffirm traditional Māori principles and values within their own whānau. This involves rejecting the imposed common law traditions that have led to male dominance over women and children.

Challenging and changing perceptions: Mikaere calls for confronting and altering the misconceptions about traditional Māori leadership being primarily a male domain. This involves recognizing and celebrating the historical and ongoing leadership roles of Māori women.

Restoring the collective responsibility: Mikaere advocates for rebuilding a society where the collective (whānau, hapū, and iwi) takes responsibility for the wellbeing of all its members, including women and children.

Māori women have expressed similar sentiments to the government as follows:[[17]](#footnote-17)

* Violence against women is not inevitable
* Family violence is not traditional
* Violence against women is preventable
* Whānau, hapū and iwi remain permanent, core units, of Māori existence Being Māori is not the problem, it’s the solution
* Whānau have the solutions within

# Mana Wāhine Claim

The Waitangi Tribunal has now commenced the second part of their research into how the Crown has breached mana wāhine rights in relation to te Tiriti o Waitangi:

* Disproportionate impact: wāhine Māori face significant inequities across various sectors, including higher rates of violence, lower life expectancy, and barriers to education and employment.
* Breach of Treaty principles: the claim asserts that the Crown's actions or inactions have breached the principles of partnership, active protection, and equity under the Treaty, leading to the marginalization of wāhine Māori.
* Intersectionality: the claim highlights the unique position of wāhine Māori, who experience discrimination not only as Māori but also as women, and how this dual disadvantage has been exacerbated by colonial policies.
* Call for redress: The claim seeks recognition of these breaches and calls for specific remedies to address the disparities and restore the mana (dignity, authority) of wāhine Māori.

Between February 2021 and September 2022, over 126 witnesses participated in six ‘tūāpapa hearings’ of the Mana Wāhine Kaupapa Inquiry, giving evidence before the Tribunal panel.

Witness evidence spanned tikanga|customary laws as it relates to wāhine Māori and the Māori understanding of wāhine in te ao Māori, setting the tūāpapa (foundation) for the inquiry.

Their kōrero was diverse, covering pūrākau (traditional stories) and unique iwi and hapū traditions, kōrero tuku iho (oral tradition), witnesses’ own personal views and life experiences, waiata, karakia, poetry, and academic research.

Evidence included:

* “Every part of tikanga and mātauranga Māori was based on the equality and interdependence of Māori women and men.”[[18]](#footnote-18)
* “Wāhine and tāne were thought of as important parts of the whakapapa, without one the other could not survive. In tikanga wahine played an important role in helping link the past present and future. Throughout time Māori history tell us wahine held important roles in society. Mātauranga Māori educates us that everything is descended from a balance of Papatuanuku and Ranginui.”[[19]](#footnote-19)
* “In Māori terms, any notion of a gendered hierarchy implying the lesser status of Māori women would have been, and still is, intellectually incomprehensible and culturally impossible. The relational nature of whakapapa, and its centrality in the Māori intellectual tradition, ensured that any differences in the roles men and women may have performed were a recognition of distinctive mutuality rather than oppositional worthiness.”[[20]](#footnote-20)
* “An old whakataukī, and often said in different ways ‘He wahine, he whenua mate ai te tangata’ or another version ‘He wahine, he whenua, e ngaro ai te tangata’ and also interpreted in different ways. My understanding is that it is akin to saying that ‘but for women, but for land – humankind would disappear,’ and that is because as the land nurtures us, that is the whenua, and as it is our mothers who nurture us, that is also the whenua, so they are one and the same thing. To put it bluntly, not a single person on this planet has come through into this world without the placenta.”[[21]](#footnote-21)

# Māori Women’s Welfare League

Founded in 1951, in recognition that Māori social fabric was disintegrating – more women and families had moved to the cities in search of better work and opportunities, and they found themselves often without homes or support. Also always a focus on support for our wāhine Māori subject to violence. Today runs shelters. Advocacy domestically and internationally on tino rangatiratanga and tikanga

[Powerpoint: picture on Dame Whina – from movie Whina]

Te Rōpū Wāhine Māori Toko i te Ora (Maori Women’s Welfare League Inc.) is the only national charitable Māori women’s organisation in Aotearoa New Zealand.

“Tatau Tatau”/ ”Let us be united” is the motto of the League. The motto stands for working together as an organisation, to enable and empower Māori women and their whānau to follow and achieve their aspirations.

There are now over 130 peka (branches) in Aotearoa New Zealand that are the foundation of the League. In addition, there are peka in Australia: one each in Perth, Northern Queensland, New South Wales and Gold Coast. Members work at the grassroots level with whānau, hapū and iwi, and across different sectors of Māori society. They are essentially voluntary and have first-hand knowledge of the needs of women and their whānau.

# Examples of how Aotearoa New Zealand has been assessed by the Committee on the Elimination of Discrimination against Women (CEDAW) when reporting and under the 2024 UPR process:

## CEDAW

The report from CEDAW makes several assessments about the wellbeing of Māori women and the responsibility of the New Zealand state: [[22]](#footnote-22)

* Intersecting discrimination;
* Overrepresentation in prison;
* Gender-based violence, which disproportionately affects Māori women. It notes that Māori women are more likely to be retraumatised under the current system;
* The Committee notes very low levels of reporting and high rates of recidivism, particularly within the Māori community;
* The report mentions a lack of adequate, culturally sensitive approaches, resulting in cultural and linguistic barriers that prevent Māori women from seeking protection from domestic and sexual violence.

Regarding state responsibility, the Committee recommended that Aotearoa New Zealand:[[23]](#footnote-23)

* Stop locking up Māori women
* Adopt criteria and guidelines for culturally appropriate legal, psychosocial, and economic assistance that recognize the special needs of Māori women.

The report emphasizes that the state has a responsibility to address these issues and improve outcomes for Māori women across various sectors including justice, health, education, and employment.

Universal Periodic Review recommendations from 2024 re: violence against Māori women.[[24]](#footnote-24)

Relevant recommendations regarding violence against Māori women, of the 152 recommendations made this year:

1. Redouble efforts to eliminate discrimination and violence against women and girls, including by ensuring their access to single-sex spaces and closing the gender pay gap between men and women;[[25]](#footnote-25)
2. Continue its efforts to combat all forms of violence against women;[[26]](#footnote-26)
3. Redouble efforts to combat all forms of violence against women, including gender-based violence;[[27]](#footnote-27)
4. Continue efforts to combat gender-based violence;[[28]](#footnote-28)
5. Take all measures to combat gender-based violence;[[29]](#footnote-29)
6. Investigate thoroughly all cases of gender-based violence and bring perpetrators to justice;[[30]](#footnote-30)
7. Redouble its efforts to end all forms of discrimination and violence against women, especially domestic and sexual violence;[[31]](#footnote-31)
8. Combat all forms of violence against women, including by adopting comprehensive legislation criminalizing all forms of gender-based violence;[[32]](#footnote-32)
9. Redouble efforts to combat all forms of violence against women, including by adopting comprehensive legislation criminalizing all forms of gender-based violence and ensuring that all cases of gender-based violence are thoroughly investigated;[[33]](#footnote-33)
10. Strengthen efforts to address gender-based violence, including family violence and sexual violence, particularly against women and children from ethnic minority groups and persons with disabilities;[[34]](#footnote-34)
11. Enhance support services for victims and survivors of gender-based violence and strengthen efforts towards raising awareness on the specific needs and vulnerabilities of women and children who are victims of gender-based violence;[[35]](#footnote-35)
12. Continue working on the development of a comprehensive national plan to combat violence against women and family violence, especially within the Māori and Pasifika minorities;[[36]](#footnote-36)
13. Take the necessary steps to protect Māori, guarantee their full and equal involvement in both public and private life, and prevent family and sexual violence, particularly that directed towards women and Māori;[[37]](#footnote-37)
14. Amend the Bill of Rights Act to incorporate economic, social and cultural rights, and establish a critical path to determine and implement constitutional processes to give effect to the Treaty of Waitangi and, in conjunction with the Māori people, restart efforts to adopt a plan of action to implement the United Nations Declaration on the Rights of Indigenous Peoples;[[38]](#footnote-38)
15. Incorporate effectively the provisions of the Treaty of Waitangi in the Constitution and national legislation;[[39]](#footnote-39)
16. Improve the level of human rights protection by raising human rights and the Treaty of Waitangi to supreme law and incorporate them into a written constitution;[[40]](#footnote-40)
17. Incorporate the rights recognized by the Treaty of Waitangi into New Zealand's legal framework and to provide constitutional protection to Indigenous Peoples' rights;[[41]](#footnote-41)
18. Advance discussions to determine and implement the appropriate constitutional processes and institutions to recognize, respect and give effect to the Treaty of Waitangi in New Zealand;[[42]](#footnote-42)
19. Determine and implement, in consultation and agreement with the Māori, the appropriate constitutional processes to recognize, respect and give effect to the Treaty of Waitangi;[[43]](#footnote-43)
20. Uphold, respect and advance New Zealand's human rights obligations to the Māori in accordance with Te Tiriti o Waitangi, including by incorporating Te Tiriti o Waitangi into key legislation to ensure enforceability of Te Tiriti, and ensuring the implementation of recommendations from the Waitangi Tribunal.[[44]](#footnote-44)

# Ministry of Women on Violence against Māori Women

“Whānau can be both a protective and risk factor for violence. Whānau is the most common theme to have emerged in the research. The traditional structure of the whānau and its significance for women’s safety and wellbeing is described by Mikaere (1994).”[[45]](#footnote-45)

What is working: self-determination inspired approaches and initiatives:

* Community-designed and led initiatives
* Programs focused on positive relationships within families and communities
* Inclusion of Māori cultural components (e.g., kapa haka, te reo Māori)
* Alignment with community values and principles
* Sustained, ongoing programs rather than one-off interventions
* Whānau (extended family) as a protective factor for some women
* Education and employment opportunities for women
* Engaging men and boys in violence prevention discussions
* Traditional Māori concepts like whakawhanaungatanga, tikanga, manaaki, and aroha.

What is hindering progress:

* Failure to fully support a by Māori, for Māori approach i.e. truly embrace Māori self-determination as the best “method”: political context – anti-Māori governance as contrary to democracy and one person, one vote
* Inadequate funding for sustainable services and outcomes
* Challenges in evaluating primary prevention initiatives
* Lack of training and support for service providers
* Insufficient prevention and public awareness campaigns

The report emphasizes the need for action despite imperfect knowledge, stating: [[46]](#footnote-46)

We can't afford to wait until we know everything. We are never going to know everything. We need to do something. Take action. Give it our best guess at the time. Our women are worth it. Our children are worth it.

# A Global International Perspective

## The right to self-determination

International law evolved – to a large degree – out of an the European imperative to legitimise colonisation by creating legal rules that justifiy the imposition, by force, of European state control over our territories and peoples.

As we appreciate, in all our areas of the world, various versions of the so-called doctrine of discovery were used to deny recognition of Indigenous peoples’ governments, territorial authority and regulatory control: in other words, our sovereignty.

In many instances, the doctrine of discovery was used to deny our very humanity. In Australia, for example, the doctrine was the basis on which the British determined that Aboriginal Australians were simply not human in any legal sense, meaning that the territories they had inhabited for more than 40,000 years were considered – legally – empty. In a notorious case from 1877 in New Zealand, Māori were described as uncivilised barbarians.[[47]](#footnote-47)

Jump forward to the 1970s and 1980s. Following centuries of resistence from Indigenous peoples globally, eventually arriving at the gates of the League of Nations and, subsequently, the United Nations (UN), the international community has recognised Indigenous peoples’ right to self-determination. We see this most explicitly in the UN Declaration on the Rights of Indigenous Peoples (UN Indigenous Declaration)[[48]](#footnote-48) but also in growing jurisprudence from all corners of the globe.

There is no singular agreed definition of self-determination.

* Long philosophical pedigree dating back many centuries, if not longer
* In the more contemporary international legal and political context
* Decolonisation movement – independence: grows out of sovereignty

Elements of self-determination in the UN Indigenous Declaration:

* autonomy
* self-government
* participation in state governance
* rights to our lands, territories and resources, including to “own” them under our own laws and traditions
* culture: without outside interference
* free, prior and informed consent.

Examples in the United States with the concept of ongoing “inherent sovereignty”, supported by cases such as the *McGirt* decision;[[49]](#footnote-49)

Examples in Canada, and recent BC and federal plans of action on the UN Indigenous Declaration;[[50]](#footnote-50)

Examples in Mexico: municipalities which self-regulate;

Aotearoa New Zealand: exercising our own governance and living under our own tikanga even thought it’s not recognised by the Crown.

## International law and the eradication of violence against Indigenous women, girls and gender diverse people

Indigenous peoples’ rights are protected, to some degree, by human rights standards

Women’s rights under, for example:

* International Covenant on Civil and Political Rights art 1, art 27;[[51]](#footnote-51)
* International Covenant on Economic, Social and Cultural Rights art 1, art 15;[[52]](#footnote-52)
* CEDAW, but note arts 2(f) and 5(a): state to eradicate customary law etc that contrary to women’s rights – licence to override Indigenous peoples’ self-determination.

But inadequate: the plight of the Western woman is not the plight of the Indigenous woman.[[53]](#footnote-53)

## Global Voices: Beijing

The 1995 Fourth World Conference on Women, held in Beijing, was a significant event for advancing women’s rights globally. Indigenous women’s issues were a critical part of the discussions, particularly regarding their unique challenges and rights.

At the conference, Indigenous women from various parts of the world, including North America, Latin America, and the Pacific, came together to highlight their concerns. They emphasized issues such as:

1. *Self-determination and sovereignty:* Indigenous women advocated for the recognition of their rights to self-determination and the protection of their traditional lands and resources. They stressed that the survival of their communities and cultures depended on these rights.
2. *Violence against Indigenous women:* The participants highlighted the disproportionate levels of violence, including domestic violence, sexual assault, and state violence, faced by Indigenous women. They called for international attention and action to address these issues.
3. *Cultural rights and traditional knowledge:* Indigenous women underscored the importance of preserving and promoting their cultural practices, languages, and traditional knowledge. They argued that these were integral to their identity and well-being.
4. *Political participation:* The need for increased political representation and participation of Indigenous women in decision-making processes at local, national, and international levels was a key concern.
5. *Economic empowerment:* Indigenous women advocated for economic opportunities that respect their cultural values and support sustainable development within their communities.

The Beijing Platform for Action, the outcome document of the conference, acknowledged the importance of addressing the specific needs of Indigenous women and promoting their rights. This conference was a turning point in bringing global attention to the issues faced by Indigenous women and set the stage for further international advocacy and policy development.

## UN Declaration on the Rights of Indigenous Peoples

Arts 21 and 22: weak.

## American Declaration on the Rights of Indigenous Peoples[[54]](#footnote-54)

The American Declaration on the Rights of Indigenous Peoples, adopted in 2016, refers to their rights explicitly, and under article VII, states have an obligation to adopt the necessary measures to prevent and eradicate all forms of violence and discrimination, particularly against Indigenous women and children.

## UN Human Rights Council, Expert Mechanism on the Rights of Indigenous Peoples

*From SR Violence Against Women on Indigenous Women*:

Other relevant international instruments, mechanisms, reports and resolutions include Human Rights Council resolution 32/19, which was focused on eliminating violence against women and girls, including Indigenous women and girls.[[55]](#footnote-55) Furthermore, by its resolution 33/25, the Council established the Expert Mechanism on the Rights of Indigenous Peoples, which has included some consideration of violence against indigenous women and girls in certain thematic reports and studies.[[56]](#footnote-56) In response to a recommendation of the United Nations Permanent Forum on Indigenous Issues, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) developed a strategy for the inclusion and visibility of Indigenous women in 2016.

## UN: Permanent Forum, Commission on the Status of Women, General Assembly

The Permanent Forum continues to play a key role in addressing the situation of indigenous women and making recommendations thereon. *First*, it has strategically positioned the rights of Indigenous women as a priority at its annual sessions, either as the special theme or as one of the substantive areas, and has advocated, through its recommendations, concrete action to include their rights and perspectives in major intergovernmental frameworks. *Second*, it has created a global platform for Indigenous women to share experiences and difficulties and exchange ideas and strategies to achieve their goals. *Third*, it provides an institutional venue for Indigenous women to establish networks with non-governmental organizations and United Nations system entities to respond to some of the challenges that they continue to face around the world.

In response to Indigenous women’s concerns, the Permanent Forum over the years has adopted a large number of recommendations containing direct references to the situation of Indigenous women in connection with a wide range of issues, including education, culture, health, human rights, environment and development, conflict and political participation.

In addition, each year, the Permanent Forum has a stand-alone agenda item devoted to indigenous women’s issues. *For example*, in 2016, it held a session entitled “Indigenous peoples: conflict, peace and resolution”, and one of the two plenary meetings was focused on the unique case of Indigenous women. Among its other recommendations, the Permanent Forum emphasized that the protection, security and rights of Indigenous girls and women in conflict settings constituted an urgent priority, including within the framework of Security Council resolution 1325 (2000) on women and peace and security.[[57]](#footnote-57) It also noted that sexual and gender-based violence increased in settings of conflict. Sexual violence has also been systematically used as a weapon of war against Indigenous women. In the light of the particular risks and vulnerabilities of Indigenous women and girls related to sexual and gender-based violence, the Permanent Forum recommended that Governments, local authorities, specialized agencies of the United Nations system and civil society collaborate with Indigenous peoples to establish multisectoral and holistic approaches to combat the various forms of violence against women and girls.[[58]](#footnote-58)

In 2017, in commemoration of the tenth anniversary of the United Nations Declaration on the Rights of Indigenous Peoples, the Commission on the Status of Women held an interactive dialogue at its sixty-first session on the focus area “Empowerment of indigenous women”.[[59]](#footnote-59) This was in response to a call made in 2014 in the outcome document of the World Conference on Indigenous Peoples,[[60]](#footnote-60) and a recommendation of the Permanent Forum to consider Indigenous women as a priority theme.[[61]](#footnote-61) The interactive dialogue marked the first time that the subject of Indigenous women had been discussed as a stand-alone topic at an official meeting of the Commission. In the discussion on gender violence, education and economic opportunity for women, many speakers also called for increased consultation with Indigenous women on environmental issues, especially climate change. They noted in particular that Indigenous women’s knowledge and capacities could provide solutions to climate change.

Every year, the General Assembly adopts a resolution on the rights of Indigenous peoples, which is discussed by the Third Committee. The Assembly refers in these resolutions to issues of particular relevance to Indigenous women, such as violence against Indigenous women and girls and their empowerment and full and effective participation in decision-making processes at all levels, and encourages States to consider including in their reports information on Indigenous women in relation to the progress made and challenges faced in the implementation of Commission on the Status of Women resolutions 49/7 of 11 March 2005, entitled “Indigenous women: beyond the ten-year review of the Beijing Declaration and Platform for Action”,[[62]](#footnote-62) and 56/4 of 9 March 2012, entitled “Indigenous women: key actors in poverty and hunger eradication”.[[63]](#footnote-63) It is relevant to note that the annual report of the Permanent Forum contributes to the analysis and rationale used to address the rights of indigenous women at the highest levels of the United Nations.

## Special Rapporteur on Violence Against Women and Girls: report on Indigenous women[[64]](#footnote-64)

* Violence includes forced sterilization, trafficking, sexual violence, harmful traditional practice and violence in the context of conflict

18. A number of indigenous communities have developed autonomous rights-based consultation and consent protocols, defining how they are to be consulted, according to their own laws, traditions, customs and representative institutions and organizations for the effective exercise of their collective rights as well as their relationship with States and third parties. They are meant to provide frameworks in which consultations are carried out. While not directly related to violence against women, they can play an important role in developing measures to prevent potential human rights abuses, including the risks indigenous women face because of non-consensual projects on their land and territories.

* Examples of domestic laws e.g. Violence Against Women Act 2005 in the United States: However, while the Act provided for funding for indigenous governments to serve victims, and access for indigenous law enforcement agencies to national criminal justice data, those authorities were often unable to prosecute cases of violence on Indian reservations and only a few cases were prosecuted by the federal Government. The Violence against Women Reauthorization Act of 2013 repealed most restrictions on tribal authorities to prosecute on Indian reservations.

25. Violations, through both colonization and post-colonial power structures and State practices, have included assaults on the cultural integrity of indigenous communities, non-recognition of customary laws and governance systems, failure to develop frameworks for self-governance, and practices that strip indigenous peoples of autonomy over land and natural resources. Furthermore, the lack of recognition of indigenous land rights can lead to poverty, food and water insecurity and barriers to access natural resources needed for survival, and can create unsafe conditions that facilitate the perpetration of gender-based violence acts against indigenous women and girls.

26. The rise of indigenous women to claim their rights has – in several contexts – been met by resistance from inside indigenous communities, as women’s rights have often been considered divisive and external to the indigenous struggle. This false dichotomy between collective and women’s rights further entrenched the vulnerability of indigenous women and girls to abuse and violence, leaving them stripped of their rights to self-determination and agency by both violations of their collective rights and violations of their individual rights, creating and perpetuating systemic and generational vulnerability. However, it is also important to recognize that indigenous customary practices can be favourable to indigenous women and can strengthen their position in the communities, with prominent examples being the matrilineal systems of the Khasi in India and Bangladesh, and the Kreung in Cambodia.

28. Indigenous women and girls are additionally specifically affected by the climate crisis, environmental degradation, industrial-scale agriculture and extractive industries and projects, and face an elevated risk of health problems, including reproductive health problems and high infant mortality rates associated with environmental contamination and degradation, leading to the loss of their traditional and spiritual ways of life, affecting their cultural identity and livelihood, and pulling them into a cycle of impoverishment and exposure to gender-based violence.

29. The different manifestations of gender-based violence perpetrated against indigenous women and girls include, but are not limited to, the following: domestic violence, sexual harassment, sexual violence, trafficking, female genital mutilation, child, early or forced marriage, obstetric violence, violations of sexual and reproductive health and rights, genderrelated or “honour” killings, forced displacement, kidnapping and forced labour. This violence is largely driven by the desire to occupy and control indigenous territories and resources and by the militarization that accompanies those efforts. These actions are committed by a multitude of actors, such as State actors, private companies, criminal groups and members of women’s own indigenous communities, including family members. At a minimum, this series of structural violence results in indigenous women being victimized by the realities of their daily life, and has a negative impact on the enjoyment of their fundamental human rights.

37. Indigenous-led victim support services are often preferred by indigenous survivors of sexual assault. For example, the StrongHearts Native Helpline in the United States found that of the 3,074 calls received in 2020, not one of the callers chose to transfer to a non-Native hotline for support during non-staffed hours. The Government of Canada, together with Pauktuutit Inuit Women of Canada, has announced its commitment to fund the construction and operation of new shelters for Inuit women and children, including those with diverse sexual orientations and gender identities, across Inuit Nunangat.

52. Furthermore, providing awareness-raising and training to indigenous authorities can lead to their increased engagement in addressing gender-based violence within the indigenous community.

60. Courts can play an important role in emphasizing the importance of truth seeking. In the case of Fernández Ortega et al. v. Mexico, the Inter-American Court on Human Rights established that from the moment the State became aware of the existence of a sexual violation committed against someone who belonged to a group in a situation of special vulnerability due to her status as indigenous and as a girl, it had the obligation to carry out a serious and effective investigation to verify the facts and identify the perpetrators.

## CEDAW General Recommendation 39 [2022]:

Indigenous women impacted in all areas of life, including climate change:

They are heavily affected by existential threats connected to climate change, environmental degradation, the loss of biodiversity and barriers in gaining access to food and water security.[[65]](#footnote-65) Extractive activities carried out by business enterprises and other industrial, financial, public and private actors often have a devastating impact on the environment, air, land, waterways, oceans, territories and natural resources of Indigenous Peoples and may infringe the rights of Indigenous women and girls. Indigenous women and girls are at the forefront of the local, national and international demand and action for a clean, safe, healthy and sustainable environment. Many Indigenous women who are environmental human rights defenders face killings, harassment, criminalization and the ongoing discrediting of their work. States parties have an obligation to ensure that State actors and business enterprises take measures without delay to guarantee a clean, healthy and sustainable environment and planetary system, including the prevention of foreseeable loss and damage, socioeconomic and environmental violence

States parties also have an obligation to address the effects of colonialism, racism, assimilation policies, sexism, poverty, armed conflicts, militarization, forced displacement and the loss of territories, sexual violence as a tool of war, and other alarming human rights abuses frequently perpetrated against Indigenous women and girls and their communities.

The prohibition of discrimination under articles 1 and 2 of the Convention must be strictly applied to ensure the rights of Indigenous women and girls, including those living in voluntary isolation or initial contact, to self-determination and to access to and the integrity of their lands, territories and resources, culture and environment. The prohibition of discrimination should also be implemented to ensure their rights to effective and equal participation in decision-making and to consultation, in and through their own representative institutions, in order to obtain their free, prior and informed consent before the adoption and implementation of legislative or administrative measures that may affect them. This set of rights lays the foundation for a holistic understanding of the individual and collective rights of Indigenous women. The violation of any of these or related rights constitutes discrimination against Indigenous women and girls.

One of the root causes of discrimination against Indigenous women and girls is the lack of effective implementation of their rights to self-determination and autonomy and related guarantees, as manifested, inter alia, in their continued dispossession of their lands, territories and natural resources. The Committee acknowledges that the vital link between Indigenous women and their lands often forms the basis of their culture, identity, spirituality, ancestral knowledge and survival. Indigenous women face a lack of legal recognition of their rights to land and territories and wide gaps in the implementation of existing laws to protect their collective rights. Governments and third-party actors frequently carry out activities related to investment, infrastructure, development, conservation, climate change adaptation and mitigation initiatives, tourism, mining, logging and extraction without securing the effective participation and obtaining the consent of the Indigenous Peoples affected. The Committee has a broad understanding of the right of Indigenous women and girls to self-determination, including their ability to make autonomous, free and informed decisions concerning their life plans and health.

In its collective dimension, discrimination, together with gender-based violence, against Indigenous women and girls threatens and disrupts the spiritual life, connection with Mother Earth, cultural integrity and survival, and social fabric of Indigenous Peoples and communities. Discrimination and gender-based violence have a harmful effect on the continuance and preservation of the knowledge, cultures, views, identities and traditions of Indigenous Peoples. The failure to protect the rights to self-determination, collective security of tenure over ancestral lands and resources, and effective participation and consent of Indigenous women in all matters affecting them constitutes discrimination against them and their communities.

As indicated in the preamble to the Declaration, collective rights are indispensable for the existence, well-being and integral development of Indigenous Peoples, including Indigenous women and girls. The individual rights of Indigenous women and girls should never be neglected or violated in the pursuit of collective or group interests, as respect for both dimensions of their human rights is essential.[[66]](#footnote-66)

 Recommendation (h): Adopt effective measures to legally recognize and protect the lands, territories, natural resources, intellectual property, scientific, technical and Indigenous knowledge, genetic information and cultural heritage of Indigenous Peoples, and take steps to fully ensure respect for their rights to free, prior and informed consent; to self-determination of their own life plan; and to effective participation, in particular marginalized groups of Indigenous women and girls, such as those with disabilities, in decision-making on matters affecting them;

The Committee reiterates that the right of Indigenous Peoples to maintain their own judicial structures and systems is a fundamental component of their rights to autonomy and self-determination.[[67]](#footnote-67) At the same time, Indigenous justice systems and their practices should be consistent with international human rights standards, as indicated in the Declaration.[[68]](#footnote-68) Accordingly, the Committee considers the Convention an important reference for both non-Indigenous and Indigenous justice systems in addressing cases related to discrimination against Indigenous women and girls.

Indigenous justice systems should also be easily available, adequate and effective. Information on how to avail themselves of judicial avenues in both the non-Indigenous and Indigenous justice systems should be available to and disseminated among Indigenous women and girls. Basic judicial services and free legal aid services should be available in close proximity to Indigenous women and communities. States must adopt measures to ensure that Indigenous women know where to seek justice and that justice systems are accessible, fair and affordable.

Among justice officials, there is a dearth of training on the rights of Indigenous women and girls in their individual and collective dimensions. Indigenous women and girls also have limited access to specialized medical care when they suffer acts of rape and sexual violence.

States parties have a due diligence obligation to prevent, investigate and punish perpetrators and to provide reparations to Indigenous women and girls who are victims of gender-based violence. This obligation is applicable to both non‑Indigenous and Indigenous justice systems.[[69]](#footnote-69) Due diligence should be implemented with gender, intersectional, Indigenous women, intercultural and multidisciplinary perspectives, as defined in paragraphs 4 and 5, and bearing in mind the gendered causes and impacts of the violence experienced by Indigenous women.

42 (a) [recommendations]

1. Adopt and effectively implement legislation that prevents, prohibits and responds to gender-based violence against Indigenous women and girls, incorporating gender, intersectional, Indigenous women and girls, intercultural, and multidisciplinary perspectives, as defined in paragraphs 4 and 5. Legislation and its implementation should also adequately consider the life cycle of all Indigenous women and girls, including those with disabilities;

(c) Ensure that Indigenous women and girls have timely and effective access to both non-Indigenous and Indigenous justice systems, including protection orders and prevention mechanisms, when needed, and the effective investigation of cases of missing and murdered Indigenous women and girls, free from all forms of discrimination and bias;

Need resources for access to justice systems.

Need participation in political life of the state.

## Commission on the Status of Women resolutions

### 2022: resolution esp re: climate change (2022):

57. The Commission recognizes the important roles and contributions of indigenous women, rural women, women smallholder farmers and women who use coastal marine resources as agents in eradicating poverty and enhancing sustainable agricultural and fisheries development and food security, and as guardians of biodiversity. It highlights the importance of ensuring that the perspectives of all indigenous and rural women and girls are taken into account and that they fully and equally participate in the design, implementation, followup to and evaluation of policies and activities that affect their livelihoods, wellbeing and resilience.

## UN Women

UN-Women and others, *Breaking the Silence on Violence against Indigenous Girls, Adolescents and Young Women* (New York, 2013)*.*

## Developments under human rights treaty bodies

See analysis of treaty bodies claims and observations.

https://www.ohchr.org/en/calls-for-input/report-self-determination-under-un-declaration-rights-indigenous-peoples:[[70]](#footnote-70)

# Recommendations

Indigenous women to direct policy and law-makers in how best to eradicate violence against them: consent required.

Take into account understandings of equality and balance situated in Indigenous peoples’ understanding of the world and cosmologies: ensure that any assessment of Indigenous peoples’ laws is not biased by Western cultural ideology. We must train the state bureaucracy.

Must be part of a wider decolonisation strategy: greater self-determination.

Our Indigenous men must back to our core values such as basic principles of harmony, of cohesion, of protection of our mother earth etc.

Non-Indigenous people: don’t underestimate the power of socialisation of the wider community – legal sociologists have proven time and time again. Dismantling discrimination.

Finally, for our Indigenous women, solidarity. One of our most important roles is teaching our inherent worth to our children, our boys, our girls, our gender diverse people.

Kia kaha, kia maia, kia manawanui|Be strong, be brave, be steadfast.

1. New Zealand History “Māori land loss, 1860-2000” <<https://nzhistory.govt.nz/media/interactive/maori-land-1860-2000>>. [↑](#footnote-ref-1)
2. (20 August 2024) 777 NZPD (Questions to Ministers, Christopher Luxon). [↑](#footnote-ref-2)
3. Marcus Boomen “Where New Zealand stands internationally: A comparison of offence profiles and recidivism rate” (2018) 6(1) Practice – the New Zealand Corrections Journal 87 at 87. [↑](#footnote-ref-3)
4. Dwayne Mamo (ed) *The Indigenous World 2022* (36th ed, International Work Group for Indigenous Affairs, Denmark, 2022) at 575. [↑](#footnote-ref-4)
5. At 575. [↑](#footnote-ref-5)
6. At 575–576. [↑](#footnote-ref-6)
7. Statistics New Zealand “National and subnational period life tables: 2017-2019” (20 April 2021) <www.stats.govt.nz/information-releases/national-and-subnational-period-life-tables-2017-2019>. [↑](#footnote-ref-7)
8. Rebekah Graham and Bridgette Masters-Awatere “Experiences of Māori of Aotearoa New Zealand’s public health system: a systematic review of two decades of published qualitative research” (2020) 44(3) Australian and New Zealand Journal of Public Health 193. [↑](#footnote-ref-8)
9. *Māori in the Labour Market* (Ministry of Business, Innovation & Employment, September 2017) at iv. [↑](#footnote-ref-9)
10. [↑](#footnote-ref-10)
11. See for example New Zealand Public Service Association “Wāhine Māori members call out racism” (30 October 2021) <www.psa.org.nz/news-media/wahine-maori-members-call-out-racism>. Tāmati Kruger and others *Transforming Whānau Violence – A Conceptual Framework* (Second Māori Taskforce on Whānau Violence, September 2004) at 9. [↑](#footnote-ref-11)
12. Ani Mikaere “Māori Women: Caught in the Contradictions of a Colonised Reality” (1994) 2 WkoLawRw 125 at 127. [↑](#footnote-ref-12)
13. At 129–131. [↑](#footnote-ref-13)
14. *Evidence of Tina Ngata* (Waitangi Tribunal, Wai 2700, #A88, May 2022) at [54]. [↑](#footnote-ref-14)
15. Leah Whiu “A Maori Woman's Experience of Feminist Legal Education in Aotearoa” (1994) 2 WkoLawRw 161 at 164. [↑](#footnote-ref-15)
16. Mikaere, above n 9, at 149. [↑](#footnote-ref-16)
17. *Wāhine Māori, Wāhine Ora, Wāhine Kaha: preventing violence against Māori women* (Ministry for Women, February 2015) at 6. [↑](#footnote-ref-17)
18. *Brief of Evidence of Dr Moana Jackson* (Waitangi Tribunal, Wai 2700, #A85, May 2022) at [19]. [↑](#footnote-ref-18)
19. *Brief of Evidence of Merepeka Raukawa-Tait* (Waitangi Tribunal, Wai 2700, #A95, May 2022) at [10]. [↑](#footnote-ref-19)
20. *Brief of Evidence of Dr Moana Jackson*, above n 15, at [21]. [↑](#footnote-ref-20)
21. *Brief of Evidence of Mere Skerrett* (Waitangi Tribunal, Wai 2700, #A137, August 2022) at [25]. [↑](#footnote-ref-21)
22. Committee on the Elimination of Discrimination against Women *Concluding observations on the eighth periodic report of New Zealand* UN Doc CEDAW/C/NZL/CO/8 (25 July 2018) at [25(a)], [25(b)], [25(g)], [43], and [44]. [↑](#footnote-ref-22)
23. At [26(e)]. [↑](#footnote-ref-23)
24. United Nations Human Rights Council *Report of the Working Group on the Universal Periodic Review: New Zealand* UN Doc A/HRC/57/4 (11 June 2024). [↑](#footnote-ref-24)
25. At [132.170]. [↑](#footnote-ref-25)
26. At [132.171]. [↑](#footnote-ref-26)
27. At [132.172]. [↑](#footnote-ref-27)
28. At [132.174]. [↑](#footnote-ref-28)
29. At [132.175]. [↑](#footnote-ref-29)
30. At [132.176]. [↑](#footnote-ref-30)
31. At [132.177]. [↑](#footnote-ref-31)
32. At [132.178]. [↑](#footnote-ref-32)
33. At [132.180]. [↑](#footnote-ref-33)
34. At [132.185]. [↑](#footnote-ref-34)
35. At [132.186]. [↑](#footnote-ref-35)
36. At [132.196]. [↑](#footnote-ref-36)
37. At [132.241]. [↑](#footnote-ref-37)
38. At [132.27]. [↑](#footnote-ref-38)
39. At [132.28]. [↑](#footnote-ref-39)
40. At [132.29]. [↑](#footnote-ref-40)
41. At [132.30]. [↑](#footnote-ref-41)
42. At [132.31]. [↑](#footnote-ref-42)
43. At [132.32]. [↑](#footnote-ref-43)
44. At [132.33]. [↑](#footnote-ref-44)
45. *Wāhine Māori, Wāhine Ora, Wāhine Kaha*, above n 14, at 9. [↑](#footnote-ref-45)
46. At 21. [↑](#footnote-ref-46)
47. *Wi Parata v Bishop of Wellington* (1877) 3 NZ Jur (NS) SC 72. [↑](#footnote-ref-47)
48. *United Nations Declaration on the Rights of Indigenous Peoples* GA Res A/RES/61/295 (13 September 2007). [↑](#footnote-ref-48)
49. *McGirt v Oklahoma* 140 SC 2452 (US 2020. [↑](#footnote-ref-49)
50. *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families* 2024 SCC 5; Declaration on the Rights of Indigenous Peoples Act RSBC 2019 c 44; United Nations Declaration on the Rights of Indigenous Peoples Act RSC 2021 c 14. [↑](#footnote-ref-50)
51. International Covenant on Civil and Political Rights 999 UNTS 171 (signed 16 December 1966, entered into force 23 March 1976). [↑](#footnote-ref-51)
52. International Covenant on Economic, Social and Cultural Rights 993 UNTS 3 (signed 16 December 1966, entered into force 3 January 1976). [↑](#footnote-ref-52)
53. See Mikaere, above n 9. [↑](#footnote-ref-53)
54. AG/RES.2888 (XLVI-O/16) (15 June 2016). [↑](#footnote-ref-54)
55. United Nations Human Rights Council *Resolution adopted by the Human Rights Council on 1 July 2016* UN Doc A/HRC/RES/32/19 (19 July 2016). [↑](#footnote-ref-55)
56. United Nations Human Rights Council *Resolution adopted by the Human Rights Council on 30 September 2016* UN Doc A/HRC/RES/33/25 (5 October 2016). [↑](#footnote-ref-56)
57. SC Res 1325 (2000), [↑](#footnote-ref-57)
58. United Nations Permanent Forum on Indigenous Issues *Report on the fifteenth session* UN Doc E/2016/43-E/C.19/2016/11 (20 May 2016) at [56] and [57]. [↑](#footnote-ref-58)
59. United Nations Commission on the Status of Women *Interactive dialogue on the focus area: empowerment of indigenous women* UN Doc E/CN.6/2017/12 (20 March 2017). [↑](#footnote-ref-59)
60. *Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples* GA Res 69/2 (2014) at [19]. [↑](#footnote-ref-60)
61. United Nations Permanent Forum on Indigenous Issues *Report on the fourteenth session* UN Doc E/2015/43-E/C.19/2015/10 (1 May 2015) at [43]. [↑](#footnote-ref-61)
62. *Indigenous women: beyond the ten-year review of the Beijing Declaration and Platform for* Action ESC Res 49/7 (2005). [↑](#footnote-ref-62)
63. *Indigenous women: key actors in poverty and hunger eradication* ESC Res 56/4 (2012). [↑](#footnote-ref-63)
64. United Nations Human Rights Council *Violence against indigenous women and girls: Report of the Special Rapporteur on violence against women, its causes and consequences, Reem Alsalem* UN Doc A/HRC/50/26 (21 April 2022). [↑](#footnote-ref-64)
65. General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, paras. 1–9. [↑](#footnote-ref-65)
66. Committee on the Rights of the Child, general comment No. 11 (2009) on indigenous children and their rights under the Convention, para. 30. [↑](#footnote-ref-66)
67. United Nations Declaration on the Rights of Indigenous Peoples, art. 34; and general recommendation No. 33 (2015) on women’s access to justice, para. 5. [↑](#footnote-ref-67)
68. Article 34 of the Declaration provides that Indigenous Peoples have the right to promote, develop and maintain their 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. [↑](#footnote-ref-68)
69. Inter-American Commission on Human Rights, *Indigenous Women*, para. 230. See also general recommendation No. 33, para. 64. [↑](#footnote-ref-69)
70. Para 9: 9. The international history of self-determination is briefly described above. It is also recognized in the African Charter on Human and Peoples’ Rights and in the American Declaration on the Rights of Indigenous Peoples of 2016. Prior to the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights invoked common article 1 of the Covenants in cases relating to indigenous peoples and in their consideration of State party reports, mainly in the context of indigenous land rights, economic rights, the right to participation and indigenous institutions.9 However, the challenge for the Human Rights Committee’s jurisprudence is that cases are considered in the context of individual, as opposed to collective, rights. Recently, the Committee on the Elimination of Racial Discrimination recommended that a State party take steps towards the extraconstitutional recognition of indigenous peoples, including by implementing the fundamental right to self-determination of indigenous peoples and the establishment of shared governance.10 The Committee on the Elimination of Discrimination against Women has also recommended a constitutional amendment to recognize explicitly the rights of indigenous women, in particular their right to self-determination, in line with the United Nations Declaration on the Rights of Indigenous Peoples, and expressed its concern about the general lack of recognition of the right of indigenous peoples to self-determination in the State party concerned.11 The Inter-American Court of Human Rights has also underpinned indigenous people’s rights, though use of common article 1 of the Covenants in its interpretations of its judgments in cases on indigenous rights.12

Para: One of the hallmarks of Guna Yala is the prominent role of women in the local economy and the political sphere. Women have in the past served as community chiefs, and each community is required to include a woman in its delegation to the Guna General Congress, their highest authority. The Guna also recently elected a woman to represent them for the first time in the National Assembly of Panama in 2019.47

Para 40: Some indigenous peoples see the denial of their right to self-determination, frequently through lack of respect for treaty and other relationships, as a root cause of atrocities, such as residential schools, murdered and missing indigenous women and girls or stolen children, as well as the negative impacts on health, economic and social well-being and justice. Some suggest that lasting peace cannot be secured without the realization of self-determination and suggest increased self-determination as a means of moving towards achieving Sustainable Development Goal 16, with the objective of promoting inclusive and peaceful societies and reducing inequalities.88 Others point to the need to respect the right to self-determination as a crucial step towards reconciliation.89 [↑](#footnote-ref-70)