



Ensuring Public Services for Indigenous Peoples: Human Rights Standards



Policy Brief, December 2022



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Acronyms

ACHPR: African Commission on Human and Peoples' Rights

CEDAW Committee: Committee on the Elimination of Discrimination against Women

CERD Committee: Committee on the Elimination of Racial Discrimination

CESCR: Committee on Economic, Social and Cultural Rights

CRC Committee: Committee on the Rights of the Child

ESCR: Economic, social and cultural rights

GI-ESCR: Global Initiative for Economic, Social and Cultural Rights

HRC: Human Rights Committee

ICESCR: International Covenant on Economic, Social and Cultural Rights

ILO: International Labour Organisation

UN: United Nations

UPR: Universal Periodic Review

UNDRIP: United Nations Declaration on the Rights of Indigenous Peoples

UNGA: United Nations General Assembly

UPR: Universal Periodic Review

Executive summary

To realise the economic, social, and cultural rights of indigenous peoples, it is essential to guarantee their universal access to good quality public services, without marginalisation, discrimination, or exclusion. Doing so also reduces inequalities between indigenous and non-indigenous populations.

The Policy Brief begins by describing the criteria that have been developed over time by international and regional bodies for the promotion and protection of human rights, to identify indigenous peoples (Section I). Identifying indigenous peoples is crucial to guarantee their recognition by States and ensure specific safeguards. States' recognition of indigenous peoples allows them to enjoy the same human rights as non-indigenous populations, without discrimination, while those rights are interpreted and applied in ways that take account of their specific historical, cultural, and socio-economic circumstances.

Section II describes how public services have been considered a tool by which States can comply with their obligations to progressively fulfil economic, social and cultural rights; such as the rights to education, to the highest attainable standard of health, water and sanitation.

Section III systematises the requirements that public services should meet to comply with human rights standards. Over the years, human rights monitoring bodies, in particular United Nations treaty bodies and special procedures, have stressed that to meet the specific needs of indigenous peoples, public services should be **accessible, available, culturally appropriate, of good quality, gender-just, participatory, accountable, transparent, and evidence-based**.

The Brief examines that to ensure indigenous peoples' equal access to public services, States should remove procedural and institutional barriers that discourage them from accessing public services. It

explains that public services should be **economically affordable** and **physically accessible**. States must make public services **available** to all on an equal basis and without discrimination. States must make sure that public services cover the places that indigenous peoples inhabit, even when they are remote. They also need to provide information about these services in a culturally appropriate manner and in languages that indigenous peoples speak. They must mobilise the resources required to provide public services, in a manner that is transparent, equitable and meets needs. To overcome the inequalities between indigenous and non-indigenous populations, public services must be of high **quality**. Low-quality public services worsen the historical and systemic discrimination against indigenous peoples, further impeding realisation of their economic, social, and cultural rights.

Public services for indigenous peoples need to be **culturally appropriate**. This means that they need to be provided in ways that are relevant to, suitable for, and respectful of the culture and cultural rights of indigenous individuals and communities. The design, implementation, and evaluation of services essential for the realisation of rights such as education, health, water and sanitation, must genuinely consider the culture and values of indigenous peoples. Public services should also be **gender-just**.

To understand the specific disadvantages of indigenous peoples and to address their needs, it is critical to promote their effective and meaningful **participation**, and secure their free, prior, and informed consent, during the design, governance, and evaluation of public services. Indigenous peoples, and particularly indigenous women, must be empowered to actively participate in shaping and implementing measures that directly affect them.

States must also make sure that public services delivered to indigenous peoples are **accountable** and **transparent**. States must establish bodies to regulate and monitor human rights in the context of service delivery, and guarantee the transparency of public services.

Finally, public services should be **evidence-based**. Authorities that collect and disaggregate data, and monitor public services, are able to continuously improve the design and delivery of public services and evaluate the degree to which they meet the needs, and so assure the economic, social, and cultural rights of indigenous peoples.

Introduction

Ensuring that indigenous peoples have equal access to public services is essential to guarantee their enjoyment of economic, social and cultural rights on an equal footing with the rest of the population.

Worldwide, some 476 million individuals are members of indigenous peoples. This makes up approximately six per cent of the world's population.¹ Being among the world's most marginalised and disadvantaged groups, they compose 19 per cent of the world's poorest people and have an average lifespan some 20 years lower than non-indigenous people.²

Indigenous peoples often face health conditions that are more severe, their child mortality tends to be higher, and they have greater risk of having disabilities than non-indigenous populations.³ Indigenous peoples also tend to have lower education levels⁴ as well as lower access to water and sanitation services than the rest of the population.⁵

Indigenous peoples have distinct languages, histories, legal systems, and cultures; most have a deep relationship with their traditional lands and the environment.⁶ They possess or live on one-quarter of the world's surface but protect around 80 per cent of the world's biodiversity.⁷ They

also often share legacies of removal from traditional lands and territories, subjugation, destruction of their cultures, discrimination, and widespread violations of their human rights. Through centuries, they have suffered from the non-recognition of their own political and cultural institutions, and the integrity of their cultures has been undermined. Indigenous peoples are also harmfully impacted by development processes, which pose a grave threat to their continued existence.⁸

Increasingly public services are recognised as having both a legal and a direct impact on the enjoyment of economic, environmental, social, and cultural rights. United Nations (UN) and regional human rights monitoring bodies have made it clear that, to secure these rights, including for indigenous peoples, States have a duty to provide public services with specific characteristics, as will be examined in this Policy Brief.

Section I of this Brief explores the concept of indigenous peoples, as well as their right to non-discrimination and equality. Section II explores the applicable human rights norms and standards related to public services which States must comply with to progressively realise their populations' economic, social and cultural rights. To do so, it draws on GI-ESCR's 2020 and 2022 Policy Briefs, titled respectively 'States' Human Rights Obligations Regarding Public Services: The United Nations Normative Framework'⁹ and 'States' Human Rights Obligations Regarding Public Services essential for the enjoyment of Economic, Social, and Cultural Rights: The regional perspective'.¹⁰

Section III lays out the human rights requirements that public services must fulfil when serving indigenous peoples. These requirements have been developed by human rights monitoring bodies. The research has looked into the UN human rights monitoring mechanisms, including the Universal Periodic Review (UPR), a peer review mechanism of the Human Rights Council; treaty bodies, including the Committee on the Rights of the Child (CRC Committee), the Committee on the Elimination of Racial Discrimination (CERD Committee), the Committee on the Elimination of Discrimination against Women (CEDAW Committee), and the Committee on Economic, Social and Cultural Rights (CESCR); as well as Special Procedures of the Human Rights Council (i.e., Special Rapporteurs, Independent Experts and Working Groups). It has also delved into the standards developed at the regional level, in particular by the African Commission on Human and Peoples' Rights (ACHPR).

After short final remarks (Section IV), the Brief explains the methodology used (Section V).

I. Who are indigenous peoples?

Historically, indigenous peoples have suffered from definitions that have been imposed on them by others. They have therefore asked societies and institutions to respect the desire and right of each person to define itself.¹¹ Rather than seeking a strict legal definition, indigenous peoples prefer an approach that identifies rather than defines them.¹² Reflecting this, the Indigenous and Tribal Peoples Convention 169 of the International Labour Organisation (ILO) characterised indigenous and tribal peoples in terms of:

[...] their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.¹³

Under human rights law, self-identification is a critical criterion for determining groups that are to be considered indigenous. According to ILO Convention 169: “self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply”.¹⁴ The former UN Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, Mr. Martínez Cobo, adopted a similar stance in his ‘Study of the problem of Discrimination against Indigenous Populations’:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their

ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.¹⁵

At the regional level, the Working Group on Indigenous Populations/Communities in Africa¹⁶, a body of the African Commission on Human and Peoples' Rights (ACHPR), has added criteria to identify indigenous peoples that rely less "on the early definitions focussing on aboriginality".¹⁷ They emphasise:

(1) Self-definition as indigenous and distinctly different from other groups within a state.

(2) A special attachment to and use of their traditional land whereby their ancestral land and territory has a fundamental importance for their collective physical and cultural survival as peoples.

(3) An experience of subjugation, marginalization, dispossession, exclusion or discrimination because of their different cultures, ways of life or modes of production than the dominant model.¹⁸

The human rights framework requires States to recognise these populations and realise their economic, social, and cultural rights on the same footing as other populations. The CERD Committee has reminded States of their obligation to "[r]ecognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation".¹⁹

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states in Article 1 that "indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law". According to the United Nations

Special Rapporteur on the rights of indigenous peoples, “[f]rom this perspective, all general human rights principles and norms apply equally to indigenous peoples, and are to be interpreted and applied with regard to the specific historical, cultural, social and economic circumstances of these peoples”.²⁰

The CESCR has affirmed that States parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) have an obligation to promote, respect and guarantee to indigenous peoples the rights to education,²¹ water,²² adequate housing,²³ adequate food,²⁴ and the highest attainable standard of health,²⁵ among other rights.

In addition, discrimination with respect to the rights of indigenous peoples, or on the grounds of their indigenous origin or identity, is prohibited. The prohibition protects indigenous peoples both from direct discrimination (as when an indigenous person or group is treated less favourably than a non-indigenous person or group) and from indirect discrimination (as when laws, policies or practices that appear neutral disproportionately harm the ability of an indigenous person or group to exercise their rights on the same footing as others).²⁶

Under human rights law,²⁷ when States apply the principle of non-discrimination in law and practice, they are obliged to consider the specific characteristics of indigenous peoples.²⁸ In particular, States have a duty to remedy historic discrimination as well as contemporary inequalities that indigenous peoples face, by adopting special measures to ensure that they are able to enjoy all their human rights.²⁹ Special measures in favour of indigenous peoples are not deemed to discriminate against non-indigenous members of the population because they address the disadvantages of indigenous peoples, their historic experiences of marginalisation and discrimination, and continuing human rights violations that disproportionately affect them.³⁰

According to ILO Convention 169, States have the duty to adopt appropriate special measures “for safeguarding the persons,

institutions, property, labour, cultures and environment of the peoples concerned".³¹ The CRC Committee has noted that indigenous children may require positive measures to eliminate conditions that cause discrimination and to ensure that they can enjoy their rights on the same footing as other children.³² To ensure that such special measures are aligned with international human rights obligations, they should:

- i. have an objective and reasonable justification;
- ii. pursue a legitimate aim under human rights law;
- iii. have a reasonable relationship of proportionality between the means employed and the aim sought to be realised;
- iv. be temporary and halted after their objectives have been achieved.³³

Special measures that comply with the above are not considered discriminatory and do not infringe principles of equality and non-discrimination.

II. What human rights norms and standards apply to public services?

To realise human rights, notably economic, social and cultural rights, States are legally obliged to give their populations universal access to public services of good quality, without marginalisation, discrimination, or exclusion.³⁴ To comply with their obligations to progressively realise the rights to education, health, water and sanitation and other socioeconomic rights of indigenous peoples, States must provide public services that are culturally appropriate, accessible, and of good quality.

GI-ESCR's 2020 Policy Brief, 'States' Human Rights Obligations Regarding Public Services: The United Nations Normative Framework', explains that:

Public services have commonly traditionally been conceived of as services that are owned, managed and delivered by the State. A broader understanding than the State-focused paradigm posits that 'public services', from a human rights perspective, are services that are managed by the people, with the recognition of the State, in the interests of the people, and that they are not driven by any commercial or profit-making pursuit or purpose.³⁵

At the regional level, the African Commission on Human and Peoples' Rights (ACHPR) has stated that the term 'public' is:

[L]ess concerned with the public nature of the entity delivering the services, than with the practical modalities of *how* the service is delivered, and to what standards the service provider is held to account. In this understanding, public provision of social services is distinctive in that it allows for the equal and democratic involvement of all members of the community or society in their design, organisation, governance, financing,

delivery, and monitoring of social services, in the exclusive pursuit of the public interest. As a result, publicly delivered social services must be able to take a long-term perspective and must be democratically accountable to the public, as opposed to commercial actors and their shareholders and investors which typically respond to a range of private interests.³⁶

This broader conception of public includes, for example, a school established and run by indigenous communities for the benefit of local children, which enjoys State recognition as a public educational institution and has no profitable objective. For instance, on education, the UNDRIP recognises the right of indigenous communities and families to retain shared responsibility for education of their children, consistent with the rights of the child. Article 14 of the UNDRIP states:

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with Indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Even though UN standards have not addressed this issue in depth,³⁷ the central role of indigenous community services in the provision of public services has been recognised.³⁸ For example, the CESCR in 2018 recommended that a State party to the ICESCR should “[...]increase its investment in customary [...] [indigenous] public health systems[...]”.³⁹

Nevertheless, in all cases the State remains the duty-bearer for public services under human rights law.⁴⁰ UN human rights bodies

and experts have identified not just the State's obligation to provide services, but its duty to organise, fund, manage, and deliver them,⁴¹ in particular to realise the economic, social and cultural rights of indigenous peoples.

III. What requirements must public services fulfil for indigenous peoples?

This section analyses the characteristics that public services should possess if they are to help realise the economic, social, and cultural rights of indigenous peoples. Each sub-section covers a challenge that indigenous peoples face, makes recommendations to address that challenge, and indicates the required qualities that public services must achieve. The sub-sections focus on education, health, water and sanitation, and public services in general. Due to lack of existing standards it has not been possible to discuss water and sanitation in every sub-section.

An analysis of existing human rights norms and standards suggests that public services for indigenous peoples should be:

a) Accessible

Article 24 of the UNDRIP states that “[i]ndigenous individuals have the right to access, without any discrimination, to all social and health services”. The recommendations of numerous human rights monitoring bodies have confirmed this obligation.⁴² For instance, the CRC Committee has emphasised that children belonging to indigenous communities should have equal access to public services.⁴³ Examining the country report of Rwanda, the CRC Committee has recommended, for example, that the State should combat discrimination against Batwa children and ensure they have full and equal access to government services, including education and healthcare.⁴⁴

To ensure accessibility, States must actively remove barriers that prevent indigenous peoples from accessing public services. For example, lack of a national identity card or birth registration is

one of the most important procedural barriers⁴⁵ impeding access to education, health, and other public services. This problem disproportionately affects members of indigenous communities.⁴⁶ According to the CRC Committee:

States parties are obliged to ensure that all children are registered immediately after birth and that they acquire a nationality. Birth registration should be free and universally accessible. The Committee is concerned that indigenous children, to a greater extent than non-indigenous children, remain without birth registration and at a higher risk of being stateless.⁴⁷

In 2009, in a report on Malaysia, the Special Rapporteur on the right to education noted that lack of birth registrations also impeded the access of indigenous peoples to education.⁴⁸

Regarding identity documents, human rights bodies often emphasise that States must improve national registration and identification systems, particularly for the most disadvantaged populations, including indigenous peoples.⁴⁹ They note that strict requirements often exclude such populations from obtaining registration.⁵⁰ In the UPR process, for example, Guatemala was recommended to “ensure free, universal birth registration and provide all children born in the territory, particularly those born in indigenous communities, with a birth certificate”.⁵¹ Ensuring registration demands high-level political commitment and close cooperation between public service authorities and national registries.⁵² It is also vital to set resources aside to tackle political, administrative, legislative, economic, geographic, and other barriers that make it difficult for indigenous peoples to obtain identity cards.⁵³

States also need to take action to root out discrimination and institutional stigma by public service providers.⁵⁴ In 2012, the CRC Committee called on Canada to take immediate steps to ensure that aboriginal children have full access to all government services without discrimination.⁵⁵ In 2013, the CESCR requested Rwanda to

“[a]dopt all necessary measures to combat all forms of discrimination faced by Batwa children and take immediate steps to ensure that in law and practice, Batwa children have full and equal access to education, [...] health care and all other government services without discrimination”.⁵⁶

With respect to health, a study by the Expert Mechanism on the Rights of Indigenous Peoples⁵⁷ found that:

Indigenous peoples are very likely to experience discrimination when accessing health-care facilities, goods, and services. Doctors, nurses, and other health-care professionals may refuse to treat indigenous peoples or indigenous peoples undergoing treatment may encounter discriminatory beliefs, practices and experiences, fuelling fear and distrust that further discourages use of health-care facilities.⁵⁸

Access to information is also critical. States must provide sufficient information on how to fulfil economic, social, and cultural rights in languages that are spoken by indigenous communities.⁵⁹ The CESCR has emphasised, for instance, that “information about public services and goods, for example, should also be available, as far as possible, in languages spoken by minorities”.⁶⁰ In this regard, for example, the Special Rapporteur on minority issues recommended to Sri Lanka to “consider establishing a system of bilingual community liaison officers, to be placed in every public institution, including provincial administrations, police forces, education and health facilities and the armed forces, among others, to help overcome language barriers and to form a bridge between their respective communities and State institutions”.⁶¹ In similar terms, the Special Rapporteur on the rights of indigenous peoples observed that “[a]ll medical professionals should be provided with comprehensive, culturally appropriate medical training, and health services in the language of the community should always be available”.⁶²

When States implement their economic, social and cultural rights’ obligations, they also have a duty to ensure that services are

economically and physically accessible.⁶³

Economic accessibility (affordability) is a challenge for many indigenous peoples because they are among the world's most marginalised, and disadvantaged populations. In countries that do not guarantee universal access to public services, access may not be affordable.⁶⁴ Therefore, it is essential to ensure universal access to education, health, water and sanitation, and other essential public services.

Physical accessibility is also an important issue, notably for indigenous peoples that live in geographically isolated areas.⁶⁵ This issue is addressed in more detail in the next section.

b) Available

Public services are the tools States have to realise the rights to education, health, water and sanitation, and other rights. Thus, public services should be made available to all persons on equal terms and without discrimination.⁶⁶ To ensure that indigenous peoples can enjoy their economic, social, and cultural rights, States should provide public services to residents of remote areas, where most indigenous peoples live.⁶⁷

States have a duty to allocate sufficient funding to ensure the provision of adequate public services for all,⁶⁸ and to “overcome the wide disparities”⁶⁹ between indigenous peoples and other groups in society. This implies a fairer distribution of public resources, particularly in indigenous areas, to reduce inequalities of availability.⁷⁰ To this end, States must “make evidence-based, per capita allocations for different groups, disaggregated by age, social and economic status, geography, ethnicity, income, gender, disability, and other grounds”.⁷¹

The Special Rapporteur on the rights of indigenous peoples has highlighted the importance of investing more effort and resources to narrow “the gap between indigenous peoples and other [... persons]

in terms of access to education, health and economic development”.⁷² At the regional level, a 2022 General Comment by the ACHPR notes:

The obligation to provide public social services cannot be realised without sufficient resources being mobilised, allocated and spent in an accountable, effective, efficient, equitable, participatory, transparent and sustainable manner.⁷³

In accordance with international human rights obligations, States should ensure that education is available to all,⁷⁴ and that indigenous populations enjoy the same educational opportunities as other groups.⁷⁵ Resources should be made transparently available for bilingual intercultural education,⁷⁶ on a scale sufficient to cover teaching and learning materials, infrastructure, and teachers’ salaries.⁷⁷ Budgets for the education of indigenous children should be established, and protected through emergencies, economic crises, and natural disasters.⁷⁸ States should not only support educational institutions for indigenous populations but programme their extension.⁷⁹ To improve the availability of education services to indigenous populations, it is critical to consult them and encourage their participation.⁸⁰

With respect to healthcare, “governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health”.⁸¹ To extend health coverage to places where indigenous populations live, it is necessary to make available, and properly resource, infrastructure, staff, and equipment.⁸² The CEDAW Committee has advised each State to “allocate sufficient human and financial resources to ensure that basic health services are provided throughout its territory, in isolated indigenous communities”.⁸³ The Special Rapporteur on the rights of indigenous peoples has recommended that “[t]he health services for indigenous communities should be expanded and adequately funded so that they fully meet the needs of the whole indigenous population”.⁸⁴

Indigenous peoples are entitled to enjoy the same services as the rest of the population, including water and sanitation services.⁸⁵

c) Culturally appropriate

States are obliged to ensure that the provision of public services is adequate, acceptable, and culturally appropriate, to comply with the right to health, education, water, and other rights for indigenous and non-indigenous populations.⁸⁶ Appropriateness “refers to the realization of a specific human right in a way that is pertinent and suitable to a given cultural modality or context, that is, respectful of the culture and cultural rights of individuals and communities, including minorities and Indigenous peoples”.⁸⁷

Human rights monitoring bodies have also stressed the need to adopt positive measures to ensure access to public services. States have a duty “to consider the application of special measures in order to ensure that indigenous children have access to culturally appropriate services in the areas of health, nutrition, education, recreation and sports, social services, housing, sanitation, and juvenile justice”.⁸⁸ States must evaluate how public services are provided to make sure they do not have a negative impact on the cultural life and diversity of indigenous peoples.⁸⁹

The Special Rapporteur on the rights of indigenous peoples has observed that “lack of genuine cultural sensitivity in the development, design, and implementation of education programmes” is a major challenge.⁹⁰ To tackle this issue, it is vital to ensure that teachers of indigenous children are recruited from within indigenous communities and given necessary training and support.⁹¹ Curricula should respect and reflect indigenous cultures, history, values, aspirations, and knowledge, and ensure their preservation and transmission:⁹²

[T]he cultural diversity of the country is reflected in the curriculum and the preservation and promotion of cultural diversity become an objective compatible with democratic

governance and the enjoyment of human rights by all. In some cases, this approach will require the revision of traditional ideas held by majority or dominant cultural groups about national culture and identity. Indigenous peoples' organisations often need to remind the world that their own cultural specificities are also contributions to a universal culture and not mere relics of a disappearing past.⁹³

Indigenous languages should be respected, promoted, and preserved through education.⁹⁴ According to Article 28 of ILO Convention 169:

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.
2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.
3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.⁹⁵

Special Procedures of the UN Human Rights Council have stressed that States have an obligation to ensure that indigenous peoples are taught and learn in their mother tongue, in addition to official languages.⁹⁶ They have noted that bilingual education is essential.⁹⁷ To achieve bilingual education, States must recruit and train indigenous teachers in both bilingual and multicultural education.⁹⁸ They should also develop appropriate teaching materials and methods; involve indigenous communities; and secure their free, prior and informed consent to the design and implementation of education programmes.⁹⁹

With respect to health, the UNDRIP states that "Indigenous peoples have the right to their traditional medicines and to maintain their

health practices, including the conservation of their vital medicinal plants, animals, and minerals".¹⁰⁰ In many instances, however, health services are not adequate, acceptable or culturally appropriate for indigenous communities, because they ignore indigenous customs, tolerate discriminatory attitudes and practices by public health workers, and do not remove the linguistic barriers between health professionals and indigenous communities.¹⁰¹ The Special Rapporteur on the rights of indigenous peoples has emphasised "the need to enhance the understanding of and respect for traditional medicine, which continues to be practised among indigenous communities".¹⁰²

To incorporate traditional medical practices in public healthcare, authorities need to consult indigenous peoples; ensure that healthcare workers receive comprehensive and culturally appropriate medical training; and recruit and train members of indigenous communities.¹⁰³ In parallel, they should improve the availability, accessibility, and quality of professional interpretation services in the medical field, and ensure that "public service professionals receive information and guidance on how to hire and work with qualified interpreters".¹⁰⁴ It is possible to create an intercultural health system in which indigenous traditional medicinal practices are respected, implemented, promoted and preserved.¹⁰⁵

At the regional level, for example, States members of the Pan American World Health Organization have agreed to advance the health of indigenous peoples by, inter alia, promoting the training, education and leadership development of indigenous healers, and their incorporation in the health system formally, where appropriate. They have also agreed on promoting the incorporation of the intercultural approach in the curricula of all training and degree programs in health areas and related fields, as well as its implementation in all health institutions.¹⁰⁶

d) Of good quality

Human rights standards require States to take measures to improve the quality of public services, for the benefit of every user¹⁰⁷ and

indigenous peoples in particular. When indigenous peoples receive poor quality public services, their historical disadvantages are yet more deeply entrenched. States must commit to improving the quality of public services that indigenous peoples are offered.¹⁰⁸

In many cases, indigenous children and particularly indigenous girls are offered education of inferior quality compared to non-indigenous children. It is recognised that this is “one of the biggest factors contributing to the disadvantaged position of indigenous peoples”.¹⁰⁹ The Special Rapporteur on the rights of indigenous peoples has stated that “[i]ndigenous education must urgently be improved in both quantity and quality. Indigenous people require not merely education, but education which is suited to their specific cultural and social characteristics.”¹¹⁰

Indigenous peoples are also entitled to health services of good quality.¹¹¹ Health facilities must be available, accessible, and in good condition, even in the most remote areas. They must respect sanitary requirements. They must be adequately staffed by qualified personnel.¹¹²

e) Gender-just

Public services serving indigenous peoples should be gender-just and responsive. States must consider the needs of indigenous women and girls to ensure that they are able to benefit from public services on an equal basis without discrimination. Programmes and policies that “are neutral to existing socio-cultural norms would not only fail to ensure compliance with the principles of equality and non-discrimination, but they could also perpetuate gender disadvantages, reduce the participation of women, or increase their marginalization”.¹¹³

When developing gender-just public services, one significant challenge is “often a reluctance to address the gender dimensions of Indigenous Peoples’ issues, as doing so is seen as ‘interfering with culture’ or ‘imposing western values’”.¹¹⁴ The UNDRIP stated that:

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with Indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.¹¹⁵

Public services should be designed to improve the human rights situation of indigenous women and girls.¹¹⁶ States must address structural problems that prevent them from accessing their rights.¹¹⁷ Indigenous traditions and cultures that are founded in discriminatory beliefs or practices against women (for example, practices that prevent girls from obtaining an education or women from participating in decision-making) must be analysed from the perspective of the rights of indigenous women, while ensuring that discrimination is eliminated.¹¹⁸

CEDAW Committee has called on States to “strengthen the gender-sensitive and intercultural approach to the provision of health services, including by adequately developing the capacity of health personnel”.¹¹⁹

The Special Rapporteur on the human rights to safe drinking water and sanitation has stated that “it is necessary to specifically identify and address the differentiated needs and capacities of women in all social and cultural contexts, including those of indigenous peoples”.¹²⁰ Gender stereotypes and stigma that gravely affect the realisation of the human rights of indigenous women and girls to water and sanitation (for instance, taboos in relation to menstruation and childbirth) must also be addressed.¹²¹

To ensure gender-just public services, indigenous women must be empowered to fully participate in discussions and decision-making processes related to their design, implementation, and monitoring.¹²² Indigenous women’s initiatives should also be supported.¹²³ To make

sure that indigenous women and girls have access to and benefit from public services, authorities must collect sufficient and relevant data, set strategies that include measurable indicators, and assess progress.¹²⁴

f) Participatory

To realise the economic, social and cultural rights of indigenous peoples, and particularly indigenous women, they must be consulted, must meaningfully participate in decision-making processes, and must be able to exercise their right to self-determination.¹²⁵

The UNDRIP recognised that “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”¹²⁶ The right to self-determination is a collective right that indigenous peoples must be able to exercise in accordance with principles of justice, respect for human rights, equality, non-discrimination, good governance, democracy, and good faith.¹²⁷ The right is universal, inalienable, and indivisible.¹²⁸ In its absence, indigenous peoples cannot fully enjoy other collective and individual human rights. For this reason, it is considered a “foundational” right. Where indigenous peoples are in a position to exercise self-determination, it strengthens a country’s democracy and respect for diversity.¹²⁹

When indigenous peoples participate effectively and meaningfully in the design, governance, and evaluation of public services, these address their needs better and take account of their specific challenges. The Special Rapporteur on the rights of indigenous peoples has noted that, “when [indigenous peoples] make their own decisions about what approaches to take and what resources to develop, they consistently out-perform [non-indigenous] decision-makers”.¹³⁰ The same Special Rapporteur urged Australia to give indigenous populations more power to determine the design and delivery of public services in their communities.¹³¹

Human rights standards are very explicit regarding the fact that indigenous peoples must be empowered to participate freely at all levels in the design, implementation and evaluation of measures that affect them.¹³² States must introduce affirmative action measures that enable indigenous peoples to participate and address potential asymmetries in their relationships with public officials.¹³³ For this to happen, it is vital “to assist them to develop the capacity to effectively exercise that power [decision-making power]”.¹³⁴

Participation should also be understood in relation to consultation, since the two are highly interconnected. In this regard the ILO has explained.

[I]ndigenous peoples should not only respond and be able to influence externally initiated proposals, but should actively participate and propose measures, programmes and activities that shape their development. Participation implies going further than mere consultation and should lead to concrete ownership of initiatives by indigenous peoples. In this sense, the intertwined concepts of consultation and participation are the mechanisms to ensure that indigenous peoples can decide their own priorities for the process of development and exercise control over their own economic, social and cultural development, as stipulated in Article 7(1) of the Convention.¹³⁵

Article 19 of the UNDRIP explains: “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them”. Consultation with indigenous peoples is described as a context-dependent process that should follow appropriate procedures to create a favourable environment to achieve consent.¹³⁶ All consultations must be guided by the principle of good faith.¹³⁷ Overall, the aim of consultation should be to achieve free, prior, and informed consent¹³⁸ with respect to a proposed measure or subject.¹³⁹

With respect to the right to education of indigenous peoples, ILO Convention 169 recognised that “[e]ducation programmes for indigenous peoples shall be developed and implemented in cooperation with them to address their specific needs”.¹⁴⁰ States must enable indigenous peoples to participate effectively throughout the policy-making cycle –from the design of educational programmes and policies to their implementation and evaluation– to ensure that their specific needs are taken into account.¹⁴¹

To improve the accessibility, availability, quality, gender-responsiveness, and cultural appropriateness of education provided to indigenous peoples, indigenous communities must be consulted and able to participate.¹⁴² States must also ensure that educational institutions are available to indigenous peoples, and prepare and implement plans to extend such facilities.¹⁴³ Effective participation of indigenous peoples in health policy is required to incorporate traditional health practices in public health services successfully.¹⁴⁴

Indigenous peoples also have the right “to free, prior and informed consent, when formulating, adopting, implementing and monitoring legislative and administrative measures, policies, programmes and projects involving their lands, territories, resources or aquatic ecosystems that may directly or indirectly affect their human rights to safe drinking water and sanitation”.¹⁴⁵

g) Accountable and transparent

The UNDRIP stated that “Indigenous peoples have the right to determine the responsibilities of individuals to their communities”.¹⁴⁶ It recognised that:

Indigenous peoples have the right to have access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration

to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.¹⁴⁷

ILO Convention 169 specified that governmental authorities responsible for matters addressed by the Convention “shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them”.¹⁴⁸

States must also establish regulatory bodies or mechanisms to guarantee that public services respect human rights,¹⁴⁹ including in the education¹⁵⁰ and public health sectors.¹⁵¹ At the regional level, the ACHPR General Comment 7 indicated that States must draft precise national strategies for the provision of social services¹⁵² that include safeguards and accountability mechanisms to address any unreasonable delays.¹⁵³ Moreover, to ensure accountability, monitoring and oversight mechanisms should “prevent, mitigate, investigate, punish, and remedy any human rights abuses linked to the entities providing social services”.¹⁵⁴

With respect to public health services in particular, the Expert Mechanism on the Rights of Indigenous Peoples has noted that “States should ensure that adequate mechanisms exist for the provision of redress and remedy in cases of infringements of the right to health, through mainstream or indigenous juridical systems (A/HRC/27/65), which may have certain advantages in respect of the resolution of complaints”.¹⁵⁵

States should also take specific measures to ensure that public services are transparent.¹⁵⁶ At the regional level, the ACHPR “has recognised that allocating, mobilising and spending resources in a transparent manner is essential to the obligation to provide public social services”.¹⁵⁷ Overall, transparency is a key asset, both for the development of regulatory standards and to ensure meaningful participation of populations in public service decisions.¹⁵⁸

Transparency requires the provision of sufficient, accessible, and culturally adequate information about services. Indigenous peoples should be able to receive information without difficulties. To prevent discrimination, information should be made available in languages spoken by indigenous peoples and other minorities.¹⁵⁹

h) Evidence-based

Human rights standards require States to collect data on indigenous peoples to make them visible in national statistics and information systems. Collecting data on indigenous peoples is essential if States are to respond to their needs and priorities, monitor the impact of their interventions, and assess the provision of public services.¹⁶⁰ Data collection on indigenous peoples is strongly linked to their recognition and identification.

In many contexts, “the specific situation of indigenous peoples, as well as differences between and within indigenous communities, is invisible in national statistics. This makes it difficult to accurately monitor the effects of state interventions addressing indigenous peoples and leaves policymakers without necessary information for developing policies and programmes”.¹⁶¹

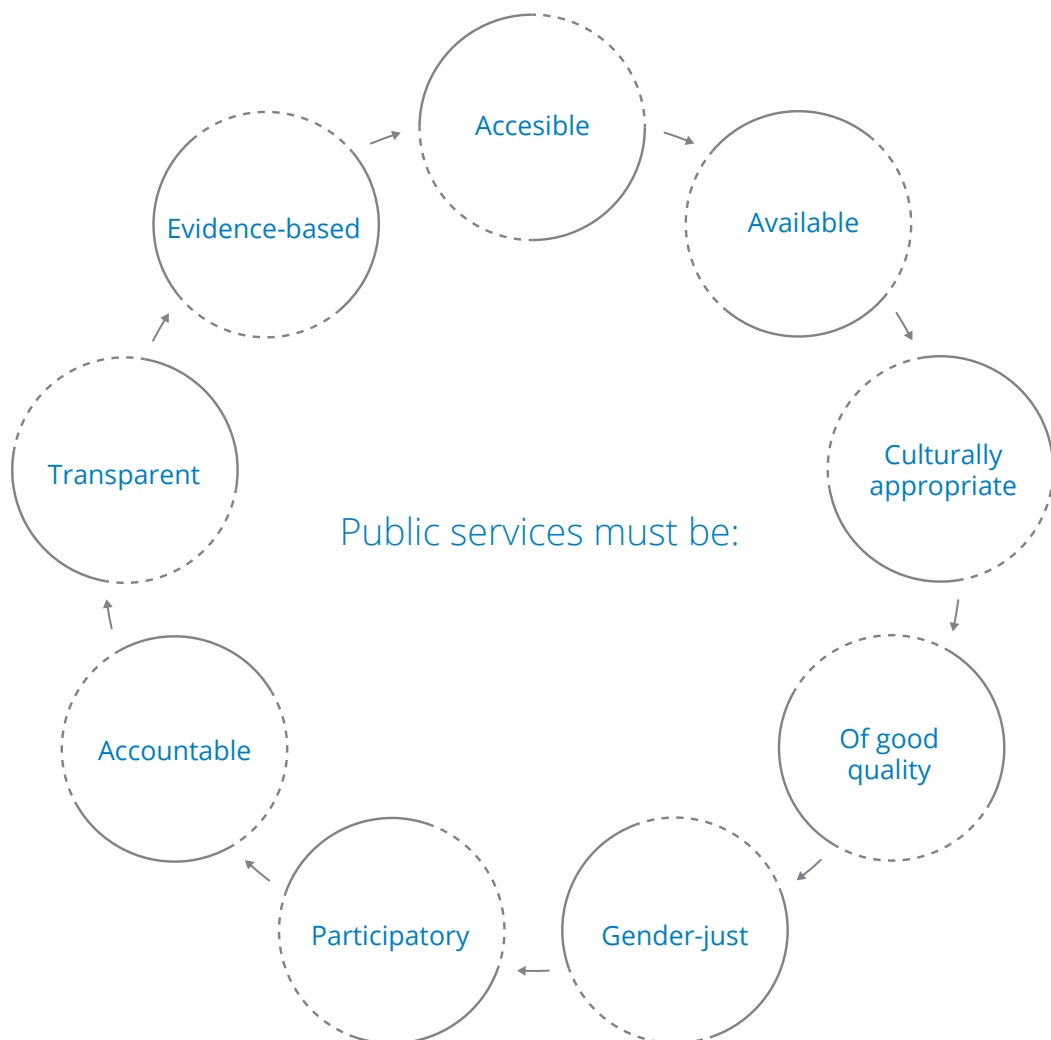
Several challenges arise in relation to the collection and disaggregation of data on indigenous peoples. They include: “[c]ontroversy over definitions or terminology; fluidity of ethnic identity; migration, conflicts and wars; lack of legal provisions/political acceptance; lack of understanding of the importance of disaggregated data; weak national capacity for data collection, analysis and disaggregation; resistance from indigenous peoples if they are not themselves in control of data collection”.¹⁶² States should actively and consensually¹⁶³ involve indigenous peoples in data collection and monitoring.¹⁶⁴ Research shows that dialogue with indigenous peoples can overcome many of the challenges of data collection, thereby deepening understanding and respect for their identities and needs.¹⁶⁵ To provide an evidence base for evaluation, data should be disaggregated by ethnic group

and indigenous people, sex, socioeconomic situation, geographic location, and representation in education, health, and other public services.¹⁶⁶

States are obliged to collect comprehensive, disaggregated, and reliable data because, if they do not do so, it is impossible to monitor the quality of public services, respond to users' complaints, identify and address challenges, or determine demographic coverage.¹⁶⁷ It is equally essential to establish specific indicators, because in their absence it is not possible to assess the degree to which indigenous peoples enjoy their economic, social and cultural rights, or the public services to which they are entitled.¹⁶⁸ Indicators also help to detect the presence of discrimination, inequality, and exclusion with respect to public services, and enable evidence-based comparisons to be made between the experiences of indigenous and non-indigenous populations.¹⁶⁹

IV. Final remarks

The analysis of existing standards developed by human rights monitoring bodies shows that guaranteeing universal access to good quality public services, without discrimination is fundamental to the realisation of human rights. To ensure indigenous peoples are able to enjoy their economic, social, and cultural rights, public services should have certain characteristics:



1

Accessible

States must ensure accessible public services for indigenous peoples. States should remove procedural barriers; prohibit institutional stigma; make information available and ensure physical and economic accessibility.

2

Available

States must make sure that public services cover all the places in which indigenous peoples live. States must make information that is accessible and culturally appropriate available to all indigenous peoples, in languages they speak. They must mobilise and allocate, equitably, sufficient resources to fund public services.

3

Culturally appropriate

States must guarantee that public services meet users' needs, be acceptable to them, and respect their culture. The design, development, and implementation of public services must genuinely consider the culture of indigenous peoples.

4

Of good quality

States must take measures to improve the quality of public services serving indigenous peoples. This is particularly important as public services of low quality deepen indigenous peoples' disadvantaged position and obstruct their ability to realise their economic, social, and cultural rights.

6

Gender-just

States must ensure that public services serving indigenous peoples are gender-just and responsive. States must consider the needs of indigenous women and girls to ensure that they are able to benefit from public services on an equal basis without discrimination.

7

Participatory

States must ensure that indigenous peoples are consulted about public services and can participate in their design, governance, and evaluation.

8

Accountable and transparent

States should establish regulatory bodies and monitoring mechanisms to evaluate the provision of public services to indigenous peoples transparently.

9

Evidence-based

States should collect, disaggregate, and evaluate data on the quality and distribution of public services, and use the information to improve their design.

Public services that have these qualities can help to reduce the inequality between indigenous and non-indigenous populations. Moreover, to realise the economic, social, and cultural rights of indigenous peoples without discrimination, States must recognise that indigenous communities exist. They should subsequently recognise the specific historical, cultural, social, and economic circumstances of indigenous peoples when they interpret and apply their human rights obligations. Where necessary, they should adopt special measures to address specific disadvantages faced by indigenous peoples, caused by their historical and contemporary experiences of discrimination, marginalisation, and human rights violations.

Finally, the analysis also showed that standards regarding public services for indigenous peoples are uneven. While human rights monitoring bodies have developed sufficient standards regarding services related to education and health, there are few standards developed regarding other public services, including water and sanitation. Human rights monitoring bodies and institutions should remedy this gap.

They should further develop their monitoring work to ensure they take into account the needs of indigenous peoples in their recommendations and assessments of the States' compliance with their human rights obligations. They should also further develop intersectional discrimination analysis when dealing with indigenous peoples. Indigenous peoples often encounter multiple grounds of discrimination which simultaneously interact in an inseparable manner, producing distinct and specific forms of discrimination.

Such work should be complemented by additional research undertaken in alliance with indigenous peoples and other stakeholders to further advance the enjoyment of economic, social, cultural, and environmental rights of indigenous peoples.

V. Methodology

To develop this Policy Brief we analysed international human rights instruments, i.e. treaties, declarations, and general comments, as well as the human rights standards developed by United Nations and regional human rights monitoring bodies that refer specifically to public services for indigenous peoples.

The research of this Policy Brief is based on three repositories from GI-ESCR that gathered information from reports of UN human rights mechanisms and bodies available at the Universal Human Rights Index (<https://uhri.ohchr.org/en/>).

GI-ESCR created the first repository for the preparation of its 2020 Policy Brief 'States' Human Rights Obligations Regarding Public Services: The United Nations Normative Framework'.¹⁷⁰ The repository includes concluding observations of UN human rights treaty bodies, country and thematic reports of UN special procedures, and reports of the Universal Periodic Review between 2002 and 2020 regarding public services. It also collected important information regarding public services and indigenous peoples in particular, which is why this repository was mobilised during the analysis for this Policy Brief.

GI-ESCR created the second repository employed for this Brief to collect standards, conclusions and recommendations made from 2002 to 2020 by UN special procedures regarding public services and indigenous peoples.

A third repository covers the concluding observations of UN human rights treaty bodies, thematic and country visits reports of UN special procedures, and reports of the Universal Periodic Review (UPR) issued between January 2021 and October 2022. The sources analysed were explicitly in relation to indigenous peoples and public services (health, education, water and sanitation).

Overall, the sources in the repositories were selected using keywords relating to public services. All the excerpts chosen confirm, directly or indirectly, States' obligations to deliver public services to indigenous peoples or describe the human rights requirements of such services.

We also reviewed standards and statements developed at the regional level. In particular, the 2022 African Commission on Human and Peoples' Rights, 'General Comment 7 on State obligations under the African Charter on Human and Peoples' Rights in the context of private provision of social services'. Moreover, we analysed explanatory documents related to the United Nations Declaration on the Rights of Indigenous Peoples and the Indigenous and Tribal Peoples Convention 169.

For general context regarding public services, we included references to GI-ESCR's Policy Briefs 'States' Human Rights Obligations Regarding Public Services: The United Nations Normative Framework'¹⁷¹ and 'States' Human Rights Obligations Regarding Public Services essential for the enjoyment of Economic, Social, and Cultural Rights: The regional perspective',¹⁷² as well as the Global Manifesto for Public Services.¹⁷³

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27. For instance, Article 3 of ILO Convention 169 states that "indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination" which shall be applied to male and female members of these populations without discrimination. Similarly, paragraph 4(b) of CERD's General Recommendation No. 23 on Indigenous Peoples called on States parties to "ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity". With regard to indigenous children, the CRC stated in paragraph 2 of its General Comment No 11 on Indigenous children and their rights under the Convention that "a child (...) who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion or to use his or her own language".
28. Asia Pacific Forum of National Human Rights Institutions and Office of the UN High Commissioner for Human Rights (2013), 'The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions'.
29. International Labour Organisation (2009), 'A Guide to the ILO Convention No. 169: Indigenous and Tribal Peoples' Rights in Practice'; UN Doc A/69/267.
30. Asia Pacific Forum of National Human Rights Institutions and Office of the UN High Commissioner for Human Rights (2013), 'The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions'; UNGA, 'Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples', 6 August 2014, UN Doc A/69/267.
31. Indigenous and Tribal Peoples Convention 169, Article 4.
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33. Sepúlveda Carmona, M. (2017), Ensuring inclusion and combatting discrimination in social protection programmes: The role of human rights standards', *International Social*

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37. GI-ESCR (2020), 'States' Human Rights Obligations Regarding Public Services: The United Nations Normative Framework'.

38. A/HRC/15/37/Add.4, paras. 93-94; CERD/C/Aus/CO/18-20, paras. 20 and 24.

39. E./C.12/NZL/CO/4, para. 45.

40. GI-ESCR (2020), 'States' Human Rights Obligations Regarding Public Services: The United Nations Normative Framework'.

41. Ibid.

42. For additional information on access to public services by indigenous peoples, see the following UN Docs: CCPR/C/VNM/CO/3; CCPR/C/BWA/CO/2; CEDAW/C/BWA/CO/4; CERD/C/SUR/CO/12; CERD/C/FRA/CO/20-21; CERD/C/THA/CO/4-8; CERD/C/CMR/CO/22-23; CRC/C/KHM/CO/4-6; UN Doc A/HRC/24/11; A/HRC/30/41/Add.1; A/HRC/37/6; A/HRC/37/9; A/HRC/38/8; A/HRC/39/11; A/HRC/40/64/Add.2; CCPR/C/VNM/CO/3; CCPR/C/BWA/CO/2; CEDAW/C/BWA/CO/4; CERD/C/SUR/CO/12; CERD/C/FRA/CO/20-21; CERD/C/THA/CO/4-8; CERD/C/CMR/CO/22-23; CRC/C/KHM/CO/4-6; A/HRC/24/11; A/HRC/30/41/Add.1; A/HRC/37/6; A/HRC/37/9; A/HRC/38/8; A/HRC/39/11; A/HRC/40/64/Add.2. For additional information on access to education by indigenous peoples, see the following UN Docs: CRC/C/CAN/CO/5-6; A/HRC/12/34/Add.2; A/HRC/24/41/Add.1; A/HRC/24/11; A/HRC/37/6; A/HRC/40/64/Add.2; A/HRC/47/8; A/HRC/48/9; A/HRC/49/6. For additional information on access to health or healthcare by indigenous peoples, see the following UN Docs: CEDAW/C/PAN/CO/8; E/C12/COL/CO/5; E/CN4/2003/90/Add.2; A/HRC/4/32/Add.3; A/HRC/15/37/Add.4; A/HRC/37/6; A/HRC/47/8; A/HRC/48/9. For additional information on access to water and sanitation by indigenous peoples, see the following UN Docs: CRC/C/CAN/CO/5-6; A/HRC/15/37/Add.2; A/HRC/21/47/Add.2; A/HRC/42/37/Add.1.

43. UN Doc CRC/C/IDN/CO/3-4.

44. UN Doc CRC/C/RWA/CO/3-4.

45. Sepúlveda Carmona, M. (2017), 'Ensuring inclusion and combatting discrimination in social protection programmes: The role of human rights standards', *International Social Security Review*, Vol. 79, 4/2017.

46. Ibid.

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52. Sepúlveda Carmona, M. (2017), 'Ensuring inclusion and combatting discrimination in social protection programmes: The role of human rights standards', *International Social Security Review*, Vol. 79, 4/2017.
53. Ibid.
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55. UN Doc CRC/C/CAN/CO/3-4.
56. UN Doc CRC/C/RWA/CO/3-4, para. 57(b).
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58. UN Doc A/HRC/33/57, para. 24.
59. Ibid, para. 25.
60. UN Doc E/C.12/GC/20, para. 21
61. UN Doc A/HRC/34/53/Add.3, para. 69.
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72. UN Doc A/HRC/27/52/Add.1, para. 75(n).
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75. UN Doc A/HRC/15/37/Add.4; UN Doc A/HRC/42/3; UN Doc A/60/358.
76. UN Doc E/CN.4/2004/80/Add.2; UN Doc E/CN.4/2004/80/Add.3; UN Doc E/CN.4/2005/88/Add.2; UN Doc A/HRC/27/52/Add. 1.
77. UN Doc E/CN.4/2006/78/Add.3; UN Doc A/HRC/12/34/Add.2; UN Doc A/60/358.
78. UN Doc CRC/C/BOL/CO/4.
79. UN Doc E/CN.4/2003/90/Add.2.
80. UN Doc E/CN.4/2005/88/Add. 3; UN Doc A/HRC/12/34/Add.2.
81. International Labour Organisation, Indigenous and Tribal Peoples Convention, C169, 27 June 1989, Article 25, para. 1.
82. UN Doc A/HRC/33/42/Add.2; UN Doc A/HRC/33/57.
83. UN Doc CEDAW/C/PER/CO/7-8, para. 34.
84. UN Doc E/CN.4/2004/80/Add.3, para. 78.
85. UN Doc A/HRC/15/37/Add.2.
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87. UN Doc A/HRC/15/37/Add.2, para. 16(e).
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111. UN Doc A/HRC/42/37/Add.1, para. 104. See also UN Doc CRC/C/CHL/CO/6-7.
112. UN Doc E/C.12/COL/CO/6.
113. Ibid, p. 32.
114. UN Doc A/HRC/51/24, para. 55.
115. UNDRIP, Article 22.
116. UN Doc E/CN.4/2005/88/Add.2.
117. UN Doc CEDAW/C/UGA/CO/8-9; UN Doc CEDAW/C/PAN/CO/8; UN Doc CEDAW/C/PER/CO/9; UN Doc E/C.12/BOL/CO/2; UN Doc A/HRC/21/47/Add.2; UN Doc A/60/358.
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127. Ibid.
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136. International Labour Organisation (2009), 'A Guide to the ILO Convention No. 169: Indigenous and Tribal Peoples' Rights in Practice', <ISBN: 978-92-2-122379-5>; Asia Pacific Forum of National Human Rights Institutions and Office of the UN High Commissioner for Human Rights (2013), 'The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions'.
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138. Free, prior, and informed consent is defined as follows: "Free, should imply that there

is no coercion, intimidation or manipulation, and Prior should imply consent being sought sufficiently in advance of any authorisation or commencement of activities and respective requirements of indigenous consultation/consensus processes. **Informed** should imply that information is provided that covers a range of aspects, [including, *inter alia*] ... the nature, size, pace, reversibility and scope of any proposed project or activity; the reason/s or purpose of the project ...; the duration; locality or areas affected; a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks; personnel likely to be involved in the execution of the project; and procedures the project may entail. This process may include the option of withholding consent. Consultation and participation are crucial components of a **consent** process.” (UN Doc E/C.19/2005/3, paras. 46-49, cited in Asia Pacific Forum of National Human Rights Institutions and Office of the UN High Commissioner for Human Rights (2013), ‘The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions’, p. 28.)

139. *Ibid.*

140. UNDRIP, Article 27.

141. UN Doc E/CN.4/2005/88; UN Doc A/HRC/11/8/Add.2; UN Doc A/HRC/12/34/Add.2; UN Doc A/HRC/18/35/Add.5.

142. UN Doc E/CN.4/2005/88/Add.3; UN Doc A/HRC/12/34/Add.2.

143. UN Doc E/CN.4/2003/90/Add.2.

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145. UN Doc A/HRC/51/24, para. 84(b); UN Doc CRC/C/CAN/CO/5-6.

146. UNDRIP, Article 35.

147. UNDRIP, Article 4.

148. ILO Convention 169, Article 33(1).

149. UN Doc CRC/C/FIN/CO/4.

150. UN Doc E/C.12/KAZ/CO/2.

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153. *Ibid.*

154. GI-ESCR (2022), ‘States’ Human Rights Obligations Regarding Public Services essential for the enjoyment of Economic, Social, and Cultural Rights: The regional perspective’, p. 13.

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156. GI-ESCR (2020), 'States' Human Rights Obligations Regarding Public Services: The United Nations Normative Framework'.
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160. International Labour Organisation (2009), 'A Guide to the ILO Convention No. 169: Indigenous and Tribal Peoples' Rights in Practice'.
161. Ibid, p. 11.
162. International Labour Organisation (2007), 'Including Indigenous Peoples in Poverty Reduction Strategies', cited in International Labour Organisation (2009), 'A Guide to the ILO Convention No. 169: Indigenous and Tribal Peoples' Rights in Practice', p. 11.
163. Ibid, para. 5. See also A/HRC/33/57.
164. UN Doc A/69/267; UN Doc CERD/C/FRA/CO/20-21.
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About GI-ESCR

The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international non-governmental human rights advocacy organisation.

Together with partners around the world, GI-ESCR works to end social, economic and gender injustice using a human rights approach.

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