

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA and
ASSEMBLY OF FIRST NATIONS**

Complainants

– and –

CANADIAN HUMAN RIGHTS COMMISSION

Commission

– and –

**ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous and Northern Affairs Canada)**

Respondent

– and –

**CHIEFS OF ONTARIO and NISHNAWBE ASKI NATION
and AMNESTY INTERNATIONAL CANADA and GEORGINA ISLAND FIRST
NATION and TAYKWA TAGAMOU NATION**

Interested Parties

**BOOK OF AUTHORITIES OF THE MOVING PARTIES, CHIEFS OF ONTARIO AND
NISHNAWBE ASKI NATION
VOLUME IV**

OLTHUIS KLEER TOWNSHEND LLP
250 University Avenue, 8th Floor
Toronto, ON M5H 3E5
Tel: (416) 981-9330
Fax: (416) 981-9350

Maggie Wenté
mwenté@oktlaw.com
Sinéad Dearman

sdearman@oktlaw.com

Jessie Stirling-Voss

jestirling@oktlaw.com

Katelyn Johnstone

kjohnstone@oktlaw.com

Ashley Ash

aash@oktlaw.com

Jenna Rogers

jrogers@oktlaw.com

Counsel for Chiefs of Ontario

FALCONERS LLP

10 Alcorn Avenue, Suite 204

Toronto, ON M4V 3A9

Tel: (416) 964-0495, x222

Fax: (416) 929-8179

Julian N. Falconer

julianf@falconers.ca

Meaghan Daniel

meaghand@falconers.ca

Counsel for Nishnawbe Aski Nation

CANADIAN HUMAN RIGHTS TRIBUNAL

c/o Judy Dubois, Registry Officer

240 Sparks Street, 6th Floor West

Ottawa, ON K1A 1J4

DEPARTMENT OF JUSTICE

PRAIRIE REGIONAL OFFICE

Dayna Anderson

601 – 400 St. Mary Avenue

Winnipeg, MB R3C 4K5

CIVIL LITIGATION SECTION

Paul Vickery, Sarah-Dawn Norris, Meg Jones, Aman Owais, and Adam Lupinacci

50 O'Connor Street

Ottawa, ON K1A 0H8

Counsel for the Attorney General of Canada

**ASSEMBLY OF FIRST NATIONS
FASKEN MARTINEAU DUMOULIN LLP
Peter Mantas, Gabrielle Cyr, Tina Sun, and Clive Ngan
55 Metcalfe Street, Suite 1300
Ottawa, ON K1P 6A4
Counsel for the Assembly of First Nations**

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA
CONWAY BAXTER WILSON LLP/s.r.l.
David P. Taylor and Kiana Saint-Macary
Suite 400 – 411 Roosevelt Avenue
Ottawa, ON K2A 3X9**

**CLARKE CHILD & FAMILY LAW
Sarah Clarke and Robin McLeod
Suite 950 – 36 Toronto Street
Toronto, ON M5C 2C5
Counsel for the First Nations Child and Family Caring Society of Canada**

**CANADIAN HUMAN RIGHTS COMMISSION
Anshumala Juyal and Khizer Pervez
344 Slater Street, 8th Floor
Ottawa, ON K1A 1E1
Counsel for the Canadian Human Rights Commission**

**AMNESTY INTERNATIONAL
STOCKWOODS LLP
Justin Safayeni, Stephen Aylward, and Taskeen Nawab
TD North Tower
77 King Street West, Suite 4130
Toronto, ON M5K 1H1
Counsel for Amnesty International**

**GEORGINA ISLAND FIRST NATION AND TAYKWA TAGAMOU NATION
STOCKWOODS LLP
Justin Safayeni and Spencer Bass
TD North Tower
77 King Street West, Suite 4130
Toronto, ON M5K 1H1
Counsel for Georgina Island First Nation and Taykwa Tagamou Nation**

Table of Authorities

Tab	Title
-----	-------

Case law

Volume I

- | | |
|----|---|
| 1 | <i>Baker v Canada (Minister of Citizenship and Immigration)</i> , [1999] 2 SCR 817 |
| 2 | <i>Ball v Ontario (Community and Social Services)</i> , 2010 HRTO 360 |
| 3 | <i>Canada (Attorney General) v Dominique</i> , 2025 FCA 24 |
| 4 | <i>Canada (Attorney General) v First Nations Child and Family Caring Society of Canada</i> , 2021 FC 969 |
| 5 | <i>Canada (Attorney General) v Grover</i> , 1994 CanLII 18487 (FC) |
| 6 | <i>Closs v Fulton Forwarders Incorporated and Stephen Fulton</i> , 2012 CHRT 30 |
| 7 | <i>Clyde River (Hamlet) v Petroleum Geo-Services Inc</i> , 2017 SCC 40 |
| 8 | <i>CN v Canada (Canadian Human Rights Commission)</i> , [1987] 1 SCR 1114 |
| 9 | <i>Delgamuukw v British Columbia</i> , [1997] 3 SCR 1010 |
| 10 | <i>Doucet-Boudreau v Nova Scotia (Minister of Education)</i> , 2003 SCC 62 |
| 11 | <i>Eldridge v British Columbia (Attorney General)</i> , [1997] 3 SCR 624 |
| 12 | <i>First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)</i> , 2016 CHRT 2 |
| 13 | <i>First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)</i> , 2016 CHRT 10 |
| 14 | <i>First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indian and Northern Affairs)</i> , 2016 CHRT 16 |
| 15 | <i>First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , 2017 CHRT 7 |

- 16 *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2017 CHRT 14](#)
- 17 *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2017 CHRT 35](#)
- 18 *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2018 CHRT 4](#)
- 19 *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2019 CHRT 7](#)

Volume II

- 20 *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2020 CHRT 7](#)
- 21 *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2020 CHRT 20](#)
- 22 *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2020 CHRT 24](#)
- 23 *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2021 CHRT 41](#)
- 24 *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2022 CHRT 8](#)
- 25 *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2022 CHRT 26](#)
- 26 *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2022 CHRT 41](#)

- 27 *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2023 CHRT 44](#)
- 28 *First Nations Child & Family Caring Society of Canada and Assembly of First Nations v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2025 CHRT 6](#)
- 29 *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2025 CHRT 80](#)
- 30 *Gitxaala v British Columbia (Chief Gold Commissioner)*, [2025 BCCA 430](#)
- 31 *Haida Nation v British Columbia (Minister of Forests)*, [2004 SCC 73](#)

Volume III

- 32 *Liu (on behalf of IPCO) v Public Safety Canada*, [2025 CHRT 90](#)
- 33 *Malec et al v Conseil des Montagnais de Natashquan*, [2012 CHRT 8](#)
- 34 *Ontario Human Rights Commission v Simpsons-Sears*, [\[1985\] 22 SCR 536](#)
- 35 *Ontario v Association of Ontario Midwives*, [2020 ONSC 2839](#)
- 36 *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Communauté urbaine de Montréal*, [2004 SCC 30](#)
- 37 *R v Desautel*, [2021 SCC 17](#)
- 38 *R v Hape*, [2007 SCC 26](#)
- 39 *R v Sparrow*, [\[1990\] 1 SCR 1075](#)
- 40 *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, [2024 SCC 5](#)
- 41 *Shot Both Sides v Canada*, [2024 SCC 12](#)

Statutes

- 42 *An Act respecting First Nations, Inuit and Métis children, youth and families*, [SC 2019, c 24](#)
- 43 *Canadian Human Rights Act*, [RSC 1985, c H-6](#)
- 44 *Child, Youth and Family Services Act, 2017*, [SO 2017, c 14, Sch 1](#)

- 45 *United Nations Declaration on the Rights of Indigenous Peoples Act*, [SC 2021, c 14](#)

Letters from the Canadian Human Rights Tribunal

- 46 Letter from Canadian Human Rights Tribunal to Parties re Long-Term Reform, dated 10 February 2025

Volume IV

International Law and UN Commentary

- 47 *Convention on the Rights of the Child*, 20 November 1989, [1577 UNTS 3](#) (entered into force 2 September 1990)
- 48 UN Committee on the Rights of the Child, *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child*, 34th Sess, UN Doc [CRC/GC/2003/5](#) (2003)
- 49 UN Committee on the Rights of the Child, *General Comment No. 11: Indigenous children and their rights under the Convention*, 50th Sess, UN Doc [CRC/C/GC/11](#) (2009)
- 50 UN Human Rights Council, *Rights of the indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples*, 48th Sess, UN Doc [A/HRC/48/74](#) (2021)
- 51 *United Nations Declaration on the Rights of Indigenous Peoples*, UNGA, 61st Sess, UN Doc [A/RES/61/295](#) (2007) GA Res 61/295

Secondary Sources

- 52 Kent Roach, “1.2.5 Choices of Remedies and Proportionality” in *Remedies for Human Rights Violations: a Two-Track Approach to Supra-National and National Law* (Cambridge University Press, 2021)
- 53 Kent Roach, “9.1 Introduction” in *Remedies for Human Rights Violations: a Two-Track Approach to Supra-National and National Law* (Cambridge University Press, 2021)
- 54 Kent Roach, “9.5.1 Indigenous Self-determination and Negotiated Remedies” in *Remedies for Human Rights Violations: a Two-Track Approach to Supra-National and National Law* (Cambridge University Press, 2021)
- 55 Kent Roach, “9.6 Conclusion” in *Remedies for Human Rights Violations: a Two-Track Approach to Supra-National and National Law* (Cambridge University Press, 2021)

- 56 Elsa Stamatopoulou, "Indigenous Children and Children's Rights" in *Oxford Handbook of Indigenous Peoples and International Law*, online eds (Oxford University Press, 2025)

Other

- 57 Chief Archie Wabasse's remarks at the Chiefs of Ontario Special Chiefs Assembly, "Special Chiefs Assembly: Strength in Unity" (10 October 2025), <https://www.youtube.com/live/BjpoRyvHEdQ?t=14266s>
- 58 Chief Joe Miskokomon's remarks at the Chiefs of Ontario Special Chiefs Assembly, "Special Chiefs Assembly: Strength in Unity" (10 October 2025), <https://www.youtube.com/live/BjpoRyvHEdQ?t=13741s>

TAB 47

Convention on the Rights of the Child

**Adopted and opened for signature, ratification and accession by General Assembly
resolution 44/25 of 20 November 1989**

entry into force 2 September 1990, in accordance with article 49

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their

own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy

throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or 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 practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute

a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any

amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

TAB 48



Convention on the Rights of the Child

Distr.
GENERAL

CRC/GC/2003/5
27 November 2003

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD
Thirty-fourth session
19 September-3 October 2003

GENERAL COMMENT No. 5 (2003)

General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)

FOREWORD

The Committee on the Rights of the Child has drafted this general comment to outline States parties' obligations to develop what it has termed "general measures of implementation". The various elements of the concept are complex and the Committee emphasizes that it is likely to issue more detailed general comments on individual elements in due course, to expand on this outline. Its general comment No. 2 (2002) entitled "The role of independent national human rights institutions in the protection and promotion of the rights of the child" has already expanded on this concept.

Article 4

"States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation."

I. INTRODUCTION

1. When a State ratifies the Convention on the Rights of the Child, it takes on obligations under international law to implement it. Implementation is the process whereby States parties take action to ensure the realization of all rights in the Convention for all children in their jurisdiction.¹ Article 4 requires States parties to take "all appropriate legislative, administrative

and other measures” for implementation of the rights contained therein. While it is the State which takes on obligations under the Convention, its task of implementation - of making reality of the human rights of children - needs to engage all sectors of society and, of course, children themselves. Ensuring that all domestic legislation is fully compatible with the Convention and that the Convention’s principles and provisions can be directly applied and appropriately enforced is fundamental. In addition, the Committee on the Rights of the Child has identified a wide range of measures that are needed for effective implementation, including the development of special structures and monitoring, training and other activities in Government, parliament and the judiciary at all levels.²

2. In its periodic examination of States parties’ reports under the Convention, the Committee pays particular attention to what it has termed “general measures of implementation”. In its concluding observations issued following examination, the Committee provides specific recommendations relating to general measures. It expects the State party to describe action taken in response to these recommendations in its subsequent periodic report. The Committee’s reporting guidelines arrange the Convention’s articles in clusters,³ the first being on “general measures of implementation” and groups article 4 with article 42 (the obligation to make the content of the Convention widely known to children and adults; see, paragraph 66 below) and article 44, paragraph 6 (the obligation to make reports widely available within the State; see paragraph 71 below).

3. In addition to these provisions, other general implementation obligations are set out in article 2: “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind ...”.

4. Also under article 3, paragraph 2, “States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.”

5. In international human rights law, there are articles similar to article 4 of the Convention, setting out overall implementation obligations, such as article 2 of the International Covenant on Civil and Political Rights and article 2 of the International Covenant on Economic, Social and Cultural Rights. The Human Rights Committee and the Committee on Economic, Social and Cultural Rights have issued general comments in relation to these provisions which should be seen as complementary to the present general comment and which are referred to below.⁴

6. Article 4, while reflecting States parties’ overall implementation obligation, suggests a distinction between civil and political rights and economic, social and cultural rights in its second sentence: “With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.” There is no simple or authoritative division of human rights in general or of Convention rights into the two categories. The Committee’s reporting guidelines group articles 7, 8, 13-17 and 37 (a) under the heading “Civil rights and freedoms”, but indicate by the context that these are not the only civil and political rights in the Convention. Indeed, it is clear that many other articles, including articles 2, 3, 6 and 12 of the Convention, contain elements which constitute civil/political rights, thus reflecting the interdependence and indivisibility of all human rights. Enjoyment of economic, social and

cultural rights is inextricably intertwined with enjoyment of civil and political rights. As noted in paragraph 25 below, the Committee believes that economic, social and cultural rights, as well as civil and political rights, should be regarded as justiciable.

7. The second sentence of article 4 reflects a realistic acceptance that lack of resources - financial and other resources - can hamper the full implementation of economic, social and cultural rights in some States; this introduces the concept of “progressive realization” of such rights: States need to be able to demonstrate that they have implemented “to the maximum extent of their available resources” and, where necessary, have sought international cooperation. When States ratify the Convention, they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation (see paragraph 60 below).

8. The sentence is similar to the wording used in the International Covenant on Economic, Social and Cultural Rights and the Committee entirely concurs with the Committee on Economic, Social and Cultural Rights in asserting that “even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances ...”.⁵ Whatever their economic circumstances, States are required to undertake all possible measures towards the realization of the rights of the child, paying special attention to the most disadvantaged groups.

9. The general measures of implementation identified by the Committee and described in the present general comment are intended to promote the full enjoyment of all rights in the Convention by all children, through legislation, the establishment of coordinating and monitoring bodies - governmental and independent - comprehensive data collection, awareness-raising and training and the development and implementation of appropriate policies, services and programmes. One of the satisfying results of the adoption and almost universal ratification of the Convention has been the development at the national level of a wide variety of new child-focused and child-sensitive bodies, structures and activities - children’s rights units at the heart of Government, ministers for children, inter-ministerial committees on children, parliamentary committees, child impact analysis, children’s budgets and “state of children’s rights” reports, NGO coalitions on children’s rights, children’s ombudspersons and children’s rights commissioners and so on.

10. While some of these developments may seem largely cosmetic, their emergence at the least indicates a change in the perception of the child’s place in society, a willingness to give higher political priority to children and an increasing sensitivity to the impact of governance on children and their human rights.

11. The Committee emphasizes that, in the context of the Convention, States must see their role as fulfilling clear legal obligations to each and every child. Implementation of the human rights of children must not be seen as a charitable process, bestowing favours on children.

12. The development of a children’s rights perspective throughout Government, parliament and the judiciary is required for effective implementation of the whole Convention and, in particular, in the light of the following articles in the Convention identified by the Committee as general principles:

Article 2: the obligation of States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind. This non-discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures. For example, the Committee highlights, in particular, the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified. Addressing discrimination may require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes. It should be emphasized that the application of the non-discrimination principle of equal access to rights does not mean identical treatment. A general comment by the Human Rights Committee has underlined the importance of taking special measures in order to diminish or eliminate conditions that cause discrimination.⁶

Article 3 (1): the best interests of the child as a primary consideration in all actions concerning children. The article refers to actions undertaken by “public or private social welfare institutions, courts of law, administrative authorities or legislative bodies”. The principle requires active measures throughout Government, parliament and the judiciary. Every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children’s rights and interests are or will be affected by their decisions and actions - by, for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but indirectly affect children.

Article 6: the child’s inherent right to life and States parties’ obligation to ensure to the maximum extent possible the survival and development of the child. The Committee expects States to interpret “development” in its broadest sense as a holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development. Implementation measures should be aimed at achieving the optimal development for all children.

Article 12: the child’s right to express his or her views freely in “all matters affecting the child”, those views being given due weight. This principle, which highlights the role of the child as an active participant in the promotion, protection and monitoring of his or her rights, applies equally to all measures adopted by States to implement the Convention.

Opening government decision-making processes to children is a positive challenge which the Committee finds States are increasingly responding to. Given that few States as yet have reduced the voting age below 18, there is all the more reason to ensure respect for the views of unenfranchised children in Government and parliament. If consultation is to be meaningful, documents as well as processes need to be made accessible. But appearing to “listen” to children is relatively unchallenging; giving due weight to their views requires real change. Listening to children should not be seen as an end in itself, but rather as a means by which States make their interactions with children and their actions on behalf of children ever more sensitive to the implementation of children’s rights.

One-off or regular events like Children's Parliaments can be stimulating and raise general awareness. But article 12 requires consistent and ongoing arrangements. Involvement of and consultation with children must also avoid being tokenistic and aim to ascertain representative views. The emphasis on "matters that affect them" in article 12 (1) implies the ascertainment of the views of particular groups of children on particular issues - for example children who have experience of the juvenile justice system on proposals for law reform in that area, or adopted children and children in adoptive families on adoption law and policy. It is important that Governments develop a direct relationship with children, not simply one mediated through non-governmental organizations (NGOs) or human rights institutions. In the early years of the Convention, NGOs had played a notable role in pioneering participatory approaches with children, but it is in the interests of both Governments and children to have appropriate direct contact.

II. REVIEW OF RESERVATIONS

13. In its reporting guidelines on general measures of implementation, the Committee starts by inviting the State party to indicate whether it considers it necessary to maintain the reservations it has made, if any, or has the intention of withdrawing them.⁷ States parties to the Convention are entitled to make reservations at the time of their ratification of or accession to it (art. 51). The Committee's aim of ensuring full and unqualified respect for the human rights of children can be achieved only if States withdraw their reservations. It consistently recommends during its examination of reports that reservations be reviewed and withdrawn. Where a State, after review, decides to maintain a reservation, the Committee requests that a full explanation be included in the next periodic report. The Committee draws the attention of States parties to the encouragement given by the World Conference on Human Rights to the review and withdrawal of reservations.⁸

14. Article 2 of the Vienna Convention on the Law of Treaties defines "reservation" as a "unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a Treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the Treaty in their application to that State". The Vienna Convention notes that States are entitled, at the time of ratification or accession to a treaty, to make a reservation unless it is "incompatible with the object and purpose of the treaty" (art. 19).

15. Article 51, paragraph 2, of the Convention on the Rights of the Child reflects this: "A reservation incompatible with the object and purpose of the present Convention shall not be permitted". The Committee is deeply concerned that some States have made reservations which plainly breach article 51 (2) by suggesting, for example, that respect for the Convention is limited by the State's existing Constitution or legislation, including in some cases religious law. Article 27 of the Vienna Convention on the Law of Treaties provides: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty".

16. The Committee notes that, in some cases, States parties have lodged formal objections to such wide-ranging reservations made by other States parties. It commends any action which contributes to ensuring the fullest possible respect for the Convention in all States parties.

III. RATIFICATION OF OTHER KEY INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

17. As part of its consideration of general measures of implementation, and in the light of the principles of indivisibility and interdependence of human rights, the Committee consistently urges States parties, if they have not already done so, to ratify the two Optional Protocols to the Convention on the Rights of the Child (on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography) and the six other major international human rights instruments. During its dialogue with States parties the Committee often encourages them to consider ratifying other relevant international instruments. A non-exhaustive list of these instruments is annexed to the present general comment, which the Committee will update from time to time.

IV. LEGISLATIVE MEASURES

18. The Committee believes a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance with the Convention is an obligation. Its experience in examining not only initial but now second and third periodic reports under the Convention suggests that the review process at the national level has, in most cases, been started, but needs to be more rigorous. The review needs to consider the Convention not only article by article, but also holistically, recognizing the interdependence and indivisibility of human rights. The review needs to be continuous rather than one-off, reviewing proposed as well as existing legislation. And while it is important that this review process should be built into the machinery of all relevant government departments, it is also advantageous to have independent review by, for example, parliamentary committees and hearings, national human rights institutions, NGOs, academics, affected children and young people and others.

19. States parties need to ensure, by all appropriate means, that the provisions of the Convention are given legal effect within their domestic legal systems. This remains a challenge in many States parties. Of particular importance is the need to clarify the extent of applicability of the Convention in States where the principle of “self-execution” applies and others where it is claimed that the Convention “has constitutional status” or has been incorporated into domestic law.

20. The Committee welcomes the incorporation of the Convention into domestic law, which is the traditional approach to the implementation of international human rights instruments in some but not all States. Incorporation should mean that the provisions of the Convention can be directly invoked before the courts and applied by national authorities and that the Convention will prevail where there is a conflict with domestic legislation or common practice. Incorporation by itself does not avoid the need to ensure that all relevant domestic law, including any local or customary law, is brought into compliance with the Convention. In case of any conflict in legislation, predominance should always be given to the Convention, in the light of article 27 of the Vienna Convention on the Law of Treaties. Where a State delegates powers to legislate to federated regional or territorial governments, it must also require these subsidiary governments to legislate within the framework of the Convention and to ensure effective implementation (see also paragraphs 40 et seq. below).

21. Some States have suggested to the Committee that the inclusion in their Constitution of guarantees of rights for “everyone” is adequate to ensure respect for these rights for children. The test must be whether the applicable rights are truly realized for children and can be directly invoked before the courts. The Committee welcomes the inclusion of sections on the rights of the child in national constitutions, reflecting key principles in the Convention, which helps to underline the key message of the Convention - that children alongside adults are holders of human rights. But this inclusion does not automatically ensure respect for the rights of children. In order to promote the full implementation of these rights, including, where appropriate, the exercise of rights by children themselves, additional legislative and other measures may be necessary.

22. The Committee emphasizes, in particular, the importance of ensuring that domestic law reflects the identified general principles in the Convention (arts. 2, 3, 6 and 12 (see paragraph 12 above)). The Committee welcomes the development of consolidated children’s rights statutes, which can highlight and emphasize the Convention’s principles. But the Committee emphasizes that it is crucial in addition that all relevant “sectoral” laws (on education, health, justice and so on) reflect consistently the principles and standards of the Convention.

23. The Committee encourages all States parties to enact and implement within their jurisdiction legal provisions that are more conducive to the realization of the rights of the child than those contained in the Convention, in the light of article 41. The Committee emphasizes that the other international human rights instruments apply to all persons below the age of 18 years.

V. JUSTICIABILITY OF RIGHTS

24. For rights to have meaning, effective remedies must be available to redress violations. This requirement is implicit in the Convention and consistently referred to in the other six major international human rights treaties. Children’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance. Where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by article 39.

25. As noted in paragraph 6 above, the Committee emphasizes that economic, social and cultural rights, as well as civil and political rights, must be regarded as justiciable. It is essential that domestic law sets out entitlements in sufficient detail to enable remedies for non-compliance to be effective.

VI. ADMINISTRATIVE AND OTHER MEASURES

26. The Committee cannot prescribe in detail the measures which each or every State party will find appropriate to ensure effective implementation of the Convention. But from its first

decade's experience of examining States parties' reports and from its ongoing dialogue with Governments and with the United Nations and United Nations-related agencies, NGOs and other competent bodies, it has distilled here some key advice for States.

27. The Committee believes that effective implementation of the Convention requires visible cross-sectoral coordination to recognize and realize children's rights across Government, between different levels of government and between Government and civil society - including in particular children and young people themselves. Invariably, many different government departments and other governmental or quasi-governmental bodies affect children's lives and children's enjoyment of their rights. Few, if any, government departments have no effect on children's lives, direct or indirect. Rigorous monitoring of implementation is required, which should be built into the process of government at all levels but also independent monitoring by national human rights institutions, NGOs and others.

A. Developing a comprehensive national strategy rooted in the Convention

28. If Government as a whole and at all levels is to promote and respect the rights of the child, it needs to work on the basis of a unifying, comprehensive and rights-based national strategy, rooted in the Convention.

29. The Committee commends the development of a comprehensive national strategy or national plan of action for children, built on the framework of the Convention. The Committee expects States parties to take account of the recommendations in its concluding observations on their periodic reports when developing and/or reviewing their national strategies. If such a strategy is to be effective, it needs to relate to the situation of all children, and to all the rights in the Convention. It will need to be developed through a process of consultation, including with children and young people and those living and working with them. As noted above (para. 12), meaningful consultation with children requires special child-sensitive materials and processes; it is not simply about extending to children access to adult processes.

30. Particular attention will need to be given to identifying and giving priority to marginalized and disadvantaged groups of children. The non-discrimination principle in the Convention requires that all the rights guaranteed by the Convention should be recognized for all children within the jurisdiction of States. As noted above (para. 12), the non-discrimination principle does not prevent the taking of special measures to diminish discrimination.

31. To give the strategy authority, it will need to be endorsed at the highest level of government. Also, it needs to be linked to national development planning and included in national budgeting; otherwise, the strategy may remain marginalized outside key decision-making processes.

32. The strategy must not be simply a list of good intentions; it must include a description of a sustainable process for realizing the rights of children throughout the State; it must go beyond statements of policy and principle, to set real and achievable targets in relation to the full range of economic, social and cultural and civil and political rights for all children. The comprehensive national strategy may be elaborated in sectoral national plans of action - for example for education and health - setting out specific goals, targeted implementation measures and allocation of financial and human resources. The strategy will inevitably set priorities, but it

must not neglect or dilute in any way the detailed obligations which States parties have accepted under the Convention. The strategy needs to be adequately resourced, in human and financial terms.

33. Developing a national strategy is not a one-off task. Once drafted the strategy will need to be widely disseminated throughout Government and to the public, including children (translated into child-friendly versions as well as into appropriate languages and forms). The strategy will need to include arrangements for monitoring and continuous review, for regular updating and for periodic reports to parliament and to the public.

34. The “national plans of action” which States were encouraged to develop following the first World Summit for Children, held in 1990, were related to the particular commitments set by nations attending the Summit.⁹ In 1993, the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, called on States to integrate the Convention on the Rights of the Child into their national human rights action plans.¹⁰

35. The outcome document of the United Nations General Assembly special session on children, in 2002, also commits States “to develop or strengthen as a matter of urgency if possible by the end of 2003 national and, where appropriate, regional action plans with a set of specific time-bound and measurable goals and targets based on this plan of action ...”.¹¹ The Committee welcomes the commitments made by States to achieve the goals and targets set at the special session on children and identified in the outcome document, *A World Fit for Children*. But the Committee emphasizes that making particular commitments at global meetings does not in any way reduce States parties’ legal obligations under the Convention. Similarly, preparing specific plans of action in response to the special session does not reduce the need for a comprehensive implementation strategy for the Convention. States should integrate their response to the 2002 special session and to other relevant global conferences into their overall implementation strategy for the Convention as a whole.

36. The outcome document also encourages States parties to “consider including in their reports to the Committee on the Rights of the Child information on measures taken and results achieved in the implementation of the present Plan of Action”.¹² The Committee endorses this proposal; it is committed to monitoring progress towards meeting the commitments made at the special session and will provide further guidance in its revised guidelines for periodic reporting under the Convention.

B. Coordination of implementation of children’s rights

37. In examining States parties’ reports the Committee has almost invariably found it necessary to encourage further coordination of government to ensure effective implementation: coordination among central government departments, among different provinces and regions, between central and other levels of government and between Government and civil society. The purpose of coordination is to ensure respect for all of the Convention’s principles and standards for all children within the State jurisdiction; to ensure that the obligations inherent in ratification of or accession to the Convention are not only recognized by those large departments which have a substantial impact on children - education, health or welfare and so on - but right across Government, including for example departments concerned with finance, planning, employment and defence, and at all levels.

38. The Committee believes that, as a treaty body, it is not advisable for it to attempt to prescribe detailed arrangements appropriate for very different systems of government across States parties. There are many formal and informal ways of achieving effective coordination, including for example inter-ministerial and interdepartmental committees for children. The Committee proposes that States parties, if they have not already done so, should review the machinery of government from the perspective of implementation of the Convention and in particular of the four articles identified as providing general principles (see paragraph 12 above).

39. Many States parties have with advantage developed a specific department or unit close to the heart of Government, in some cases in the President's or Prime Minister's or Cabinet office, with the objective of coordinating implementation and children's policy. As noted above, the actions of virtually all government departments impact on children's lives. It is not practicable to bring responsibility for all children's services together into a single department, and in any case doing so could have the danger of further marginalizing children in Government. But a special unit, if given high-level authority - reporting directly, for example, to the Prime Minister, the President or a Cabinet Committee on children - can contribute both to the overall purpose of making children more visible in Government and to coordination to ensure respect for children's rights across Government and at all levels of Government. Such a unit can be given responsibility for developing the comprehensive children's strategy and monitoring its implementation, as well as for coordinating reporting under the Convention.

C. Decentralization, federalization and delegation

40. The Committee has found it necessary to emphasize to many States that decentralization of power, through devolution and delegation of government, does not in any way reduce the direct responsibility of the State party's Government to fulfil its obligations to all children within its jurisdiction, regardless of the State structure.

41. The Committee reiterates that in all circumstances the State which ratified or acceded to the Convention remains responsible for ensuring the full implementation of the Convention throughout the territories under its jurisdiction. In any process of devolution, States parties have to make sure that the devolved authorities do have the necessary financial, human and other resources effectively to discharge responsibilities for the implementation of the Convention. The Governments of States parties must retain powers to require full compliance with the Convention by devolved administrations or local authorities and must establish permanent monitoring mechanisms to ensure that the Convention is respected and applied for all children within its jurisdiction without discrimination. Further, there must be safeguards to ensure that decentralization or devolution does not lead to discrimination in the enjoyment of rights by children in different regions.

D. Privatization

42. The process of privatization of services can have a serious impact on the recognition and realization of children's rights. The Committee devoted its 2002 day of general discussion to the theme "The private sector as service provider and its role in implementing child rights", defining the private sector as including businesses, NGOs and other private associations, both for profit and not-for-profit. Following that day of general discussion, the Committee adopted detailed recommendations to which it draws the attention of States parties.¹³

43. The Committee emphasizes that States parties to the Convention have a legal obligation to respect and ensure the rights of children as stipulated in the Convention, which includes the obligation to ensure that non-State service providers operate in accordance with its provisions, thus creating indirect obligations on such actors.

44. The Committee emphasizes that enabling the private sector to provide services, run institutions and so on does not in any way lessen the State's obligation to ensure for all children within its jurisdiction the full recognition and realization of all rights in the Convention (arts. 2 (1) and 3 (2)). Article 3 (1) establishes that the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private bodies. Article 3 (3) requires the establishment of appropriate standards by competent bodies (bodies with the appropriate legal competence), in particular, in the areas of health, and with regard to the number and suitability of staff. This requires rigorous inspection to ensure compliance with the Convention. The Committee proposes that there should be a permanent monitoring mechanism or process aimed at ensuring that all State and non-State service providers respect the Convention.

E. Monitoring implementation - the need for child impact assessment and evaluation

45. Ensuring that the best interests of the child are a primary consideration in all actions concerning children (art. 3 (1)), and that all the provisions of the Convention are respected in legislation and policy development and delivery at all levels of government demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation). This process needs to be built into government at all levels and as early as possible in the development of policy.

46. Self-monitoring and evaluation is an obligation for Governments. But the Committee also regards as essential the independent monitoring of progress towards implementation by, for example, parliamentary committees, NGOs, academic institutions, professional associations, youth groups and independent human rights institutions (see paragraph 65 below).

47. The Committee commends certain States which have adopted legislation requiring the preparation and presentation to parliament and/or the public of formal impact analysis statements. Every State should consider how it can ensure compliance with article 3 (1) and do so in a way which further promotes the visible integration of children in policy-making and sensitivity to their rights.

F. Data collection and analysis and development of indicators

48. Collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights, is an essential part of implementation. The Committee reminds States parties that data collection needs to extend over the whole period of childhood, up to the age of 18 years. It also needs to be coordinated throughout the jurisdiction, ensuring nationally applicable indicators. States should collaborate with appropriate research institutes and aim to build up a complete picture of progress towards implementation, with qualitative as well as quantitative studies. The reporting guidelines for

periodic reports call for detailed disaggregated statistical and other information covering all areas of the Convention. It is essential not merely to establish effective systems for data collection, but to ensure that the data collected are evaluated and used to assess progress in implementation, to identify problems and to inform all policy development for children. Evaluation requires the development of indicators related to all rights guaranteed by the Convention.

49. The Committee commends States parties which have introduced annual publication of comprehensive reports on the state of children's rights throughout their jurisdiction. Publication and wide dissemination of and debate on such reports, including in parliament, can provide a focus for broad public engagement in implementation. Translations, including child-friendly versions, are essential for engaging children and minority groups in the process.

50. The Committee emphasizes that, in many cases, only children themselves are in a position to indicate whether their rights are being fully recognized and realized. Interviewing children and using children as researchers (with appropriate safeguards) is likely to be an important way of finding out, for example, to what extent their civil rights, including the crucial right set out in article 12, to have their views heard and given due consideration, are respected within the family, in schools and so on.

G. Making children visible in budgets

51. In its reporting guidelines and in the consideration of States parties' reports, the Committee has paid much attention to the identification and analysis of resources for children in national and other budgets.¹⁴ No State can tell whether it is fulfilling children's economic, social and cultural rights "to the maximum extent of ... available resources", as it is required to do under article 4, unless it can identify the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly. Some States have claimed it is not possible to analyse national budgets in this way. But others have done it and publish annual "children's budgets". The Committee needs to know what steps are taken at all levels of Government to ensure that economic and social planning and decision-making and budgetary decisions are made with the best interests of children as a primary consideration and that children, including in particular marginalized and disadvantaged groups of children, are protected from the adverse effects of economic policies or financial downturns.

52. Emphasizing that economic policies are never neutral in their effect on children's rights, the Committee has been deeply concerned by the often negative effects on children of structural adjustment programmes and transition to a market economy. The implementation duties of article 4 and other provisions of the Convention demand rigorous monitoring of the effects of such changes and adjustment of policies to protect children's economic, social and cultural rights.

H. Training and capacity-building

53. The Committee emphasizes States' obligation to develop training and capacity-building for all those involved in the implementation process - government officials, parliamentarians and members of the judiciary - and for all those working with and for children. These include, for example, community and religious leaders, teachers, social workers and other professionals,

including those working with children in institutions and places of detention, the police and armed forces, including peacekeeping forces, those working in the media and many others. Training needs to be systematic and ongoing - initial training and re-training. The purpose of training is to emphasize the status of the child as a holder of human rights, to increase knowledge and understanding of the Convention and to encourage active respect for all its provisions. The Committee expects to see the Convention reflected in professional training curricula, codes of conduct and educational curricula at all levels. Understanding and knowledge of human rights must, of course, be promoted among children themselves, through the school curriculum and in other ways (see also paragraph 69 below and the Committee's General Comment No. 1 (2001) on the aims of education).

54. The Committee's guidelines for periodic reports mention many aspects of training, including specialist training, which are essential if all children are to enjoy their rights. The Convention highlights the importance of the family in its preamble and in many articles. It is particularly important that the promotion of children's rights should be integrated into preparation for parenthood and parenting education.

55. There should be periodic evaluation of the effectiveness of training, reviewing not only knowledge of the Convention and its provisions but also the extent to which it has contributed to developing attitudes and practice which actively promote enjoyment by children of their rights.

I. Cooperation with civil society

56. Implementation is an obligation for States parties, but needs to engage all sectors of society, including children themselves. The Committee recognizes that responsibilities to respect and ensure the rights of children extend in practice beyond the State and State-controlled services and institutions to include children, parents and wider families, other adults, and non-State services and organizations. The Committee concurs, for example, with general comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights on the right to the highest attainable standard of health, paragraph 42, of which states: "While only States are parties to the Covenant and thus ultimately accountable for compliance with it, all members of society - individuals, including health professionals, families, local communities, intergovernmental and non-governmental organizations, civil society organizations, as well as the private business sector - have responsibilities regarding the realization of the right to health. States parties should therefore provide an environment which facilitates the discharge of these responsibilities."

57. Article 12 of the Convention, as already emphasized (see paragraph 12 above), requires due weight to be given to children's views in all matters affecting them, which plainly includes implementation of "their" Convention.

58. The State needs to work closely with NGOs in the widest sense, while respecting their autonomy; these include, for example, human rights NGOs, child- and youth-led organizations and youth groups, parent and family groups, faith groups, academic institutions and professional associations. NGOs played a crucial part in the drafting of the Convention and their involvement in the process of implementation is vital.

59. The Committee welcomes the development of NGO coalitions and alliances committed to promoting, protecting and monitoring children's human rights and urges Governments to give them non-directive support and to develop positive formal as well as informal relationships with them. The engagement of NGOs in the reporting process under the Convention, coming within the definition of "competent bodies" under article 45 (a), has in many cases given a real impetus to the process of implementation as well as reporting. The NGO Group for the Convention on the Rights of the Child has a very welcome, strong and supportive impact on the reporting process and other aspects of the Committee's work. The Committee underlines in its reporting guidelines that the process of preparing a report "should encourage and facilitate popular participation and public scrutiny of government policies".¹⁵ The media can be valuable partners in the process of implementation (see also paragraph 70).

J. International cooperation

60. Article 4 emphasizes that implementation of the Convention is a cooperative exercise for the States of the world. This article and others in the Convention highlight the need for international cooperation.¹⁶ The Charter of the United Nations (Arts. 55 and 56) identifies the overall purposes of international economic and social cooperation, and members pledge themselves under the Charter "to take joint and separate action in cooperation with the Organization" to achieve these purposes. In the United Nations Millennium Declaration and at other global meetings, including the United Nations General Assembly special session on children, States have pledged themselves, in particular, to international cooperation to eliminate poverty.

61. The Committee advises States parties that the Convention should form the framework for international development assistance related directly or indirectly to children and that programmes of donor States should be rights-based. The Committee urges States to meet internationally agreed targets, including the United Nations target for international development assistance of 0.7 per cent of gross domestic product. This goal was reiterated along with other targets in the Monterrey Consensus, arising from the 2002 International Conference on Financing for Development.¹⁷ The Committee encourages States parties that receive international aid and assistance to allocate a substantive part of that aid specifically to children. The Committee expects States parties to be able to identify on a yearly basis the amount and proportion of international support earmarked for the implementation of children's rights.

62. The Committee endorses the aims of the 20/20 initiative, to achieve universal access to basic social services of good quality on a sustainable basis, as a shared responsibility of developing and donor States. The Committee notes that international meetings held to review progress have concluded that many States are going to have difficulty meeting fundamental economic and social rights unless additional resources are allocated and efficiency in resource allocation is increased. The Committee takes note of and encourages efforts being made to reduce poverty in the most heavily indebted countries through the Poverty Reduction Strategy Paper (PRSP). As the central, country-led strategy for achieving the millennium development goals, PRSPs must include a strong focus on children's rights. The Committee urges Governments, donors and civil society to ensure that children are a prominent priority in the development of PRSPs and sectorwide approaches to development (SWAs). Both PRSPs

and SWAps should reflect children's rights principles, with a holistic, child-centred approach recognizing children as holders of rights and the incorporation of development goals and objectives which are relevant to children.

63. The Committee encourages States to provide and to use, as appropriate, technical assistance in the process of implementing the Convention. The United Nations Children's Fund (UNICEF), the Office of the High Commissioner for Human Rights (OHCHR) and other United Nations and United Nations-related agencies can provide technical assistance with many aspects of implementation. States parties are encouraged to identify their interest in technical assistance in their reports under the Convention.

64. In their promotion of international cooperation and technical assistance, all United Nations and United Nations-related agencies should be guided by the Convention and should mainstream children's rights throughout their activities. They should seek to ensure within their influence that international cooperation is targeted at supporting States to fulfil their obligations under the Convention. Similarly the World Bank Group, the International Monetary Fund and World Trade Organization should ensure that their activities related to international cooperation and economic development give primary consideration to the best interests of children and promote full implementation of the Convention.

K. Independent human rights institutions

65. In its general comment No. 2 (2002) entitled "The role of independent national human rights institutions in the protection and promotion of the rights of the child", the Committee notes that it "considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children's rights". Independent human rights institutions are complementary to effective government structures for children; the essential element is independence: "The role of national human rights institutions is to monitor independently the State's compliance and progress towards implementation and to do all it can to ensure full respect for children's rights. While this may require the institution to develop projects to enhance the promotion and protection of children's rights, it should not lead to the Government delegating its monitoring obligations to the national institution. It is essential that institutions remain entirely free to set their own agenda and determine their own activities."¹⁸ General comment No. 2 provides detailed guidance on the establishment and operation of independent human rights institutions for children.

Article 42: Making the Convention known to adults and children

"States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike."

66. Individuals need to know what their rights are. Traditionally in most, if not all, societies children have not been regarded as rights holders. So article 42 acquires a particular importance. If the adults around children, their parents and other family members, teachers and carers do not

understand the implications of the Convention, and above all its confirmation of the equal status of children as subjects of rights, it is most unlikely that the rights set out in the Convention will be realized for many children.

67. The Committee proposes that States should develop a comprehensive strategy for disseminating knowledge of the Convention throughout society. This should include information on those bodies - governmental and independent - involved in implementation and monitoring and on how to contact them. At the most basic level, the text of the Convention needs to be made widely available in all languages (and the Committee commends the collection of official and unofficial translations of the Convention made by OHCHR. There needs to be a strategy for dissemination of the Convention among illiterate people. UNICEF and NGOs in many States have developed child-friendly versions of the Convention for children of various ages - a process the Committee welcomes and encourages; these should also inform children of sources of help and advice.

68. Children need to acquire knowledge of their rights and the Committee places special emphasis on incorporating learning about the Convention and human rights in general into the school curriculum at all stages. The Committee's general comment No. 1 (2001) entitled "The aims of education" (art. 29, para. 1), should be read in conjunction with this. Article 29, paragraph 1, requires that the education of the child shall be directed to "... the development of respect for human rights and fundamental freedoms ...". The general comment underlines: "Human rights education should provide information on the content of human rights treaties. But children should also learn about human rights by seeing human rights standards implemented in practice whether at home, in school or within the community. Human rights education should be a comprehensive, lifelong process and start with the reflection of human rights values in the daily life and experiences of children."¹⁹

69. Similarly, learning about the Convention needs to be integrated into the initial and in-service training of all those working with and for children (see paragraph 53 above). The Committee reminds States parties of the recommendations it made following its meeting on general measures of implementation held to commemorate the tenth anniversary of adoption of the Convention, in which it recalled that "dissemination and awareness-raising about the rights of the child are most effective when conceived as a process of social change, of interaction and dialogue rather than lecturing. Raising awareness should involve all sectors of society, including children and young people. Children, including adolescents, have the right to participate in raising awareness about their rights to the maximum extent of their evolving capacities".²⁰

"The Committee recommends that all efforts to provide training on the rights of the child be practical, systematic and integrated into regular professional training in order to maximize its impact and sustainability. Human rights training should use participatory methods, and equip professionals with skills and attitudes that enable them to interact with children and young people in a manner that respects their rights, dignity and self-respect."²¹

70. The media can play a crucial role in the dissemination of the Convention and knowledge and understanding of it and the Committee encourages their voluntary engagement in the process, which may be stimulated by governments and by NGOs.²²

Article 44 (6): Making reports under the Convention widely available

“... States Parties shall make their reports widely available to the public in their own countries.”

71. If reporting under the Convention is to play the important part it should in the process of implementation at the national level, it needs to be known about by adults and children throughout the State party. The reporting process provides a unique form of international accountability for how States treat children and their rights. But unless reports are disseminated and constructively debated at the national level, the process is unlikely to have substantial impact on children's lives.

72. The Convention explicitly requires States to make their reports widely available to the public; this should be done when they are submitted to the Committee. Reports should be made genuinely accessible, for example through translation into all languages, into appropriate forms for children and for people with disabilities and so on. The Internet may greatly aid dissemination, and Governments and parliaments are strongly urged to place such reports on their web sites.

73. The Committee urges States to make all the other documentation of the examination of their reports under the Convention widely available to promote constructive debate and inform the process of implementation at all levels. In particular, the Committee's concluding observations should be disseminated to the public including children and should be the subject of detailed debate in parliament. Independent human rights institutions and NGOs can play a crucial role in helping to ensure widespread debate. The summary records of the examination of government representatives by the Committee aid understanding of the process and of the Committee's requirements and should also be made available and discussed.

Notes

¹ The Committee reminds States parties that, for the purposes of the Convention, a child is defined as “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier” (art. 1).

² In 1999, the Committee on the Rights of the Child held a two-day workshop to commemorate the tenth anniversary of adoption of the Convention on the Rights of the Child by the United Nations General Assembly. The workshop focused on general measures of implementation following which the Committee adopted detailed conclusions and recommendations (see CRC/C/90, para. 291).

³ General Guidelines Regarding the Form and Content of Initial Reports to be Submitted by States Parties under Article 44, Paragraph 1 (a) of the Convention, CRC/C/5, 15 October 1991; General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted under Article 44, Paragraph 1 (b) of the Convention on the Rights of the Child, CRC/C/58, 20 November 1996.

⁴ Human Rights Committee, general comment No. 3 (thirteenth session, 1981), *Article 2: Implementation at the national level*; Committee on Economic, Social and Cultural Rights, general comment No. 3 (fifth session, 1990), *The nature of States parties' obligations (article 2, paragraph 1, of the Covenant)*; also general comment No. 9 (nineteenth session, 1998), *The domestic application of the Covenant*, elaborating further on certain elements in general comment No. 3. A compendium of the treaty bodies' general comments and recommendations is published regularly by the Office of the High Commissioner for Human Rights (HRI/GEN/1/Rev.6).

⁵ General comment No. 3, HRI/GEN/1/Rev.6, para. 11, p. 16.

⁶ Human Rights Committee, general comment No. 18 (1989), HRI/GEN/1/Rev.6, pp. 147 et seq.

⁷ General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted under Article 44, Paragraph 1 (b) of the Convention on the Rights of the Child, CRC/C/58, 20 November 1996, para. 11.

⁸ World Conference on Human Rights, Vienna, 14-25 June 1993, "Vienna Declaration and Programme of Action", A/CONF.157/23.

⁹ World Summit for Children, "World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s", CF/WSC/1990/WS-001, United Nations, New York, 30 September 1990.

¹⁰ World Conference on Human Rights, Vienna, 14-25 June 1993, "Vienna Declaration and Programme of Action", A/CONF.157/23.

¹¹ *A World Fit for Children*, outcome document of the United Nations General Assembly special session on children, 2002, para. 59.

¹² *Ibid.*, para. 61 (a).

¹³ Committee on the Rights of the Child, Report on its thirty-first session, September-October 2002, Day of General Discussion on "The private sector as service provider and its role in implementing child rights", paras. 630-653.

¹⁴ General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted under Article 44, Paragraph 1(b), of the Convention on the Rights of the Child, CRC/C/58, 20 November 1996, para. 20.

¹⁵ *Ibid.*, para. 3.

¹⁶ The following articles of the Convention relate to international cooperation explicitly: articles 7 (2); 11 (2); 17 (b); 21 (e); 22 (2); 23 (4); 24 (4); 27 (4); 28 (3); 34 and 35.

¹⁷ Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002 (A/Conf.198/11).

¹⁸ HRI/GEN/1/Rev. 6, para. 25, p. 295.

¹⁹ Ibid., para. 15, p. 286.

²⁰ See CRC/C/90, para. 291 (k).

²¹ Ibid., para. 291 (l).

²² The Committee held a day of general discussion on the theme “The child and the media” in 1996, adopting detailed recommendations (see CRC/C/57, paras. 242 et seq.).

Annex I**RATIFICATION OF OTHER KEY INTERNATIONAL
HUMAN RIGHTS INSTRUMENTS**

As noted in paragraph 17 of the present general comment, the Committee on the Rights of the Child, as part of its consideration of general measures of implementation, and in the light of the principles of indivisibility and interdependence of human rights, consistently urges States parties, if they have not already done so, to ratify the two Optional Protocols to the Convention on the Rights of the Child (on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography) and the six other major international human rights instruments. During its dialogue with States parties the Committee often encourages them to consider ratifying other relevant international instruments. A non-exhaustive list of these instruments is annexed here. The Committee will update this from time to time.

- Optional Protocol to the International Covenant on Civil and Political Rights;
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
- Optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- Optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Convention against Discrimination in Education;
- ILO Forced Labour Convention No. 29, 1930;
- ILO Convention No. 105 on Abolition of Forced Labour, 1957;
- ILO Convention No. 138 Concerning Minimum Age for Admission to Employment, 1973;
- ILO Convention No. 182 on Worst Forms of Child Labour, 1999;
- ILO Convention No. 183 on Maternity Protection, 2000;
- Convention relating to the Status of Refugees of 1951, as amended by the Protocol relating to the Status of Refugees of 1967;
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949);
- Slavery Convention (1926);

- Protocol amending the Slavery Convention (1953);
- The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956);
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime of 2000;
- Geneva Convention relative to the Protection of Civilians in Time of War;
- Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I);
- Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II);
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and of Their Destruction;
- Statute of the International Criminal Court;
- Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption;
- Hague Convention on the Civil Aspects of International Child Abduction;
- Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children of 1996.

TAB 49

UNITED
NATIONS

CRC



**Convention on the
Rights of the Child**

Distr.
GENERAL

CRC/C/GC/11
12 February 2009

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD

Fiftieth session

Geneva, 12-30 January 2009

GENERAL COMMENT No. 11 (2009)

Indigenous children and their rights under the Convention

COMMITTEE ON THE RIGHTS OF THE CHILD

GENERAL COMMENT No. 11 (2009)

Indigenous children and their rights under the Convention

Introduction

1. In the preamble of the Convention on the Rights of the Child, States parties take “*due account of the importance and cultural values of each people for the protection and harmonious development of the child*”. While all the rights contained in the Convention apply to all children, whether indigenous or not, the Convention on the Rights of the Child was the first core human rights treaty to include specific references to indigenous children in a number of provisions.
2. Article 30 of the Convention states that “*In those States in which ethnic, religious, or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or 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 practise his or her own religion or to use his or her own language.*”
3. Furthermore, article 29 of the Convention provides that “*education of the child shall be directed to the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin*”.
4. Article 17 of the Convention also makes specific mention as States parties shall “*encourage the mass media to have particular regard for the linguistic needs of the child who belongs to a minority group or who is indigenous*”.
5. The specific references to indigenous children in the Convention are indicative of the recognition that they require special measures in order to fully enjoy their rights. The Committee on the Rights of the Child has consistently taken into account the situation of indigenous children in its reviews of periodic reports of States parties to the Convention. The Committee has observed that indigenous children face significant challenges in exercising their rights and has issued specific recommendations to this effect in its concluding observations. Indigenous children continue to experience serious discrimination contrary to article 2 of the Convention in a range of areas, including in their access to health care and education, which has prompted the need to adopt this general comment.
6. In addition to the Convention on the Rights of the Child, various human rights treaties, have played an important role in addressing the situation of indigenous children and their right not to be discriminated, namely, the International Convention on the Elimination of All Forms of Racial Discrimination, 1965, the International Covenant on Civil and Political Rights, 1966, and the International Covenant on Economic, Social and Cultural Rights, 1966.
7. The International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, 1989 contains provisions which advance the rights of indigenous peoples and specifically highlights the rights of indigenous children in the area of education.

8. In 2001, the United Nations Commission on Human Rights appointed a Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, subsequently confirmed by the Human Rights Council in 2007. The Council has requested the Special Rapporteur to pay particular attention to the situation of indigenous children and several recommendations included in his annual and mission reports have focused on their specific situation.

9. In 2003, the United Nations Permanent Forum on Indigenous Issues held its second session on the theme indigenous children and youth and the same year the Committee on the Rights of the Child held its annual Day of General Discussion on the rights of indigenous children and adopted specific recommendations aimed primarily at States parties but also United Nations entities, human rights mechanisms, civil society, donors, the World Bank and regional development banks.

10. In 2007, the United Nations General Assembly adopted the Declaration on the Rights of Indigenous Peoples which provides important guidance on the rights of indigenous peoples, including specific reference to the rights of indigenous children in a number of areas.

Objectives and structure

11. This general comment on the rights of indigenous children as provided for by the Convention on the Rights of the Child draws on the legal developments and initiatives outlined above.

12. The primary objective of this general comment is to provide States with guidance on how to implement their obligations under the Convention with respect to indigenous children. The Committee bases this general comment on its experience in interpreting the provisions of the Convention in relation to indigenous children. Furthermore, the general comment is based upon the recommendations adopted following the Day of General Discussion on indigenous children in 2003 and reflects a consultative process with relevant stakeholders, including indigenous children themselves.

13. The general comment aims to explore the specific challenges which impede indigenous children from being able to fully enjoy their rights and highlight special measures required to be undertaken by States in order to guarantee the effective exercise of indigenous children's rights. Furthermore, the general comment seeks to encourage good practices and highlight positive approaches in the practical implementation of rights for indigenous children.

14. Article 30 of the Convention and the right to the enjoyment of culture, religion and language are key elements in this general comment; however the aim is to explore the various provisions which require particular attention in their implementation in relation to indigenous children. Particular emphasis is placed on the interrelationship between relevant provisions, notably with the general principles of the Convention as identified by the Committee, namely, non-discrimination, the best interests of the child, the right to life, survival and development and the right to be heard.

15. The Committee notes that the Convention contains references to both minority and indigenous children. Certain references in this general comment may be relevant for children of minority groups and the Committee may decide in the future to prepare a general comment specifically on the rights of children belonging to minority groups.

Article 30 and general obligations of States

16. The Committee recalls the close linkage between article 30 of the Convention on the Rights of the Child and article 27 of the International Covenant on Civil and Political Rights. Both articles specifically provide for the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion or to use his or her own language. The right established is conceived as being both individual and collective and is an important recognition of the collective traditions and values in indigenous cultures. The Committee notes that the right to exercise cultural rights among indigenous peoples may be closely associated with the use of traditional territory and the use of its resources.¹

17. Although article 30 is expressed in negative terms, it nevertheless recognizes the existence of a “right” and requires that it “shall not be denied”. Consequently, a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. The Committee concurs with the Human Rights Committee that positive measures of protection are required, not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party.²

18. In this context, the Committee also supports the Committee on the Elimination of Racial Discrimination in its call upon States parties *to recognize and respect indigenous distinct cultures, history, language and way of life as an enrichment of the State’s cultural identity and to promote its preservation.*³

19. The presence of indigenous peoples is established by self-identification as the fundamental criterion for determining their existence.⁴ There is no requirement for States parties to officially recognize indigenous peoples in order for them to exercise their rights.

¹ Human Rights Committee, general comment No. 23 on article 27, CCPR/C/Rev.1/Add.5, 1994, paras. 3.2, 7. Recommendations of CRC Day of General Discussion on the Rights of Indigenous Children, 2003, para. 4.

² Human Rights Committee, general comment No. 23 on article 27, CCPR/C/Rev.1/Add.5, 1994, para. 6.1.

³ Committee on the Elimination of Racial Discrimination, general recommendation No. 23 on Indigenous Peoples, 1997, contained in A/52/18, Annex V.

⁴ ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries No. 169, article 1 (2).

20. Based on its reviews of States parties reports, the Committee on the Rights of the Child has observed that in implementing their obligations under the Convention many States parties give insufficient attention to the rights of indigenous children and to promotion of their development. The Committee considers that special measures through legislation and policies for the protection of indigenous children should be undertaken in consultation with the communities concerned⁵ and with the participation of children in the consultation process, as provided for by article 12 of the Convention. The Committee considers that consultations should be actively carried out by authorities or other entities of States parties in a manner that is culturally appropriate, guarantees availability of information to all parties and ensures interactive communication and dialogue.

21. The Committee urges States parties to ensure that adequate attention is given to article 30 in the implementation of the Convention. States parties should provide detailed information in their periodic reports under the Convention on the special measures undertaken in order to guarantee that indigenous children can enjoy the rights provided in article 30.

22. The Committee underlines that cultural practices provided by article 30 of the Convention must be exercised in accordance with other provisions of the Convention and under no circumstances may be justified if deemed prejudicial to the child's dignity, health and development.⁶ Should harmful practices be present, inter alia early marriages and female genital mutilation, the State party should work together with indigenous communities to ensure their eradication. The Committee strongly urges States parties to develop and implement awareness-raising campaigns, education programmes and legislation aimed at changing attitudes and address gender roles and stereotypes that contribute to harmful practices.⁷

General principles **(arts. 2, 3, 6 and 12 of the Convention)**

Non-discrimination

23. Article 2 sets out the obligation of States parties to ensure the rights of each child within its jurisdiction without discrimination of any kind. Non-discrimination has been identified by the Committee as a general principle of fundamental importance for the implementation of all the rights enshrined in the Convention. Indigenous children have the inalienable right to be free from discrimination. In order to effectively protect children from discrimination, it is a State party obligation to ensure that the principle of non-discrimination is reflected in all domestic legislation and can be directly applied and appropriately monitored and enforced through judicial and administrative bodies. Effective remedies should be timely and accessible. The Committee highlights that the obligations of the State party extend not only to the public but also to the private sector.

⁵ ILO Convention No. 169, articles 2, 6, 27.

⁶ UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 7.

⁷ CRC, general comment No. 4 on Adolescent Health, 2003, para. 24.

24. As previously stated in the Committee's general comment No. 5 on general measures of implementation, the non-discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures. For example, the Committee highlights, in particular, the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified. Addressing discrimination may furthermore require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes.⁸

25. The Committee, through its extensive review of State party reports, notes that indigenous children are among those children who require positive measures in order to eliminate conditions that cause discrimination and to ensure their enjoyment of the rights of the Convention on equal level with other children. In particular, States parties are urged 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.⁹

26. Among the positive measures required to be undertaken by States parties is disaggregated data collection and the development of indicators for the purposes of identifying existing and potential areas of discrimination of indigenous children. The identification of gaps and barriers to the enjoyment of the rights of indigenous children is essential in order to implement appropriate positive measures through legislation, resource allocation, policies and programmes.¹⁰

27. States parties should ensure that public information and educational measures are taken to address the discrimination of indigenous children. The obligation under article 2 in conjunction with articles 17, 29.1 (d) and 30 of the Convention requires States to develop public campaigns, dissemination material and educational curricula, both in schools and for professionals, focused on the rights of indigenous children and the elimination of discriminatory attitudes and practices, including racism. Furthermore, States parties should provide meaningful opportunities for indigenous and non-indigenous children to understand and respect different cultures, religions, and languages.

28. In their periodic reports to the Committee, States parties should identify measures and programmes undertaken to address discrimination of indigenous children in relation to the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Discrimination, Xenophobia and Related Intolerance.¹¹

⁸ CRC, general comment No. 5 on General Measures of Implementation, 2003, para. 12.

⁹ Recommendations of CRC Day of General Discussion on the Rights of Indigenous Children, 2003, para. 9.

¹⁰ Ibid., para. 6.

¹¹ Recommendations of CRC Day of General Discussion on the Rights of Indigenous Children, 2003, para. 12.

29. In the design of special measures, States parties should consider the needs of indigenous children who may face multiple facets of discrimination and also take into account the different situation of indigenous children in rural and urban situations. Particular attention should be given to girls in order to ensure that they enjoy their rights on an equal basis as boys. States parties should furthermore ensure that special measures address the rights of indigenous children with disabilities.¹²

Best interests of the child

30. The application of the principle of the best interests of the child to indigenous children requires particular attention. The Committee notes that the best interests of the child is conceived both as a collective and individual right, and that the application of this right to indigenous children as a group requires consideration of how the right relates to collective cultural rights. Indigenous children have not always received the distinct consideration they deserve. In some cases, their particular situation has been obscured by other issues of broader concern to indigenous peoples, (including land rights and political representation).¹³ In the case of children, the best interests of the child cannot be neglected or violated in preference for the best interests of the group.

31. When State authorities including legislative bodies seek to assess the best interests of an indigenous child, they should consider the cultural rights of the indigenous child and his or her need to exercise such rights collectively with members of their group. As regards legislation, policies and programmes that affect indigenous children in general, the indigenous community should be consulted and given an opportunity to participate in the process on how the best interests of indigenous children in general can be decided in a culturally sensitive way. Such consultations should, to the extent possible, include meaningful participation of indigenous children.

32. The Committee considers there may be a distinction between the best interests of the individual child, and the best interests of children as a group. In decisions regarding one individual child, typically a court decision or an administrative decision, it is the best interests of the specific child that is the primary concern. However, considering the collective cultural rights of the child is part of determining the child's best interests.

33. The principle of the best interests of the child requires States to undertake active measures throughout their legislative, administrative and judicial systems that would systematically apply the principle by considering the implication of their decisions and actions on children's rights

¹² Convention on the Rights of Persons with Disabilities, preamble. United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, articles 21, 22.

¹³ UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 1.

and interests.¹⁴ In order to effectively guarantee the rights of indigenous children such measures would include training and awareness-raising among relevant professional categories of the importance of considering collective cultural rights in conjunction with the determination of the best interests of the child.

The right to life, survival and development

34. The Committee notes with concern that disproportionately high numbers of indigenous children live in extreme poverty, a condition which has a negative impact on their survival and development. The Committee is furthermore concerned over the high infant and child mortality rates as well as malnutrition and diseases among indigenous children. Article 4 obliges States parties to address economic, social and cultural rights to the maximum extent of their available resources and where needed with international cooperation. Articles 6 and 27 provide the right of children to survival and development as well as an adequate standard of living. States should assist parents and others responsible for the indigenous child to implement this right by providing culturally appropriate material assistance and support programmes, particularly with regard to nutrition, clothing and housing. The Committee stresses the need for States parties to take special measures to ensure that indigenous children enjoy the right to an adequate standard of living and that these, together with progress indicators, be developed in partnership with indigenous peoples, including children.

35. The Committee reiterates its understanding of development of the child as set out in its general comment No. 5, as a “holistic concept embracing the child’s physical, mental, spiritual, moral, psychological and social development”.¹⁵ The Preamble of the Convention stresses the importance of the traditions and cultural values of each person, particularly with reference to the protection and harmonious development of the child. In the case of indigenous children whose communities retain a traditional lifestyle, the use of traditional land is of significant importance to their development and enjoyment of culture.¹⁶ States parties should closely consider the cultural significance of traditional land and the quality of the natural environment while ensuring the children’s right to life, survival and development to the maximum extent possible.

36. The Committee reaffirms the importance of the Millennium Development Goals (MDGs) and calls on States to engage with indigenous peoples, including children, to ensure the full realization of the MDGs with respect to indigenous children.

¹⁴ CRC, general comment No. 5 on General Measures of Implementation, 2003, para. 12.

¹⁵ Ibid.

¹⁶ UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 8.

Respect for the views of the child

37. The Committee considers that, in relation to article 12, there is a distinction between the right of the child as an individual to express his or her opinion and the right to be heard collectively, which allows children as a group to be involved in consultations on matters involving them.

38. With regard to the individual indigenous child, the State party has the obligation to respect the child's right to express his or her view in all matters affecting him or her, directly or through a representative, and give due weight to this opinion in accordance with the age and maturity of the child. The obligation is to be respected in any judicial or administrative proceeding. Taking into account the obstacles which prevent indigenous children from exercising this right, the State party should provide an environment that encourages the free opinion of the child. The right to be heard includes the right to representation, culturally appropriate interpretation and also the right not to express one's opinion.

39. When the right is applied to indigenous children as a group, the State party plays an important role in promoting their participation and should ensure that they are consulted on all matters affecting them. The State party should design special strategies to guarantee that their participation is effective. The State party should ensure that this right is applied in particular in the school environment, alternative care settings and in the community in general. The Committee recommends States parties to work closely with indigenous children and their communities to develop, implement and evaluate programmes, policies and strategies for implementation of the Convention.

**Civil rights and freedoms
(arts. 7, 8, 13-17 and 37 (a) of the Convention)**

Access to information

40. The Committee underlines the importance that the media have particular regard for the linguistic needs of indigenous children, in accordance with articles 17 (d) and 30 of the Convention. The Committee encourages States parties to support indigenous children to have access to media in their own languages. The Committee underlines the right of indigenous children to access information, including in their own languages, in order for them to effectively exercise their right to be heard.

Birth registration, nationality and identity

41. 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.

42. Therefore, States parties should take special measures in order to ensure that indigenous children, including those living in remote areas, are duly registered. Such special measures, to

be agreed following consultation with the communities concerned, may include mobile units, periodic birth registration campaigns or the designation of birth registration offices within indigenous communities to ensure accessibility.

43. States parties should ensure that indigenous communities are informed about the importance of birth registration and of the negative implications of its absence on the enjoyment of other rights for non-registered children. States parties should ensure that information to this effect is available to indigenous communities in their own languages and that public awareness campaigns are undertaken in consultation with the communities concerned.¹⁷

44. Furthermore, taking into account articles 8 and 30 of the Convention, States parties should ensure that indigenous children may receive indigenous names of their parents' choice in accordance with their cultural traditions and the right to preserve his or her identity. States parties should put in place national legislation that provides indigenous parents with the possibility of selecting the name of their preference for their children.

45. The Committee draws the attention of States to article 8 (2) of the Convention which affirms that a child who has been illegally deprived of some or all of the elements of his or her identity shall be provided with appropriate assistance and protection in order to re-establish speedily his or her identity. The Committee encourages States parties to bear in mind article 8 of the United Nations Declaration on the Rights of Indigenous Peoples which sets out that effective mechanisms should be provided for prevention of, and redress for, any action which deprives indigenous peoples, including children, of their ethnic identities.

Family environment and alternative care
(arts. 5, 18 (paras. 1-2), 9-11, 19-21, 25, 27 (para. 4) and 39 of the Convention)

46. Article 5 of the Convention requires States parties to respect the rights, responsibilities and duties of parents or where applicable, the members of the extended family or community to provide, in a manner consistent with the evolving capacities of all children, appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention. States parties should ensure effective measures are implemented to safeguard the integrity of indigenous families and communities by assisting them in their child-rearing responsibilities in accordance with articles 3, 5, 18, 25 and 27 (3) of the Convention.¹⁸

47. States parties should, in cooperation with indigenous families and communities, collect data on the family situation of indigenous children, including children in foster care and adoption processes. Such information should be used to design policies relating to the family environment

¹⁷ UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 9.

¹⁸ Recommendations of CRC Day of General Discussion on the Rights of Indigenous Children, 2003, para. 17.

and alternative care of indigenous children in a culturally sensitive way. Maintaining the best interests of the child and the integrity of indigenous families and communities should be primary considerations in development, social services, health and education programmes affecting indigenous children.¹⁹

48. Furthermore, States should always ensure that the principle of the best interests of the child is the paramount consideration in any alternative care placement of indigenous children and in accordance with article 20 (3) of the Convention pay due regard to the desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background. In States parties where indigenous children are overrepresented among children separated from their family environment, specially targeted policy measures should be developed in consultation with indigenous communities in order to reduce the number of indigenous children in alternative care and prevent the loss of their cultural identity. Specifically, if an indigenous child is placed in care outside their community, the State party should take special measures to ensure that the child can maintain his or her cultural identity.

Basic health and welfare
(arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) of the Convention)

49. States parties shall ensure that all children enjoy the highest attainable standard of health and have access to health-care service. Indigenous children frequently suffer poorer health than non-indigenous children due to inter alia inferior or inaccessible health services. The Committee notes with concern, on the basis of its reviews of States parties' reports, that this applies both to developing and developed countries.

50. The Committee urges States parties to take special measures to ensure that indigenous children are not discriminated against enjoying the highest attainable standard of health. The Committee is concerned over the high rates of mortality among indigenous children and notes that States parties have a positive duty to ensure that indigenous children have equal access to health services and to combat malnutrition as well as infant, child and maternal mortality.

51. States parties should take the necessary steps to ensure ease of access to health-care services for indigenous children. Health services should to the extent possible be community based and planned and administered in cooperation with the peoples concerned.²⁰ Special consideration should be given to ensure that health-care services are culturally sensitive and that information about these is available in indigenous languages. Particular attention should be given to ensuring access to health care for indigenous peoples who reside in rural and remote areas or in areas of armed conflict or who are migrant workers, refugees or displaced. States parties should furthermore pay special attention to the needs of indigenous children with disabilities and ensure that relevant programmes and policies are culturally sensitive.²¹

¹⁹ Ibid.

²⁰ ILO Convention No. 169, article 25 (1, 2).

²¹ CRC, general comment No. 9 on The Rights of Children with Disabilities, 2006.

52. Health-care workers and medical staff from indigenous communities play an important role by serving as a bridge between traditional medicine and conventional medical services and preference should be given to employment of local indigenous community workers.²² States parties should encourage the role of these workers by providing them with the necessary means and training in order to enable that conventional medicine be used by indigenous communities in a way that is mindful of their culture and traditions. In this context, the Committee recalls article 25 (2) of the ILO Convention No. 169 and articles 24 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples on the right of indigenous peoples to their traditional medicines.²³

53. States should take all reasonable measures to ensure that indigenous children, families and their communities receive information and education on issues relating to health and preventive care such as nutrition, breastfeeding, pre- and postnatal care, child and adolescent health, vaccinations, communicable diseases (in particular HIV/AIDS and tuberculosis), hygiene, environmental sanitation and the dangers of pesticides and herbicides.

54. Regarding adolescent health, States parties should consider specific strategies in order to provide indigenous adolescents with access to sexual and reproductive information and services, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted infections (STIs). The Committee recommends States parties to take into account its general comments No. 3 on HIV/AIDS and the rights of the child (2003) and No. 4 on adolescent health (2003) for this purpose.²⁴

55. In certain States parties suicide rates for indigenous children are significantly higher than for non-indigenous children. Under such circumstances, States parties should design and implement a policy for preventive measures and ensure that additional financial and human resources are allocated to mental health care for indigenous children in a culturally appropriate manner, following consultation with the affected community. In order to analyse and combat the root causes, the State party should establish and maintain a dialogue with the indigenous community.

Education **(arts. 28, 29 and 31 of the Convention)**

56. Article 29 of the Convention sets out that the aims of education for all children should be directed to, among other objectives, the development of respect for the child's cultural identity, language and values and for civilizations different from his or her own. Further objectives

²² ILO Convention No. 169, article 25 (3).

²³ United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, articles 24, 31.

²⁴ CRC, general comment No. 3 on HIV/AIDS and the Rights of the Child, 2003 and general comment No. 4 on Adolescent Health, 2003.

include the preparation of the child for responsible life in a free society, in the spirit of understanding peace, tolerance, equality of sexes and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin. The aims of education apply to education for all children and States should ensure these are adequately reflected in the curricula, content of materials, teaching methods and policies. States are encouraged to refer to the Committee's general comment No. 1 on the aims of education for further guidance.²⁵

57. The education of indigenous children contributes both to their individual and community development as well as to their participation in the wider society. Quality education enables indigenous children to exercise and enjoy economic, social and cultural rights for their personal benefit as well as for the benefit of their community. Furthermore, it strengthens children's ability to exercise their civil rights in order to influence political policy processes for improved protection of human rights. Thus, the implementation of the right to education of indigenous children is an essential means of achieving individual empowerment and self-determination of indigenous peoples.

58. In order to ensure that the aims of education are in line with the Convention, States parties are responsible for protecting children from all forms of discrimination as set out in article 2 of the Convention and for actively combating racism. This duty is particularly pertinent in relation to indigenous children. In order to effectively implement this obligation, States parties should ensure that the curricula, educational materials and history textbooks provide a fair, accurate and informative portrayal of the societies and cultures of indigenous peoples.²⁶ Discriminatory practices, such as restrictions on the use of cultural and traditional dress, should be avoided in the school setting.

59. Article 28 of the Convention sets out that States parties shall ensure that primary education is compulsory and available to all children on the basis of equal opportunity. States parties are encouraged to make secondary and vocational education available and accessible to every child. However, in practice, indigenous children are less likely to be enrolled in school and continue to have higher drop out and illiteracy rates than non-indigenous children. Most indigenous children have reduced access to education due to a variety of factors including insufficient educational facilities and teachers, direct or indirect costs for education as well as a lack of culturally adjusted and bilingual curricula in accordance with article 30. Furthermore, indigenous children are frequently confronted with discrimination and racism in the school setting.

60. In order for indigenous children to enjoy their right to education on equal footing with non-indigenous children, States parties should ensure a range of special measures to this effect. States parties should allocate targeted financial, material and human resources in order to implement policies and programmes which specifically seek to improve the access to education for indigenous children. As established by article 27 of the ILO Convention No. 169, education programmes and services should be developed and implemented in cooperation with the peoples

²⁵ CRC, general comment No. 1 on the Aims of Education, 2001.

²⁶ ILO Convention No. 169, article 31, United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, article 15.

concerned to address their specific needs. Furthermore, governments should recognize the right of indigenous peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples.²⁷ States should undertake all reasonable efforts to ensure that indigenous communities are aware of the value and importance of education and of the significance of community support for school enrolment.

61. States parties should ensure that school facilities are easily accessible where indigenous children live. If required, States parties should support the use of media, such as radio broadcasts and long distance education programmes (internet-based) for educational purposes and establish mobile schools for indigenous peoples who practice nomadic traditions. The school cycle should take into account and seek to adjust to cultural practices as well as agricultural seasons and ceremonial periods. States parties should only establish boarding schools away from indigenous communities when necessary as this may be a disincentive for the enrolment of indigenous children, especially girls. Boarding schools should comply with culturally sensitive standards and be monitored on a regular basis. Attempts should also be made to ensure that indigenous children living outside their communities have access to education in a manner which respects their culture, languages and traditions.

62. Article 30 of the Convention establishes the right of the indigenous child to use his or her own language. In order to implement this right, education in the child's own language is essential. Article 28 of ILO Convention No. 169 affirms that indigenous children shall be taught to read and write in their own language besides being accorded the opportunity to attain fluency in the official languages of the country.²⁸ Bilingual and intercultural curricula are important criteria for the education of indigenous children. Teachers of indigenous children should to the extent possible be recruited from within indigenous communities and given adequate support and training.

63. With reference to article 31 of the Convention, the Committee notes the many positive benefits of participation in sports, traditional games, physical education, and recreational activities and calls on States parties to ensure that indigenous children enjoy the effective exercise of these rights.

Special protection measures **(arts. 22, 30, 38, 39, 40, 37 (b)-(d), 32-36 of the Convention)**

Children in armed conflict and refugee children

64. Through its periodic reviews of States parties' reports, the Committee has concluded that indigenous children are particularly vulnerable in situations of armed conflict or in situations of internal unrest. Indigenous communities often reside in areas which are coveted for their natural

²⁷ ILO Convention No. 169, article 27.

²⁸ ILO Convention No. 169, article 28.

resources or that, because of remoteness, serve as a base for non-State armed groups. In other situations, indigenous communities reside in the vicinity of borders or frontiers which are disputed by States.²⁹

65. Indigenous children in such circumstances have been, and continue to face risks of being, victims of attacks against their communities, resulting in death, rape and torture, displacement, enforced disappearances, the witnessing of atrocities and the separation from parents and community. Targeting of schools by armed forces and groups has denied indigenous children access to education. Furthermore, indigenous children have been recruited by armed forces and groups and forced to commit atrocities, sometimes even against their own communities.

66. Article 38 of the Convention obliges States parties to ensure respect for the rules of humanitarian law, to protect the civilian population and to take care of children who are affected by armed conflict. States parties should pay particular attention to the risks indigenous children face in hostilities and take maximum preventive measures in consultation with the communities concerned. Military activities on indigenous territories should be avoided to the extent possible, the Committee recalls article 30 of the United Nations Declaration on the Rights of Indigenous Peoples in this regard.³⁰ States parties should not require military conscription of indigenous children under the age of 18 years. States parties are encouraged to ratify and implement the Optional Protocol on the Involvement of Children in Armed Conflict.

67. Indigenous children who have been victims of recruitment in armed conflict should be provided with the necessary support services for reintegration into their families and communities. Consistent with article 39 of the Convention, States parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of exploitation, abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment or armed conflicts. In the case of indigenous children, this should be done giving due consideration to the child's cultural and linguistic background.

68. Indigenous children who have been displaced or become refugees should be given special attention and humanitarian assistance in a culturally sensitive manner. Safe return and restitution of collective and individual property should be promoted.

Economic exploitation

69. Article 32 of the Convention provides that all children should be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. In addition, ILO Convention No. 138 (Minimum Age Convention) and Convention No. 182 (Worst Forms of Child Labour Convention) set parameters for

²⁹ UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 13.

³⁰ United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, article 30.

distinguishing child labour that needs abolition, on the one hand, and acceptable work done by children, including such activities that allow indigenous children to acquire livelihood skills, identity and culture, on the other. Child labour is work that deprives children of their childhood, their potential and dignity and that is harmful to their physical and mental development.³¹

70. Provisions in the Convention on the Rights of the Child refer to the use of children in illicit production and trafficking of drugs (art. 33), sexual exploitation (art. 34), trafficking in children (art. 35), children in armed conflicts (art. 38). These provisions are closely related to the definition of the worst forms of child labour under ILO Convention No. 182. The Committee notes with grave concern that indigenous children are disproportionately affected by poverty and at particular risk of being used in child labour, especially its worst forms, such as slavery, bonded labour, child trafficking, including for domestic work, use in armed conflict, prostitution and hazardous work.

71. The prevention of exploitative child labour among indigenous children (as in the case of all other children) requires a rights-based approach to child labour and is closely linked to the promotion of education. For the effective elimination of exploitative child labour among indigenous communities, States parties must identify the existing barriers to education and the specific rights and needs of indigenous children with respect to school education and vocational training. This requires that special efforts be taken to maintain a dialogue with indigenous communities and parents regarding the importance and benefits of education. Measures to combat exploitative child labour furthermore require analysis of the structural root causes of child exploitation, data collection and the design and implementation of prevention programmes, with adequate allocation of financial and human resources by the State party, to be carried out in consultation with indigenous communities and children.

Sexual exploitation and trafficking

72. Articles 34 and 35 of the Convention with consideration to the provisions of article 20, call on States to ensure that children are protected against sexual exploitation and abuse as well as the abduction, sale or traffic of children for any purposes. The Committee is concerned that indigenous children whose communities are affected by poverty and urban migration are at a high risk of becoming victims of sexual exploitation and trafficking. Young girls, particularly those not registered at birth, are especially vulnerable. In order to improve the protection of all children, including indigenous, States parties are encouraged to ratify and implement the Optional Protocol on the sale of children, child prostitution and child pornography.

73. States should, in consultation with indigenous communities, including children, design preventive measures and allocate targeted financial and human resources for their implementation. States should base preventive measures on studies which include documentation of the patterns of violations and analysis of root causes.

³¹ ILO, Handbook on Combating Child Labour among Indigenous and Tribal Peoples, 2006, p. 9.

Juvenile justice

74. Articles 37 and 40 of the Convention ensure the rights of children within, and in interaction with, State judicial systems. The Committee notes with concern that incarceration of indigenous children is often disproportionately high and in some instances may be attributed to systemic discrimination from within the justice system and/or society.³² To address these high rates of incarceration, the Committee draws the attention of States parties to article 40 (3) of the Convention requiring States to undertake measures to deal with children alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings, whenever appropriate. The Committee, in its general comment No. 10 on children's rights in juvenile justice (2007) and in its concluding observations, has consistently affirmed that the arrest, detention or imprisonment of a child may be used only as a measure of last resort.³³

75. States parties are encouraged to take all appropriate measures to support indigenous peoples to design and implement traditional restorative justice systems as long as those programmes are in accordance with the rights set out in the Convention, notably with the best interests of the child.³⁴ The Committee draws the attention of States parties to the United Nations Guidelines for the Prevention of Juvenile Delinquency, which encourage the development of community programmes for the prevention of juvenile delinquency.³⁵ States parties should seek to support, in consultation with indigenous peoples, the development of community-based policies, programmes and services which consider the needs and culture of indigenous children, their families and communities. States should provide adequate resources to juvenile justice systems, including those developed and implemented by indigenous peoples.

76. States parties are reminded that pursuant to article 12 of the Convention, all children should have an opportunity to be heard in any judicial or criminal proceedings affecting them, either directly or through a representative. In the case of indigenous children, States parties should adopt measures to ensure that an interpreter is provided free of charge if required and that the child is guaranteed legal assistance, in a culturally sensitive manner.

77. Professionals involved in law enforcement and the judiciary should receive appropriate training on the content and meaning of the provisions of the Convention and its Optional Protocols, including the need to adopt special protection measures for indigenous children and other specific groups.³⁶

³² CRC, general comment No. 1 on Children's Rights in Juvenile Justice, 2007, para. 6.

³³ Ibid. para. 23.

³⁴ Recommendations of Day of General Discussion on the Rights of Indigenous Children, 2003, para. 13.

³⁵ United Nations Guidelines for the Prevention of Juvenile Delinquency, "the Riyadh Guidelines", 1990.

³⁶ CRC, general comment No. 1 on Children's Rights in Juvenile Justice, 2007, para. 97.

States parties' obligations and monitoring of the implementation of the Convention

78. The Committee reminds States parties that ratification of the Convention on the Rights of the Child obliges States parties to take action to ensure the realization of all rights in the Convention for all children within their jurisdiction. The duty to respect and protect requires each State party to ensure that the exercise of the rights of indigenous children is fully protected against any acts of the State party by its legislative, judicial or administrative authorities or by any other entity or person within the State party.

79. Article 3 of the Convention requires States parties to ensure that in all actions concerning children, the best interests of the child shall be a primary consideration. Article 4 of the Convention requires States parties to undertake measures to implement the Convention to the maximum extent of their available resources. Article 42 sets out that States parties are further required to ensure that children and adults are provided information on the principles and provisions of the Convention.

80. In order to effectively implement the rights of the Convention for indigenous children, States parties need to adopt appropriate legislation in accordance with the Convention. Adequate resources should be allocated and special measures adopted in a range of areas in order to effectively ensure that indigenous children enjoy their rights on an equal level with non-indigenous children. Further efforts should be taken to collect and disaggregate data and develop indicators to evaluate the degree of implementation of the rights of indigenous children. In order to develop policy and programming efforts in a culturally sensitive manner, States parties should consult with indigenous communities and directly with indigenous children. Professionals working with indigenous children should be trained on how consideration should be given to cultural aspects of children's rights.

81. The Committee calls for States parties to, when applicable, better integrate information in their periodic reports to the Committee on the implementation of indigenous children's rights and on the adoption of special measures in this regard. Furthermore, the Committee requests States parties to strengthen efforts to translate and disseminate information about the Convention and its Optional Protocols and the reporting process among indigenous communities and children, in order for them to actively participate in the monitoring process. Furthermore, indigenous communities are encouraged to utilize the Convention as an opportunity to assess the implementation of the rights of their children.

82. Finally, the Committee urges States parties to adopt a rights-based approach to indigenous children based on the Convention and other relevant international standards, such as ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples. In order to guarantee effective monitoring of the implementation of the rights of indigenous children, States parties are urged to strengthen direct cooperation with indigenous communities and, if required, seek technical cooperation from international agencies, including United Nations entities. Empowerment of indigenous children and the effective exercise of their rights to culture, religion and language provide an essential foundation of a culturally diverse State in harmony and compliance with its human rights obligations.

TAB 50



General Assembly

Distr.: General
9 August 2021

Original: English

Human Rights Council

Forty-eighth session

13 September–1 October 2021

Agenda items 3 and 5

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Human rights bodies and mechanisms

Rights of the indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples

Study of the Expert Mechanism on the Rights of Indigenous Peoples*

Summary

The Expert Mechanism on the Rights of Indigenous Peoples has prepared the present study pursuant to Human Rights Council resolution 33/25.

The study concludes with Expert Mechanism advice No. 14 on the rights of the indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples.

* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitters' control.



I. Introduction

1. Pursuant to Human Rights Council resolution 33/25, the Expert Mechanism on the Rights of Indigenous Peoples decided, at its thirteenth session, to prepare a study on the rights of the indigenous child. For this purpose, the Expert Mechanism held a virtual seminar on 16 and 17 November 2020 with the collaboration of the Centre for Children, Youth and Family Research of the University of Greenland. The study was informed by the presentations made at that seminar and at the fourteenth session of the Mechanism, and the submissions of Member States, indigenous peoples, including children, national human rights institutions, academics and others.¹ The Expert Mechanism encouraged children and those working with them to make submissions and presentations.

2. The Expert Mechanism sees the study as an opportunity to integrate a human and children's rights-based approach into the interpretation of the rights of indigenous children under the United Nations Declaration on the Rights of Indigenous Peoples. In the study, both the individual and collective rights of indigenous children and the interplay between them are examined. The study incorporates the seminal principle of the best interests of the child in the context of indigenous children. The Expert Mechanism has adopted the definition of the child from the Convention on the Rights of the Child: "a child means any human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier" (art. 1).

3. The capacity of indigenous peoples to meet their children's needs depends on their ability to exercise their right to self-determination and is essential when considering existing gaps in areas such as education and child welfare. That critical link was made by Australian Aboriginal and Torres Strait Islanders in the Uluru Statement from the Heart, in which they stated "When we have power over our destiny our children will flourish." Ties to traditional territories are also central to the ability of indigenous children to reach their potential and exercise the full panoply of their rights, including cultural rights and the right to health.

4. Globally, indigenous peoples, including children, have been disproportionately impacted by the coronavirus disease (COVID-19) pandemic and accompanying containment measures.² That has been particularly acute for those with intersecting vulnerabilities, including girls and children with disabilities, and there is a real risk that in the recovery phase indigenous children will be left even further behind.

II. Legal framework

A. General international human rights law

Convention on the Rights of the Child

5. The Convention on the Rights of the Child and its protocols are the pillars of children's rights and guarantee all children the rights enshrined therein. The Convention emphasizes the active role of children in promoting and protecting their rights. Four of the enumerated rights are also understood as overarching principles required for the full enjoyment of all other rights; non-discrimination (art. 2), the best interests of the child (art. 3), the right to life, survival and development (art. 6) and the right to express their views (art. 12).

6. The principle of the best interests of the child is integral for the enjoyment of all other rights and should be a primary consideration in all matters concerning children. It aims to ensure full enjoyment of all rights, as well as physical, mental, spiritual, moral, psychological and social development, integrity and the human dignity of the child.³ In its general comments No. 11 (2009) and No. 14 (2013), the Committee on the Rights of the Child noted

¹ Submissions and statements received for the present report will be posted on the web page of the Expert Mechanism.

² See A/HRC/46/72.

³ Committee on the Rights of the Child, general comment No. 14 (2013), paras. 4–5.

that the principle exists with regard to both collective and individual rights. The principle must be applied to indigenous children specifically, while this may differ from the approach used for non-indigenous children in a State, the culture, lifestyle and collective rights of indigenous peoples must be taken into consideration. It must be applied specifically to the child in question and cannot be disregarded in favour of the best interests of the indigenous collective.

7. Article 30 of the Convention guarantees the rights of indigenous children to enjoy their own culture, profess and practise their own religion and use their language. In its seminal general comment No. 11 on indigenous children, the Committee on the Rights of the Child confirmed that under this article, States have an obligation to protect those rights and to take special measures in consultation with indigenous communities, including the participation of children in that process. An integral part of article 30 is that it contemplates the child within the community, thereby recognizing the individual rights of the child within the community, including rights to the enjoyment of their own culture, religion and language. The rights of indigenous children are also explicitly contemplated in article 17 (d) with regard to access to media in indigenous languages and in article 29 (d) on the aims of education.

Other key instruments

8. In addition to their rights as children under the Convention, indigenous children have the full gamut of human rights enshrined in all relevant international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities, as well as regional instruments, including those specifically dealing with children, such as the African Charter on the Rights and Welfare of the Child.

9. Although not referred to specifically, indigenous peoples are understood to fall under article 27 of the International Covenant on Civil and Political Rights as ethnic, religious or linguistic minorities, which guarantees their rights to enjoy their cultures, religions and languages in community with others of their group.

B. Collective rights of indigenous peoples under international law

10. In addition to their individual rights, indigenous peoples have collective rights under international law, as guaranteed by the United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), as well as regional and domestic instruments, such as the American Declaration on the Rights of Indigenous Peoples, which includes several references to children.⁴

United Nations Declaration on the Rights of Indigenous Peoples

11. The United Nations Declaration on the Rights of Indigenous Peoples outlines the collective rights of indigenous peoples and constitutes minimum standards for the survival, dignity and well-being of all indigenous peoples (art. 43). The first mention of the rights of indigenous children is in the preamble regarding the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child. Article 7 deals with a key issue in the history of indigenous children, namely the collective right of indigenous peoples not to be subjected to any act of genocide or any other act of violence, including the forcible removal of children of one group to another group. Article 14 confirms the collective rights to education of indigenous peoples, including the establishment and control over educational systems and institutions, using culturally appropriate methods, in their own languages, without discrimination.

⁴ Articles VII, XV, XVII, XXVII, XXX.

12. The Declaration sets out the need for particular attention to be paid to several groups, including children, in relation to the right of indigenous peoples to the continuing improvement of their economic and social conditions (art. 21). It also refers to special measures that States should take, in consultation with indigenous peoples, to protect indigenous children from economic exploitation, including any work that is likely to interfere with their education or be otherwise harmful to them (art. 17). Article 22 calls for special attention to be paid to the rights and needs of certain groups, including children, and measures to guarantee protection against all forms of violence and discrimination, thereby recognizing the intersectional discrimination they face.

13. In addition to the articles that explicitly reference children's rights, there are also cross-cutting rights throughout the Declaration. The rights to self-determination (art. 3) and traditional lands, resources and territories (arts. 25–28) are closely linked with their ability to fully enjoy all other rights, including for example the rights to health (art. 24) and cultural rights (*inter alia*, arts. 11, 13, 31 and 34). There continues to be a gap between the rights provided for in the Declaration and the implementation at national level, particularly regarding the rights of indigenous children.

III. Status of the rights of the indigenous child worldwide

14. Indigenous children face barriers to their rights, including marginalization, racism and structural discrimination, inadequate housing, poor health and education outcomes, vulnerability to suicide, increased interactions with State care and justice systems, violence, forced displacement, the impact of extractive industries, militarization of their territories and lack of registration and recognition. Indigenous children are also impacted by the challenges facing their families and communities, such as high unemployment rates, and are more likely to live in poverty or extreme poverty than non-indigenous children. While there is a lack of comprehensive disaggregated data on their situation in each country, from the information available it is clear that this is their overall status worldwide.

15. Challenges to the rights of children vary depending on region and their individual situations, and may be compounded by intersecting vulnerabilities, including for girls, lesbian, gay, bisexual, transgender, intersex and two-spirit children, children with disabilities and those in remote or nomadic settlements or urban settings. Indigenous girls experience additional barriers, including to their rights to education and health, and disproportionately high rates of teenage pregnancy, which is often attributed to underlying causes, including lower education rates and harmful practices such as child marriage.⁵

A. Non-discrimination

16. All children have the right to be free from discrimination. In addition to article 21 of the Declaration on the Rights of Indigenous Peoples, article 2 of the Convention on the Rights of the Child obliges States parties to ensure the rights provided therein without discrimination of any kind. Article 44 of the Declaration reiterates that the rights therein are equally guaranteed for female and male indigenous individuals. In its general comment No. 11, the Committee on the Rights of the Child found that indigenous children were among those requiring positive measures to counter discriminatory attitudes and practices, including racism, and ensure the full enjoyment of their rights, including special measures relating to the provision of culturally appropriate health care, education, housing and sanitation, and in the juvenile justice system.

17. Indigenous children often experience discrimination regarding access to services. Greenlanders living in Denmark face discrimination and stigmatization from employers and in accessing health care, education and other social services. Although often lacking, disaggregated data is crucial for identifying gaps and developing appropriate policies to counter the discrimination faced by indigenous children.

⁵ A/HRC/33/57, para. 61 and A/HRC/30/41, paras. 24–28, 33–37, 54 and 56.

18. New Zealand has introduced measures to monitor the disparities between indigenous and non-indigenous children within its child welfare system, which have demonstrated a decline in the number of Maori children in State care in recent years. Guatemala has introduced a system to bring visibility to indicators related to indigenous peoples and Ecuador incorporates self-identification into its information intake in its health-care system. In Canada, First Nations brought legal cases regarding discrimination in health-care access, leading to the adoption of legislation known as Jordan's Principle to reduce jurisdictional barriers and provide support and funding for indigenous children seeking social services.

B. Participation, consultation and the right to be heard

19. Indigenous peoples have rights to consultation and to participate in decision-making. In its 2011 study on the right to participate in decision-making, the Expert Mechanism emphasized the importance of involving indigenous women and youth in decision-making processes.⁶ Children, who often make up a large percentage of indigenous populations, should be included in these processes in a meaningful way.

20. Article 12 of the Convention on the Rights of the Child holds that the views of children should be given due weight in all matters affecting them, according to their age and maturity. That is not limited to seemingly child-specific issues, such as education or alternative care, but in all areas that affect their lives, for example health care or issues concerning their traditional territories and environment. In its general comment No. 11, the Committee on the Rights of the Child confirmed that States play an integral role in the participation of indigenous children and must ensure that they are consulted on matters affecting them.

21. With regard to free, prior and informed consent, in its 2018 study, the Expert Mechanism reiterated the importance of consulting with women, children, youth and persons with disabilities, and considering the specific impacts of decisions on them.⁷ However, indigenous peoples report that Governments are not consulting them on policies that affect indigenous children. These issues are particularly relevant in Africa where, due to patriarchal structures, women and children are often not consulted or involved in decision-making, even at the community level.⁸

C. Registration and nationality

22. Article 6 of the Declaration reiterates the right of indigenous peoples to a nationality, which is also enshrined specifically with regard to children in article 24 (3) of the International Covenant on Civil and Political Rights and in article 7 of the Convention on the Rights of the Child. Lack of registration at birth is linked to the right to nationality, as unregistered children do not have the required documentation, such as birth certificates, to access national identity documents. That leaves them at risk of statelessness and is exacerbated in countries where indigenous peoples are not recognized as such. Lack of registration impacts their ability to access basic public services, including education and health care, and leaves them at greater risk of trafficking, particularly for girls.⁹

23. Indigenous children are often at high risk of non-registration. In its general comment No. 2 on article 6 of the African Charter on the Rights and Welfare of the Child, the African Committee of Experts on the Rights and Welfare of the Child highlighted the increased risk for indigenous children in Africa where, for example, those from the eastern part of the Democratic Republic of the Congo are not registered and are considered stateless.¹⁰ Children whose communities span national borders and those in nomadic communities are often

⁶ See A/HRC/18/42.

⁷ A/HRC/39/62, annex, para. 11.

⁸ Information provided by member of the Expert Mechanism, Margaret Lokawua.

⁹ A/HRC/EMRIP/2019/2/Rev.1, para. 73, A/HRC/30/41, para. 66, and Committee on the Rights of the Child, general comment No. 11 (2009), para. 72.

¹⁰ Submission by Innovation pour la défense et la protection des ressources naturelles.

impacted, as are those in remote areas, such as in Mexico,¹¹ where they remain at risk of not being registered.

24. Guatemala has made efforts to increase the registration of indigenous children, including through mobile registration in remote areas and preregistration initiatives. The Public Defender in Paraguay has carried out registration in indigenous communities.

D. Right to life, physical and mental integrity, liberty and security of person

25. Article 7 (1) of the Declaration on the Rights of Indigenous Peoples reiterates the rights to life, liberty and security of person guaranteed under international law. The right to life is further developed by the Convention on the Rights of the Child, which includes State obligations to ensure the survival and development of the child to the maximum extent possible (art. 6 (2)). That is also an overarching principle of the Convention that is tied to, and reliant upon, the right to an adequate standard of living (art. 27).

26. Indigenous children often have higher mortality rates than non-indigenous children, as is the case with Maori children in New Zealand.¹² The infant mortality rate in the Chittagong Hill Tracts, home to indigenous peoples of Bangladesh, is more than double the national average.¹³ Indigenous children are at heightened risk of violence, exclusion, discrimination and bullying, and often lack State protection.

Violence, abuse and racism

27. Indigenous children are at a higher risk of violence than non-indigenous children, owing to conditions such as poverty and migration, in particular to urban centres, leaving them at risk of sexual exploitation and trafficking. In Greenland, many indigenous children are exposed to domestic violence and substance abuse at home. They are often victims of sexual abuse, which goes largely unreported, even for generations.¹⁴ The underreporting demonstrates the friction between collective and individual rights, as in many communities reporting may be seen as a threat against the collective and fear of exclusion may hinder reporting in communities where people are interdependent. Indigenous children have experienced increased domestic violence during the pandemic and report the need to create safe spaces. Indigenous children, including Sami, reported experiencing bullying, harassment and racism at school, on social media and when exercising their traditional livelihoods.¹⁵

State and non-State actors

28. Indigenous children experience threats of violence from State and non-State actors. They often express fear of law enforcement, for example Mapuche children who have been exposed to violence during police raids, during which police enter houses with high-calibre weapons.¹⁶ Indigenous children in Australia report being targeted and subject to verbal and physical abuse by the police, with girls reticent to seek assistance and reporting sexual exploitation by the police.¹⁷

29. Indigenous children, particularly in Asia, Africa and South America, are impacted by armed conflicts and the presence of armed actors on their land. The risk of violence increases when they are displaced, as was the case for Kel-Tamasheq children living in refugee camps

¹¹ Submission by the Mexican National Human Rights Commission.

¹² Child and Youth Mortality Review Committee, *14th Data Report 2013–17* (Wellington, Health Quality & Safety Commission, 2019).

¹³ Submission by Maleya Foundation. See also United Nations Children's Fund (UNICEF) Bangladesh, "Many tracts one community" (August 2019).

¹⁴ Submission by MIO (National Advocacy Centre), Greenland.

¹⁵ Submission to the fourteenth session of the Expert Mechanism by the Youth Council of the Sami Parliament in Sweden.

¹⁶ Submissions by Human Rights Watch and Red por la Defensa de la Infancia Mapuche.

¹⁷ Wiyi Yani U Thangani (Women's Voices), *Securing Our Rights, Securing Our Future* (Sydney, Australian National Human Rights Commission, 2020), p. 190.

owing to armed conflicts in the Sahel, some of whom have been recruited as child soldiers by militias.

Heightened violence against girls

30. While protection from violence and discrimination is enshrined in the Declaration, indigenous women and girls experience disproportionate rates of all types of violence, including sexual, domestic, gender and conflict-based violence, and those with disabilities are at even greater risk. Indigenous girls are frequently victims of sexual violence, as is the case for Emberá girls in Colombia, and most perpetrators enjoy immunity for their crimes.¹⁸ Sexual violence, in addition to a lack of opportunities and of sexual education can lead to early marriages and pregnancies for indigenous girls, exposing them to risks and obstetric violence that they may face because of their youth or ethnic origin.¹⁹ Indigenous girls also continue to experience violence through practices such as female genital mutilation. They are particularly vulnerable to sexual exploitation and trafficking, including in South America and Asia. States are taking measures to counter this phenomenon, including Canada, which held a national inquiry into missing and murdered indigenous women and girls with the aim of decreasing the levels of violence against them.²⁰

E. Impact of development activities, including the extractive industries

31. Indigenous peoples, including children, are disproportionately affected by development and business activities. Indigenous children often suffer irreparable harm, which gets worse when they are displaced. Such projects often arrive at a critical stage in children's development, resulting in environmental damage and causing health problems, impacting their rights to education and family life and affecting their traditional territories and enjoyment of their cultural rights.

32. Indigenous peoples have been displaced from their lands for development activities, such as the establishment of national parks. Forced displacement affects all areas of the lives of indigenous children, who lose the connection with their lands and by extension their cultures, with impacts on their language, education and health. That was the case when indigenous peoples in the eastern part of the Democratic Republic of the Congo were forced from their traditional territories for the establishment of the Kahuzi Biega National Park in 1975, which had a disproportionate impact on those who were children then and on their children today.

33. Extractive industries affect the full spectrum of the rights of indigenous children. The arrival of mining in indigenous territories has led to deforestation, limited access to traditional lands, contamination of the environment and water sources, and devastating impacts on health, livestock and crops. Contamination from toxic substances affects the rights to health and a healthy environment, with substances such as mercury and other heavy metals seeping into water sources causing severe health impacts for children and serious damage to fetuses in utero. The Ngati Kuku Maori Peoples report deleterious effects of industrial chemical pollution on their children, including rashes, respiratory symptoms and risk of infection when swimming in ancestral waters.²¹

34. Guji peoples living near the Lega Dembi mine in Ethiopia have reported suffering increased miscarriages and stillbirths, higher rates of infant mortality and congenital disabilities since the establishment of the mine. Children have experienced chronic health

¹⁸ Intervention by Dali Angel, Fondo para el Desarrollo de los Pueblos Indígenas de América Latina y el Caribe.

¹⁹ Joint statement and submission to the fourteenth session of the Expert Mechanism by indigenous youth and women's organizations of Latin America and the Caribbean.

²⁰ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place*, executive summary of the final report (2019).

²¹ Submission to the fourteenth session of the Expert Mechanism by Whareroa marae and Ngati Kuku Maori Peoples.

issues, such as vision and skin problems, and have been born with deformed limbs, reportedly due to contamination from the mine, including of water sources.²²

35. Ipili indigenous communities in Papua New Guinea have reported similar violations related to the establishment of the Porgera gold mine in their traditional territories: environmental degradation and exposure to chemicals that led to birth defects in children and violence. Indigenous girls and women are particularly impacted. In Porgera, many were raped, often when searching for gold in dump areas after losing their ability to subsist on agriculture, traditionally the role of girls and women in their communities.²³

F. Alternative care and forced removals

36. While the forcible removal of children from indigenous groups is prohibited under article 7 (2) of the Declaration on the Rights of Indigenous Peoples and article 8 prohibits forced assimilation or destruction of their culture, assimilationist and discriminatory policies have often led to the removal of indigenous children from their communities and subsequent institutionalization. Such removals impact many of their rights, including their collective rights to their traditional lands, to belong to an indigenous community, to practise their spiritual and religious traditions, and to their languages and culture.

1. Current alternative care

37. Indigenous children are more likely to find themselves in alternative care and in more frequent contact with criminal justice systems than non-indigenous children. Alternative care and the criminal justice system are linked, with many children going from the former to the latter, or back and forth between the two, owing to cycles of trauma and loss.

38. Aboriginal and Torres Strait Islander children are reportedly 9.7 times more likely to be removed from their parents than non-indigenous children in Australia.²⁴ That includes babies removed for reasons such as the young age or mental health of the mother.²⁵

39. Representing only 7.7 per cent of children under 14 years of age in Canada, indigenous children make up 52.2 per cent of children in alternative care.²⁶ Involvement and decision-making by indigenous peoples in child welfare is critical to improving this disparity. There have been efforts by First Nations to regain authority for child services since the passing of the *Act respecting First Nations, Inuit and Métis children, youth and families* on 1 January 2019.

40. Amendments were made to the Oranga Tamariki Act, the New Zealand child welfare act, aimed at improving the situation of children, including Maori children. It includes incorporation of international children's rights instruments and establishes basic minimum standards for every child aimed at reducing disparity in care and increasing a child's connection to his or her cultural identity.

2. Residential schools, adoption and redress

41. Various countries, including Australia, Canada, the Russian Federation and the United States of America have historically sent indigenous children to boarding schools far from their families and communities, where they were usually unable to use their languages and were exclusively taught the dominant religion and culture. Many experienced physical,

²² Submission by Ethiopian non-governmental organizations Girja Integrated Rural Development Association and Development by Unity and Brotherly Action for the Future and Northwestern University Center for International Human Rights.

²³ Submission by the Porgera Red Wara Women's Association.

²⁴ National Voice for our Children, the Family Matters Campaign, University of Melbourne, Griffith University and Monash University, *The Family Matters Report 2020. Measuring Trends to Turn the Tide on the Over-representation of Aboriginal and Torres Strait Islander Children in Out-of-home Care in Australia*.

²⁵ Hannah McGlade, "My journey into 'child protection' and Aboriginal family led decision making", p. 5.

²⁶ Census 2016 data on [reducing the number of indigenous children in care](#).

psychological and sexual abuse. They were alienated from their communities and cultures, often lost their language and consequently experienced mental, physical and spiritual trauma. Others never returned. Between May and July 2021, the remains of hundreds of indigenous peoples, including children, were discovered on the grounds of former residential schools in Canada, including the Tk'emlups te Secwepemc and Cowessess First Nations. The impact of such assimilationist policies went beyond the individual, resulting in intergenerational trauma and a loss of traditional knowledge, by breaking cycles of transmission of information to children.

42. Two notable commissions related to the rights of indigenous children were held in North America in recent years: the Truth and Reconciliation Commission of Canada (2008–2015) and the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission (2013–2015). The Canadian commission was established to work towards reconciliation for the intergenerational trauma suffered from its historical residential schools and ended in 94 calls to action to provide redress to survivors, families and communities and prevent recurrence, including concrete recommendations regarding child welfare and the legacy of residential schools.

43. The Maine-Wabanaki Commission was a collaborative commission between the State of Maine and the Wabanaki peoples that aimed to improve child welfare practices regarding indigenous children in the State and establish an accurate history of those practices. It found that between 2000 and 2013, Wabanaki children entered alternative care five times more frequently than non-indigenous children.²⁷

44. While many children in North America were taken to residential schools, others were adopted out, including in Canada in what was known as the “Sixties Scoop”. In the United States, the federal Indian Child Welfare Act (1978) was enacted to address the large number of indigenous children who had been adopted out of their communities, often due to underlying discrimination, as opposed to neglect or abuse. While the Act recognizes the rights of indigenous children, families and tribes, it suffers from ongoing non-compliance by states and local officials.²⁸ Efforts led by indigenous people in the United States include tribal foster care programmes, including in the Cherokee Nation, to enable indigenous children to remain in their communities.²⁹

45. An important part of reparation lies in improving the situation. In Australia, there has been continued removal of indigenous children from their homes and communities since the Government apologized in 2008 for earlier removals, known as the “stolen generations”, and a reported increase in removals since the national inquiry and report on the subject.³⁰ The Government has pledged to reduce the number of indigenous children in care by 5 per cent per year from 2021 onwards.³¹ In 2021, the State of Victoria established the Yoo-rook Justice Commission, becoming the first Australian state to establish a truth-telling commission for wrongs committed against its Aboriginal peoples.

G. Access to justice and interactions with justice systems

46. While there is often a focus on criminal justice, children interact with all types of justice systems. In Africa, indigenous children interact more with informal justice systems, such as community- and religion-based processes. Formal justice systems are often inaccessible owing to a lack of legal aid or exclusive use of dominant languages.³² Guatemala has taken measures to support indigenous children in its justice system, including the provision of interpretation in indigenous languages and specialized bodies dealing with trafficking, which affects many indigenous children.

²⁷ A/HRC/EMRIP/2019/3/Rev.1, para. 51.

²⁸ Intervention by Angel Smith.

²⁹ Information provided by member of the Expert Mechanism, Kristen Carpenter.

³⁰ Hannah McGlade, “My journey into ‘child protection’ and Aboriginal family led decision making”, p. 4.

³¹ Intervention by the Chair of the Expert Mechanism, Megan Davis.

³² Intervention by Nkatha Murungi, Pretoria University.

47. Indigenous children and youth are often overrepresented in detention centres. This can be due to a lack of alternatives; for example a lack of non-custodial programmes for girls in remote areas may lead to disproportionate incarceration rates of indigenous girls.³³ The Committee on the Rights of the Child has expressed concern regarding disproportionate rates of incarceration of indigenous children and reiterated that the arrest and detention of children should be a last resort.³⁴

48. While Aboriginal and Torres Strait Islanders make up only 3 per cent of the population of Australia, their children and youth represent 50 per cent of those in detention and are more than 20 times more likely to find themselves in custody than their non-indigenous counterparts.³⁵ Indigenous children in detention have often been impacted by domestic violence or suffer from mental health challenges. Reports on indigenous children in the Australian child justice system include the use of solitary confinement and the detention of children with disabilities, including cognitive impairments. Indigenous children have reported being harassed, followed and stopped by police officers. That is supported by research regarding the New South Wales suspect target management programme, which reportedly targets children as young as 10, disproportionately Aboriginal, who are deemed to be at risk of offending.³⁶

49. There are programmes that are aimed at improving the experience of indigenous children in the Australian child justice system, including the Koori court programme which creates transition plans for children once they leave detention. Other efforts involving and being led by indigenous communities are based on restorative justice and circle sentencing. The Rangatahi courts in New Zealand have helped Maori youth connect and engage more actively with their community and cultural identity. Traditional restorative justice practices, such as circle sentencing and focus on mutual forgiveness, have been reintroduced in parts of Canada and the United States, the former having incorporated them into its youth criminal justice system.

H. Economic, social and cultural rights

50. Indigenous children face marginalization and multiple disparities in the enjoyment of their economic, social and cultural rights, frequently due to structural discrimination and colonial legacies. They more often live in poverty than non-indigenous children, leaving them more vulnerable to involvement with care and justice systems. They also experience disproportionate rates of preventable childhood diseases.

51. These disparities occur in rich and lesser developed countries. Maori children experience higher poverty rates and more food insecurity than non-indigenous children in New Zealand. While poverty is widely experienced by children in Latin America, it is more common for indigenous children, particularly those in rural areas. Despite efforts made by the State, corruption by service providers is a barrier to accessing water, school meals and health services aimed at benefiting Wayuu children in the department of Guajira, Colombia. In the Guajira, access to water is limited, childhood malnutrition rates are high and COVID-19 containment measures have decreased the ability of the population to access food and medical attention.³⁷

52. In her report of 2019, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context found that even in rich countries, indigenous peoples often live in abhorrent conditions in grossly inadequate housing lacking even basic amenities such as water and

³³ Submission by the Office of the Special Representative of the Secretary-General on Violence Against Children.

³⁴ General comment No. 11, paras. 74–75. See also Committee on the Rights of the Child, general comment No. 24 (2019).

³⁵ Submissions by the Queensland Human Rights Commission and Human Rights Watch.

³⁶ Wiyi Yani U Thangani (Women's Voices), *Securing Our Rights, Securing Our Future*, p. 193.

³⁷ Submission by Human Rights Watch.

toilets.³⁸ Poor housing conditions, such as mould and damp, have been linked to increased respiratory health problems in indigenous children, including Maori children.³⁹

53. Indigenous peoples are also affected by homelessness, including in the Arctic. There is a trend towards urbanization in many countries, including Canada, where the majority of urban indigenous peoples are children and youth and most indigenous children live in urban areas. Indigenous children leave their territories for many reasons, including lack of opportunities or adequate infrastructure, lack of acceptance of lesbian, gay, bisexual, transgender, intersex, and two-spirit persons, or, particularly for women, to escape domestic violence.⁴⁰ Some are displaced because of the extractive industries, natural disasters, militarization or the presence of organized crime in their territories. Others remain in cities after leaving State care programmes and some are born there. They often face additional challenges to exercising their rights, particularly regarding access to culturally appropriate education, services, media and their languages.

54. Many indigenous children are forced to work out of economic necessity. Urban indigenous children are often out of school and working at young ages. Indigenous girls are sent to cities as domestic workers, leaving them vulnerable to abuse.⁴¹ Some undertake dangerous work, such as mining, as is the case with some Amazigh children in Algeria. In the Colombian Amazon, there are also reports of armed actors related to the drug trade using indigenous children as forced labour.⁴²

I. Right to education

55. The right to education is fundamental to the exercise of many other rights. Article 28 of the Convention on the Rights of the Child recognizes the right to education with a view to the progressive realization of the right on the basis of equal opportunity. Article 29 of the Convention includes as an aim of education, the preparation of children “for responsible life in a free society in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin”. In its general comment No. 1 (2001), the Committee on the Rights of the Child stated that school environments must reflect this spirit of understanding and noted that the promotion of values and policies conducive to human rights was needed in both schools and the broader community (para. 6). Article 29 (c) of the Convention also highlights the importance of respect for the child’s own cultural identity, language and values.

56. Article 14 of the Declaration on the Rights of Indigenous Peoples reiterates the right of indigenous children to education without discrimination and confirms the right of indigenous peoples to “establish and control” their own educational systems in their own languages. It also obliges States, together with indigenous peoples, to take measures to ensure access to education in their own languages and cultures when possible. Article 15 confirms the right of indigenous peoples to have their cultures appropriately reflected in education. The Indigenous and Tribal Peoples Convention (No. 169) guarantees the right of indigenous children to learn in their own languages, as well as to learn dominant languages (article 28). It also includes the promotion of the participation of indigenous children in their communities and larger society as an educational aim (article 29).

57. Education is not only a foundational element for the individual development of indigenous children, but also of the community as a whole and is integral to their participation in society. In its 2009 study on the right to education, the Expert Mechanism reiterated that States must ensure access to high quality, culturally appropriate education for all indigenous

³⁸ A/74/183, para. 1.

³⁹ Royal Australasian College of Physicians, [Indigenous Child Health in Australia and Aotearoa New Zealand](#) (December 2020) and Tristram Ingham and others, “[Damp mouldy housing and early childhood hospital admissions for acute respiratory infection: a case control study](#)”, *Thorax*, vol. 74, No. 9.

⁴⁰ Submission by the National Association of Friendship Centres.

⁴¹ Submission to the fourteenth session of the Expert Mechanism by Red de Jóvenes Indígenas de América Latina.

⁴² Submission by Comisión Nacional de Mujeres Indígenas de Colombia.

children, including those in remote and nomadic communities, with particular attention paid to indigenous girls.⁴³

1. Access to education

58. The ability of indigenous peoples to control and implement their own education systems is an exercise of their right to self-determination. Indigenous educational systems are holistic and incorporate nature, and learning is considered a lifelong endeavour.⁴⁴ Indigenous languages and education are inextricably linked (see paras. 66–69 below).

59. In its 2009 study, the Expert Mechanism found that lack of access to quality education was a major factor contributing to the disadvantaged position of indigenous peoples. Underlying structural issues often create challenges to the ability of indigenous children to fully enjoy their right to education and they face various barriers owing to remote locations or nomadic traditions and lack of access to electricity and the Internet.

60. Mainstream educational curricula often depict indigenous peoples in a discriminatory and derogatory manner, using stereotypes and not accurately reflecting history. Racism in public school systems can drive indigenous children to abandon their studies or leave their culture behind as a survival mechanism. It is essential that States ensure that learning materials do not negatively impact indigenous peoples, including through the removal of all harmful stereotypes and outdated language. It is important that shared histories be taught to all children, indigenous and non-indigenous.

61. Indigenous children suffer disproportionately high illiteracy rates and are less likely to attend or finish school than non-indigenous children.⁴⁵ Indigenous peoples in Asia often have a high school dropout rate⁴⁶ and Maya Ixil youth report having to drop out of school to work in agriculture from a young age.⁴⁷

62. Indigenous girls face additional barriers to education, often resulting in their dropping out of school, owing to domestic and care responsibilities, harmful practices such as child marriage, pregnancies and the risk of sexual violence during transit and at school. In addition, in some cultures families prioritize the schooling of boys. Indigenous girls with disabilities face even more discrimination, often remaining hidden at home. Indigenous children with disabilities do not have equal access to education. Schools in indigenous communities are often not equipped with accessible software or methodologies. Such challenges may cause indigenous families to leave their communities, or the child may be separated from family and community in order to seek the support required.

63. Indigenous children in remote settlements often lack access to adequate education in their communities. Some attend boarding schools away from their communities and are taught in dominant languages. They include Sami children,⁴⁸ indigenous children in the Russian Federation⁴⁹ and Adivasi children in India.⁵⁰ Boarding schools far from traditional territories create further barriers to the enjoyment of cultural rights. Where possible, indigenous children should have the opportunity to be educated in their own communities and, to the extent possible, by indigenous teachers.

64. In the Russian Federation, measures have been taken to accommodate indigenous children, including establishing nomadic and semi-permanent schools in the north,⁵¹ where teachers may come to the students. In the Khanty-Mansi Autonomous District-Yugra, so-called camping schools and kindergartens combine distance learning with preservation of the nomadic lifestyle, allowing children to remain in their communities.⁵² Also in this region,

⁴³ A/HRC/12/33, annex, para. 3.

⁴⁴ Intervention by the Special Rapporteur on the rights of indigenous peoples.

⁴⁵ Committee on the Rights of the Child, general comment No. 11, para. 59.

⁴⁶ Intervention by Vice-Chair of the Expert Mechanism, Binota Moy Dhamai.

⁴⁷ Intervention by Fondo para el Desarrollo de los Pueblos Indígenas de América Latina y El Caribe.

⁴⁸ Intervention by the Chair of the Expert Mechanism, Laila Vars.

⁴⁹ Intervention by Nadezhda Bulatova, Russian Academy of Sciences.

⁵⁰ Submission by Survival International.

⁵¹ Submission by the Russian Federation.

⁵² Submission by (Association of Ethnocultural Centres and Heritage Organizations) ECHO.

students are provided with State support when studying indigenous cultures and languages, or traditional occupations, thereby enabling indigenous youth to return to their communities.

65. The participation of indigenous peoples, including children, in the planning of educational systems and curricula is essential. Children's voices should be incorporated at all stages of research, as is being done at the University of Greenland, where children report security and mutual respect as central elements of a good learning environment. The indigenous communities of Greenland are establishing educational programmes based on their world view. They emphasize indigenous learning methods, such as dialogue, are community-centred and integrate modern technology. It is also critical that indigenous children, particularly girls, are aware of their rights.⁵³ The National Human Rights Commission of Mexico has organized workshops and training sessions and published workbooks for children, parents and teachers on children's rights.

2. Access to education in indigenous languages

66. Language and education are inextricably linked. Early mother tongue education has proven critical to the ability of indigenous children to learn in any language and increased the time they remain in school. Many indigenous children have no or limited access to education in their own languages. They continue to be taught in dominant languages and frequently do not have access to educational materials in their own languages. Indigenous children with disabilities generally learn in a dominant language, as materials in accessible formats are not available in their own languages.

67. Lack of education in an indigenous language can lead to a total lack of access to education. Indigenous children in remote areas of Bangladesh traditionally had challenges accessing education as they did not speak the language of instruction. Since the signing of the Chittagong Hill Tracts accord in 1997, their right to primary education in their mother tongue has been recognized by national law. Indigenous peoples' organizations have developed learning materials, but the steps taken by the Government towards implementation will be essential for their full enjoyment of that right.⁵⁴

68. Age and location are often the determinants of whether an indigenous child has access to schooling in their own language. Learning in one's own language at primary levels provides a solid foundation, even if a student is educated in another language in later years. Educational curricula in Africa are often designed and controlled centrally by States. This affects learning in indigenous communities, leading to a decline in the use of indigenous languages. In Morocco and Algeria, Amazigh children are taught primarily in Arabic, later in French and only have the option to learn in Amazigh in some regions from the age of 10. In Greenland, Inuit children have access to instruction in the Kalaallisut language, but they must be fluent in Danish or English to continue with higher education.

69. Availability of education in indigenous languages is important at all ages and States should make efforts to establish learning opportunities in indigenous languages whenever possible. Norway has incorporated the Sami language into its Education Act, which guarantees teaching in Sami for primary levels in Sami districts. However, for Sami children at the same level living outside delineated Sami districts, mother tongue education is only guaranteed when there are a specified number of students wishing to be taught in Sami. The right to learn the Sami language is guaranteed to all Sami children in primary levels regardless of district.⁵⁵

3. Impact of COVID-19 on the right to education

70. The digital environment is becoming an essential part of children's lives, including their education. However, indigenous children often have less good access to education owing to the digital divide, which has been exacerbated during the pandemic. Indigenous communities, particularly remote ones, frequently have worse Internet access rates than non-

⁵³ Submissions to the fourteenth session of the Expert Mechanism by the African Indigenous Women's Association and UNICEF.

⁵⁴ Intervention by Zabarang Kalyan Samity.

⁵⁵ Norwegian Education Act (1998), section 6.

indigenous communities, or no access at all, which has meant many indigenous children have had no schooling since the start of the pandemic. Indigenous children with disabilities have faced even greater barriers, with difficulties in obtaining accessible formats, particularly in their own languages.⁵⁶

71. Indigenous students and teachers report challenges related to Internet access or not having a computer at home, as is the case for Amazigh children. Indigenous homes often include extended families, with children having to share a computer or not having a quiet place to learn during the pandemic. Some indigenous children have been doing their schoolwork by mobile phone, often travelling to get a signal. Children from Pueblo de Jemez, New Mexico, learn in the unwritten Towa language so have not been able to carry out written assignments remotely. Some indigenous students in Alaska received assignments but they were in English instead of their Yup'ik language. In New Zealand, television programmes, supported by the Ministry of Education, have offered educational programming in the Maori language during the pandemic.

J. Right to health

72. The right to health is recognized in article 24 of the Convention on the Rights of the Child and the right to health, including the determinants of the right to health, are reflected throughout the Declaration on the Rights of Indigenous Peoples. Article 24 of the Declaration includes the right to traditional medicines and health practices, including the conservation of medicinal plants, animals and minerals. It also reflects the highest attainable standard of mental and physical health, as provided for in article 12 of the International Covenant on Economic, Social and Cultural Rights, including the critical principles of non-discrimination and equal treatment. Health is also referred to in article 21 of the Declaration, regarding the right to improvement in economic and social conditions for indigenous peoples, and in article 23, regarding the right to be involved in developing and determining economic and social programmes, including health programmes. The rights of indigenous peoples to health are also guaranteed in article 25 of the Indigenous and Tribal Peoples Convention (No. 169) and article XVII of the American Declaration on the Rights of Indigenous Peoples.

73. In its general comment No. 14 (2000), the Committee on Economic, Social and Cultural Rights referred to the rights of indigenous peoples to specific measures to improve access to culturally appropriate health care that takes traditional practices and medicines into account. The Committee also recognized the collective dimension of the health of indigenous peoples, noting that an individual's health is often linked to the health of the community as a whole. The Committee on the Rights of the Child has clarified that children's right to health includes their right to grow, develop to their full potential and live in conditions enabling them to attain the highest standard of health.⁵⁷

74. Indigenous peoples, including children, often have unequal access to health care, including in Africa, Latin America and the Arctic. Poverty has an impact on health. That link has been made in New Zealand, where Maori children, who are more likely to live in poverty, also experience more health issues, are less likely to access health care and twice as likely to die from treatable conditions than non-indigenous children.⁵⁸

75. Unequal access is particularly stark in remote areas, including for Inuit children in smaller settlements in Greenland, who often do not have access to a doctor or dentist. Consequently, health professionals have encountered children with symptoms of sexual abuse long after the event and evidence is lost, leaving accountability and recovery even less likely.

76. Lack of access to health care has a disproportionate impact on indigenous girls, with little access to sexual and reproductive health services, including contraception. Indigenous women often do not access prenatal care and give birth at home. In Africa, indigenous babies

⁵⁶ Submission to the fourteenth session of the Expert Mechanism by the Global Network of Indigenous Peoples with Disabilities and International Disability Alliance.

⁵⁷ General comment No. 15 (2013), para. 2.

⁵⁸ Submission by Aotearoa New Zealand Centre for Indigenous Peoples and the Law.

may not receive regular vaccination doses, as is the case for some from the Democratic Republic of the Congo.⁵⁹ The Russian Federation has taken measures to support health during pregnancy, childbirth and the postnatal period in the Yamalo-Nenets Autonomous District, including the provision of air ambulances and the introduction of telemedicine. One key element for ensuring equal and appropriate access to health care is ensuring, as Ecuador has done, that there are indigenous staff members in health-care systems.

77. As the Expert Mechanism has recently produced a report focusing on the impact of COVID-19 on indigenous peoples, the present study does not report on that issue. However, it reiterates the disproportionate impact of the disease and containment measures on the health of indigenous peoples, including children. COVID-19 has compounded already existing challenges to accessing adequate health care and potable water, and led to the diversion of resources from other health needs. It has since been reported that indigenous children with disabilities suffered when rehabilitation abruptly stopped due to the pandemic.

Mental health

78. While there is a lack of comprehensive disaggregated data, the information available indicates that indigenous children are vulnerable to substance abuse and depression and at greater risk of suicide than non-indigenous children. Removal from their community is detrimental to their mental health, causing a sense of detachment, intergenerational trauma and difficult reintegration.

79. American Indian and Alaskan native children and youth reported higher depression rates than any other ethnic group in the United States. The number of Greenlanders under the age of 20 committing suicide has increased in recent years.⁶⁰ Studies also show Maori youth suicide rates rising, with challenging underlying issues, including discrimination, poverty and lack of access to health care.⁶¹ Ecuador has begun suicide intervention programmes in indigenous communities and has trained 53 indigenous leaders and medical professionals in the traditional territories of the Waorani people, who have a high suicide rate.⁶²

Right to a healthy environment

80. Article 24 (2) of the Convention on the Rights of the Child makes specific reference to clean drinking water and the risks of environmental pollution, and the Committee on the Rights of the Child has interpreted article 6 (2), guaranteeing the survival and development of the child to the maximum extent, as including climate change and environmental pollution. The Declaration includes the rights of indigenous peoples to conservation and protection of the environment (article 29) in addition to including conservation of vital medicinal plants, animals and minerals in the right to traditional medicines (article 24).

81. Children's rights are indivisible and interdependent and many, such as the rights to health and a healthy environment, are critical to the enjoyment of all other rights. Indigenous children and nature are interconnected and the protection of their traditional territories is integral to their ability to pass on their cultural heritage.⁶³ Indigenous peoples are disproportionately impacted by climate change and the rights of the children, who will remain on the planet longer than adults, will be increasingly affected as the impacts worsen, as is already the case in areas such as the Pacific islands.⁶⁴

82. Guatemala has recognized the increased vulnerability of indigenous children to climate change, including as regards their food security and possible displacement, and has taken a series of measures to educate the public. They include programmes for children and

⁵⁹ Intervention by Ms. Murungi and submission by Innovation pour la défense et la protection des ressources naturelles.

⁶⁰ Submissions by the Human Rights Council of Greenland and the Inuit Circumpolar Council.

⁶¹ Submission by Aotearoa New Zealand Centre for Indigenous Peoples and the Law.

⁶² Submission by Ecuador.

⁶³ Submission to the fourteenth session of the Expert Mechanism by the Public Defender of Ecuador.

⁶⁴ Submission by member of the Committee on the Rights of the Child, Clarence Nelson.

youth to become “eco guardians” and translating educational materials on climate change into indigenous languages.⁶⁵

K. Cultural and language rights

83. Indigenous peoples face discrimination for using their languages, wearing their traditional dress and participating in cultural activities. Language is the principal mode of transmission of traditional knowledge and is a foundational element of indigenous cultures and identity. Indigenous children learning and using their languages are key to preserving indigenous cultures, historical memory and worldview, as well as to ensuring political participation, economic development and environmental sustainability.

84. Indigenous children often do not learn their languages and are often not fluent in them, even though their communities and families use those languages. Rural or isolated indigenous populations, including children, tend to have higher rates of knowledge of indigenous languages. Assimilationist policies, such as the use of residential schools and adoption for indigenous children, has had harmful effects on the maintenance of indigenous cultures and languages, at times leading to the endangerment and near extinction of indigenous languages. The United Nations Educational, Scientific and Cultural Organization has recognized that social factors may contribute to decreased transmission of languages, including possible discrimination against indigenous language speakers, particularly children.⁶⁶

85. Aymara youth report the maintenance of indigenous languages as a priority, particularly as the legacy of their elders.⁶⁷ In addition to the rights regarding language use and education, States are also obliged to promote indigenous languages and encourage regard for the linguistic needs of indigenous children in the media.⁶⁸

Harmful practices against indigenous girls

86. Harmful practices, such as female genital mutilation, breast ironing and child marriage, continue to exist, including in indigenous communities. In its general comment No. 11, the Committee on the Rights of the Child reiterated that cultural practices must be in accordance with the Convention, and are in no circumstances allowable if they are prejudicial to a child’s dignity, health and development.⁶⁹

87. In some indigenous cultures, including in South Kivu in the Democratic Republic of the Congo, girls may be married at 12 or 13 years of age. This impacts various rights including those to education, life and health, and brings additional care and household duties that lead to unequal enjoyment of their rights. It also puts them at risk of further violations, increasing their vulnerability to violence, including sexual violence.⁷⁰

88. The Expert Mechanism reaffirms what the Committee on the Rights of the Child asserted in its general comment No. 11 (para. 22), namely that indigenous communities and States must work together to eradicate traditional cultural or religious practices that place a child’s health, dignity or development at risk. Indigenous organizations have noted the importance of reflection on cultural values that normalize practices such as child marriage and early unions, including through intergenerational dialogue.⁷¹ States and indigenous

⁶⁵ Submission by Guatemala.

⁶⁶ Ibid., para. 40.

⁶⁷ Intervention by Ms. Angel, Fondo para el Desarrollo de los Pueblos Indígenas de América Latina y El Caribe.

⁶⁸ See Convention on the Rights of the Child, arts. 17 (d) and 30; International Covenant on Civil and Political Rights, art. 27; United Nations Declaration on the Rights of Indigenous Peoples, arts. 13, 14 and 16; and Indigenous and Tribal Peoples Convention (No. 169), art. 28.

⁶⁹ See also joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2014).

⁷⁰ A/HRC/30/41, para. 56.

⁷¹ Joint statement and submission to the fourteenth session of the Expert Mechanism by indigenous youth and women’s organizations of Latin America and the Caribbean.

peoples should work together on finding ways to preserve culture without harm, in line with the best interests of the child.

IV. COVID-19, moving forward

89. The COVID-19 pandemic will most likely have devastating consequences for indigenous children. Political will is essential to ensure that they are not left behind. States must ensure that there is no erosion of children's pre-existing degree of enjoyment of their rights during such times of crisis.

90. Children's voices are key and their participation and consultation on decisions related to them is more critical than ever. They should be supported as agents of change and be engaged in solutions for overcoming the barriers they face in accessing their rights.

91. While the pandemic has exacerbated the pre-existing challenges faced by indigenous children, it is also an opportunity to build back better in a way that reflects the Sustainable Development Goals and prioritizes vulnerable groups such as indigenous children, including through national implementation plans on the Declaration on the Rights of Indigenous Peoples, in line with the commitments States have made to achieve its ends.

Annex

Advice No. 14 on the rights of the indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples

1. States should increase and ensure the enjoyment by indigenous children of their individual and collective rights, including by ratifying the Convention on the Rights of the Child and its optional protocols, the Indigenous and Tribal Peoples Convention, 1989 (No. 169) and other key human rights treaties, and signing the United Nations Declaration on the Rights of Indigenous Peoples. States should incorporate those instruments into national law including through national implementation plans, with the participation of, and in consultation with, indigenous peoples, including children.
2. States and indigenous peoples should ensure the meaningful participation and consultation of indigenous children in decision-making processes and use the Declaration and the best interests of the child as a framework for all decisions that may impact them.
3. Indigenous peoples, with the support of States, should invest in the leadership of women and girls in indigenous communities, particularly in decision-making structures.
4. States should ratify and implement the Paris Agreement on Climate Change, including through concrete actions to mitigate the effects of climate change, with the aim of fostering the highest attainable standard of health for indigenous children and their right to a healthy environment.
5. States and indigenous peoples should make all efforts to protect the medicinal plants, animals and minerals necessary for the health of indigenous peoples and protect their traditional territories to ensure both present and future enjoyment of the rights of indigenous children, including through their symbiotic relationship with their lands, territories and resources.
6. States should take measures to ensure free and equitable access to social services for all indigenous children, paying particular attention to the rights and special needs of girls, lesbian, gay, bisexual, transgender, intersex and two-spirit children, children with disabilities and those in remote or nomadic settlements and urban settings, and take measures to address discrimination against them, including through public information campaigns.
7. States should take measures to improve birth registration processes and remove registration as a precondition for accessing health-care services.
8. States should take measures to support indigenous families, including urban and homeless indigenous children, ensuring minimum standards, such as heating, electricity, water and sanitation, are met.
9. States should support and provide, to the best of their ability, indigenous and community-led childcare systems.
10. States should take concrete measures to reduce the overrepresentation of indigenous children in alternative care and justice systems, and provide training on the rights and cultures of indigenous children for relevant actors, including law enforcement and prison officials, judges and social workers. They should also provide adequate support, including psychosocial support, for those who have been removed from their communities and/or are in State institutions.
11. States should ensure the meaningful participation and consultation of indigenous peoples, including children, in all child welfare and adoption systems, with the aim of establishing indigenous-led child welfare systems for indigenous children.
12. States should take steps to redress intergenerational trauma and the impact of removing children from their communities, and take immediate measures to reduce and aim to eradicate the removal of indigenous children from their families and communities, and to reunite all families separated by migration.

13. States should support the development of traditional restorative justice systems, in consultation with indigenous peoples, and make use of them to the extent possible for indigenous children accused of wrongdoing.
14. States should take all appropriate measures to ensure the realization of the highest attainable standard of health for indigenous children, including measures to eliminate discrimination in the provision of health care. They should ensure that all indigenous peoples, including those living in remote and urban settings, have access to holistic health care that incorporates traditional knowledge and medicines, including those relating to physical, mental, spiritual and environmental health. States should ensure adequate provision of culturally appropriate health care and supplies for indigenous girls, including sanitary products and sexual and reproductive health-care services.
15. States, in consultation and cooperation with indigenous peoples, should immediately take steps to reduce the suicide rate of indigenous children, including the provision of adequate resources for culturally appropriate prevention programmes.
16. States should ensure that every indigenous child has access to high-quality, culturally appropriate primary and secondary education, including in their traditional languages when possible, and take urgent measures to overcome the additional barriers faced by indigenous girls. Special measures should be taken to ensure access to adequate education in remote and nomadic communities, including through providing resources for improved Internet and radio connections and the delivery of education remotely, and to accessible formats for indigenous children with disabilities.
17. States should consult with indigenous peoples, including children, on school curricula and take measures to ensure the inclusion of accurate representations of the history of indigenous peoples, including through the removal of stereotypes. They should support capacity-building programmes to ensure culturally appropriate provision of services, the recruitment of indigenous teachers and indigenous-led education efforts. States should also ensure that indigenous educational traditions and knowledge are respected in national standards.
18. In accordance with General Assembly resolution 74/135, States, in partnership with indigenous peoples, should consider establishing national mechanisms with adequate funding to implement the International Decade of Indigenous Languages (2022–2032), including through the provision of educational materials in indigenous languages.
19. States should take the necessary measures to protect indigenous children, particularly girls, against violence and combat the immunity of perpetrators, ensuring accountability. They should work with indigenous peoples to ensure coordination between authorities to develop and implement action plans to support indigenous families and protect children against neglect, violence and sexual abuse, and ensure that victims are provided with all the necessary support, including psychosocial support.
20. States and indigenous peoples should work together to find innovative ways to maintain cultures without practices that harm children; engage against harmful practices, particularly those carried out against indigenous girls; and ensure that cultural practices are undertaken with the best interests of the child in mind, including through human rights-centred awareness-raising campaigns and legislation.
21. States should ensure that all development activities that are contemplated, including in the extractive industries, which may impact indigenous peoples, are undertaken according to the principle of free, prior and informed consent. States should ensure that they consult with indigenous peoples, including children and women, and carry out development activities in line with the United Nations Guiding Principles on Business and Human Rights, with the infrastructure in place to ensure that indigenous children are not negatively impacted.
22. States should, in consultation with indigenous peoples, take specific measures to protect indigenous children from economic exploitation, including work that is likely to be hazardous, interfere with their education or be harmful to their physical, mental or spiritual health or development.

23. States should ensure the effective collection, publication and use of disaggregated data and indicators related to indigenous peoples, including identifying and remedying gaps in protection for indigenous children.

24. COVID-19 recovery plans should include provision for the additional barriers to the enjoyment by indigenous children of their rights, including those related to their physical, mental and spiritual health, education and protection.

TAB 51



General Assembly

Distr.: General
2 October 2007

Sixty-first session
Agenda item 68

Resolution adopted by the General Assembly on 13 September 2007

[without reference to a Main Committee (A/61/L.67 and Add.1)]

61/295. United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006,¹ by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

*107th plenary meeting
13 September 2007*

Annex

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

¹ See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 53 (A/61/53)*, part one, chap. II, sect. A.

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights² and the International Covenant on Civil and Political Rights,² as well as the Vienna Declaration and Programme of

² See resolution 2200 A (XXI), annex.

Action,³ affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

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 Rights⁴ and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

³ A/CONF.157/24 (Part I), chap. III.

⁴ Resolution 217 A (III).

Article 3

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.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the

community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

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.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

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.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

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.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. 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. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

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.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to 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.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

TAB 52

explain why they have not received the same attention as rights. Remedies are the rainy-day side of the sunny-day human rights story.

The two-track approach recognizes the tragic inevitability of remedial failure. Once systemic remedies have failed to prevent yet another individual violation, a new two-track cycle of remedies can start with new individual remedies that will focus attention on specific instances of rights violations. Courts may also begin devising less deferential systemic remedies to minimize future rights violations.

1.2.5 *Choice of Remedies and Proportionality*

Remedies are often subject to a balancing of competing interests and rights.²³ Courts ignore social interests that may be harmed by remedies at their peril. Nevertheless, they should resist the temptation to disguise the impact of these social interests on their remedial decisions by either refusing to recognize well-grounded rights claims or by relying on summary and inarticulate appeals to their remedial discretion.

Proportionality reasoning is increasingly used in other parts of human rights law. It can also assist in remedial decision-making in two main ways. First, it can structure and make transparent the balancing of interests. By requiring an explicit and legitimate objective to limit remedies, proportionality makes real the broken promise made by the United States Supreme Court in *Brown II*²⁴ that mere objections to rights should not be a legitimate factor in remedial decision-making. It can require courts to limit remedies as little as necessary to recognize competing interests and to compare the harms to society and rights-holders of limits to remedies.²⁵ Second, proportionality reasoning can play an important role in selecting the most appropriate of multiple remedies. The most drastic remedy such as a stay of proceedings that will stop prosecutions will not always be appropriate.²⁶ Less drastic remedies such as exclusion of evidence or sentence reductions may in some cases adequately address the damage caused by the violation and help prevent similar violations in the future. Damages may be adequate in some cases, but in other cases an interim or final injunction that prevents irreparable harm to rights may

²³ Gewirtz, "Remedies and Resistance".

²⁴ 349 US 294 (1955).

²⁵ Aharon Barak, *Proportionality* (Cambridge: Cambridge University Press, 2012).

²⁶ See *infra*, Chapter 6, Section 6.2.8.

be necessary. The role of proportionality in remedial decision-making will be discussed in greater detail in Section 1.9 of this chapter.

1.2.6 *Separation of Powers and Subsidiarity*

Another restraint on remedies is the appropriate role of courts. In domestic law, limits on judicial power are often based on concerns about the separation of powers. In supra-national law, these limits are also based on the principle of subsidiarity and concerns about the role of the nation state. These will be examined in greater detail in Section 1.8 of this chapter.

The limits on judicial power are often context-specific. Some countries accept that judges can strike down laws that violate human rights, but others do not. Some far-reaching judicial remedies that might ordinarily offend the separation of powers may be justified if the state is incapable or unwilling to take steps to prevent continuing or reoccurring violations. The role that courts play will often depend on how the executive and the legislature discharge their roles, especially with respect to the prevention of repetitive violations. It is in this sense that judicial remedies are "dialogic" because they respond to executive and legislative performance.

Judges should be candid about how concerns about institutional roles as well as competing social interests influence their remedial decisions. This is important if remedies are not to remain the under-examined underbelly of our modern commitment to human rights.

1.3 Methodology: Legal Process and Interactional/Dialogical Approaches

My methodological approach is rooted in the legal process tradition of scholarship that examines the role of courts in light of the roles of other institutions and other processes of dispute resolution. Such an approach requires attention to interaction or dialogue between courts and the executive or legislature, often mediated by participation of civil society and the parties to a lawsuit who have an important role to play in proposing or objecting to particular remedies.

1.3.1 *The Legal Process*

The legal process approach has its origins in the course and teaching materials of Harvard law professors Henry Hart Jr. and Albert Sacks. It

TAB 53

9.1 Introduction

The challenges of devising effective and just remedies for long-standing violations of Indigenous rights are considerable. They include the problem of remedial deterrence discussed in Chapter 8, Section 8.1, in relation to social, economic and cultural (SEC) rights. Such problems are greater in the Indigenous rights context because the harms of colonial dispossession of Indigenous people are so massive.

Even if there is a willingness to recognize harms, there is the added danger that supra-national and national adjudicators may, even with the best of intentions, replicate colonial methods and impose what they perceive to be the best for Indigenous peoples.¹ James Anaya has warned that: "remedies to redress historical violations of self-determination do not necessarily entail a reversion to the status quo ante, but rather are to be developed in accordance with the present-day aspirations of the aggrieved groups, whose character may be substantially altered with the passage of time".² Remedies for violations of Indigenous rights should make room for Indigenous self-determination while also recognizing judicial responsibility for effective and meaningful remedies.

Following the two-track approach, courts should take the lead with first-track remedies designed to prevent irreparable harm and provide restitution and reparation for past harms. At the same time, they should be even more deferential than usual with respect to systemic remedies that will help shape the future. Systemic remedies should be based on prior and informed Indigenous consent and the exercise of Indigenous self-determination. The two tracks are, however, linked. First-track reparations and interim remedies are often necessary to create the conditions for free and informed Indigenous consent and systemic remedies that will prevent the re-occurrence of violations. Unfortunately, domestic courts have frequently denied requests for interim injunctions to protect Indigenous rights from irreparable harm sometimes on the basis of majoritarian understandings of the balance of convenience. To make matters worse, they have used interim remedies to prevent Indigenous protest and self-help.

¹ In some early cases, the IACtHR imposed trust fund requirements on the use of the damages, something that has been aptly criticized by a leading commentator as "paternalism"; Thomas M. Antkowiak, "A Dark Side of Virtue: The Inter-American Court and Reparations for Indigenous Peoples" (2014) 25 *Duke J. Comp. Int'l. L.* 1, 22.

² S. James Anaya, *Indigenous Peoples in International Law*, 2nd ed. (Oxford: Oxford University Press, 2004), p.107. Dean Anaya situates self-determination as the foundational principle. He adds "[n]egotiation makes possible nuanced solutions to potentially complex issues of redistribution of power and resources in diverse circumstances." *Ibid.*, p.187

The enforcement of rights relating to Indigenous languages, medicine, and culture involve many of the dilemmas examined in Chapter 8 in relation to SEC rights. In addition, these remedies need to be developed in a manner that recognizes the right of Indigenous people "to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions".³

Article 40 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) provides a right "to effective remedies". It states that remedial decisions "shall give due consideration to the customs, traditions, rules and legal systems of the Indigenous people concerned and international human rights".⁴ UNDRIP thus contemplates a bi-jural approach to remedies that combines Indigenous laws and human rights.

Remedies may have a better chance of embracing bi-juralism than rights. Remedies involve a search for practical and creative solutions compared to rights, where the focus has often been on competing rights.⁵ At the same time, Article 40 received little discussion in the travaux préparatoires of UNDRIP perhaps because its reference to remedies was thought to refer more to procedure and access to justice than reparations. Remedies were not neglected in other parts of UNDRIP. Article 28 of UNDRIP contemplates the priority of restitution over compensation and Article 11(2) provides for redress, which may include restitution, with respect to the taking of cultural, intellectual, religious and spiritual property.⁶

UNDRIP⁷ makes frequent reference to fair, equitable and just compensation including restitution. Section 9.2 of this chapter will document a regrettable tendency both in supra-national and national courts to

³ United Nations Declaration on the Rights of Indigenous Peoples, GA Res. 61/295 UNGAOR, 61st Sess., UN Doc A/Res/71/295 (2007), Art. 23 (henceforth UNDRIP). The precise legal status of UNDRIP raises questions beyond the scope of this book. Even non-binding "soft" international law may provide guidance for remedial principles and practice.

⁴ Ibid., Art. 40.

⁵ There is a danger of a zero-sum approach to conflicts between human rights and Indigenous law. For example in a 1993 case, the Inter-American Court of Human Rights held that the human rights standards of gender equality should prevail over the matrilineal customs of an Indigenous community: *Aloeboetoe v. Suriname* (1993), (2015) 37 *Loy. L.A. Int'l. & Comp. L. Rev.* 1591.

⁶ Willem van Genugten and Federico Lenzerini "Legal Implementation and International Co-operation and Assistance" in Jessie Hohmann and Marc Weiler (eds.), *The United Nations Declaration on the Rights of Indigenous Peoples* (Oxford: Oxford University Press, 2018) at p.558; Federico Lenzerini "Reparations, Restitution and Redress" in *ibid.*

⁷ UNDRIP Arts. 10 and 28.

under-estimate the pecuniary harms caused by violations of Indigenous rights. The fact that courts also tend to off-set this with a generous approach to assessing non-pecuniary harms relating to cultural loss does not excuse such under-compensation.

Consistent with general international law principles of state responsibility, restitution should be the primary remedy with compensation only being used when restitution is impossible or disproportionate. Return of Indigenous land and resources may require courts to retain jurisdiction. This will be a delicate task because judges who retain jurisdiction need to avoid neo-colonial judicial rule but also ensure that governments comply with what may be costly and unpopular remedies. The declaration plus introduced in Chapter 7, Section 7.4, is an appealing remedy in this context. It avoids detailed judicial management while ensuring that the judiciary can be called upon by the parties to assist in resolving disputes about the meaning and consequences of declarations of Indigenous rights.

The duty of governments to consult Indigenous people is increasingly recognized in domestic and international law. But the duty to consult is an elusive legal concept. The duty to consult, like the South African engagement duty discussed in Chapter 8, Section 8.5, is best used when it results in creative and consensual agreements that themselves provide effective remedies. At a minimum, Indigenous people should be provided interim relief that protects them from suffering irreparable harm while the parties are engaged in a consultation process that should also respect Indigenous law. Unfortunately, it will be suggested that the duty to consult, like the engagement duty, is often used more as a means to authorize resource extraction sometimes with accommodations of Indigenous interests. When the duty to consult is breached, courts often simply give governments a "do over". This fails to remedy the harms that inadequate and sometimes disrespectful consultation causes to Indigenous people.

The two-track approach can assist in balancing the need for Indigenous rights to have effective judicial remedies with the need for courts to more modestly respect Indigenous self-determination going forward. The two-track approach suggests that courts should be more active with respect to interim remedies designed to prevent irreparable harm. They should maintain the integrity of both consultation and adjudication with interim remedies to prevent irreparable harm to Indigenous rights. They should also recognize the preferred position of restitution as a remedy. If restitution of Indigenous land is impossible or disproportionate, courts should fairly calculate damages. They should not

give way to temptations to limit pecuniary damages for often unarticulated reasons related to competing social interests. They should also not attempt to off-set this process with a romanticized but in the end colonial willingness to give generous awards for non-pecuniary cultural harms. With respect to second-track systemic remedies, courts should use declarations and the declaration plus in an attempt to make room for consensual agreements.

Given the durability and harms of colonialism, courts should be especially attentive to the reality of remedial failure. Fortunately, an iterative remedial process may accord with multi-generational worldviews of many Indigenous peoples. The grant of new interim remedies, meaningful remedies for the failure to consult and restitution and reparation for past violations may be a necessary response to the failure of systemic remedies and the stubborn and multi-generational nature of colonial harms. The task of devising effective remedies for long-standing violations of Indigenous rights is, however, urgent. Effective remedies and respect for Indigenous laws may also help mitigate the environmental crises that affect us all.

9.1.1 *Outline of This Chapter*

Section 9.2 will examine the broad range of remedies that are available for violations of Indigenous rights before supra-national and national courts. The Inter-American Court of Human Rights (IACtHR) has been a leader in trying to return land to Indigenous peoples. Alas courts have not always calculated either the balance of convenience or pecuniary damages for the harms caused to Indigenous rights fairly and transparently.

Section 9.3 will examine the duty to consult in both supra-national and national law. It can act as a means to limit Indigenous claims of rights without Indigenous consent or it can be a source of consensual agreement. In addition, if governments fail to conduct the required consultations, this action itself may be a basis for judicial remedies. The extensive Canadian experience with the duty to consult, however, suggests that these remedies are often weak. They generally only give the government a second chance to perform adequate consultation without compensation for the harms that inadequate consultation causes to Indigenous people. The Canadian approach has been focused on securing regulatory approval of resource extraction, as opposed to producing new Treaties based on Indigenous consent.

TAB 54

serious danger that judicial failures to order effective first-track remedies will mean that systemic second-track remedies will only replicate colonial imbalances of power. In other words, the absence of effective first-track remedies will make it difficult for Indigenous people to give consent that will result in modern Treaties that are our best hope for sustainable systemic remedies.

9.5.1 *Indigenous Self-determination and Negotiated Remedies*

Writing in the context of the rights of Indigenous Hawaiians, James Anaya has stated that the ultimate remedy should be: "[n]egotiation or other procedures responsive to Native Hawaiian demands".²¹¹ Anaya recognizes that self-determination will require negotiations between Indigenous peoples and governments with the aim of achieving consensual remedies or new Treaties. Such negotiations and settlements may also require work by Indigenous people to ensure democratic and legitimate forms of self-governance that have often been lost because of colonialism. This process may involve Indigenous people reclaiming and developing their Indigenous laws.

9.5.2 *Bi-Jural Remedies*

Mark Walters has suggested that remedies should be viewed "as a cross-cultural legal question".²¹² He recounts the negotiations of the 1764 Niagara Treaty where the Europeans demanded remedies for a past "rebellion" but the Indigenous people were focused on "re-establishing, in a forward-looking manner, a relationship of trust and care".²¹³ In some ways, this reflects the traditional European emphasis on remedies for past wrongs and the Indigenous focus on relationships. Dean Walters is right to be drawn to remedies in discussing the potential for cross cultural understandings. Remedies are more flexible than rights. At the same time, he recognizes that western judges brought up with European "right to a remedy" traditions may be reluctant to recognize remedies that are dependent on Indigenous participation and self-determination.

²¹¹ S. James Anaya, "The Native Hawaiian People and International Human Rights Law: Towards a Remedy for Past and Continuing Wrongs" (1994) 28 *Geo. L. Rev.* 309, 362.

²¹² Walters, "Rights and Remedies within Common Law and Indigenous Legal Traditions" in Borrows and Coyle, *The Right Relationship*, p.190.

²¹³ *Ibid.*, p.197.

Like both Christie and Anaya, Walters concludes that a cross-cultural approach "cannot be restored through a simple judicial order".²¹⁴ There is much wisdom in their consensus on this subject. Adjudicators should be respectful of the resilience and wisdom of Indigenous peoples and their laws. There is a need for judicial humility. As Professor Christie notes, much of the remedial process should be "the business of Indigenous people". At the same time, however, there is a fine line between needed judicial humility and judicial abdication. Remedies for past violations and stopping ongoing violations should, when Indigenous people ask for them, be the business of the courts.

Article 40 of UNDRIP supports an emphasis on cross-cultural and bi-jural remedies by calling for effective remedies that "shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights".²¹⁵ Article 40 is deliberately agnostic about the particular process used to develop such remedies. Ryan Beaton has argued that Article 27 of UNDRIP encourages the creation by governments and Indigenous people of tribunals to adjudicate "the rights of Indigenous peoples pertaining to their land, territories and resources" in a manner that gives "due recognition to indigenous peoples' laws, traditions, customs and land tenure systems".²¹⁶ He contemplates that such a tribunal would have a role to play in deciding whether limits on Indigenous rights are justified and that such determinations should be made before any encroachment on Indigenous rights.²¹⁷

9.5.3 *Treaty of Waitangi Tribunal*

The Treaty of Waitangi Tribunal generally makes non-binding recommendations. It can make binding recommendations relating to Crown land, but even those recommendations allow the parties to negotiate a

²¹⁴ Ibid., p.199.

²¹⁵ UNDRIP Art. 40.

²¹⁶ Ryan Beaton, "Articles 27 and 46(2): UNDRIP Signposts Pointing towards the Justified Infringement Section 35 Morass" in Centre for International Governance Innovation and Wiyasiwewin Mikiwahp Native Law Centre, *UNDRIP Implementation: More Reflections on the Braiding of International, Domestic and Indigenous Laws* (Saskatchewan: Center for International Governance Innovation, 2018), pp.111-120, online (pdf): www.cigionline.org/sites/default/files/documents/UNDRIP%202018%20lowres.pdf

²¹⁷ Ibid.

TAB 55

possibility of establishing Māori customary title over the foreshore and seabed and its failure to provide a guaranteed right of redress, notwithstanding the State party's obligations under articles 5 and 6 of the Convention" on the Elimination of All Forms of Racial Discrimination.²⁴² Consistent with the iterative remedial approach often taken by supra-national institutions, the Committee asked New Zealand to report back on steps it had taken to provide remedies.²⁴³ James Anaya, then the UN special rapporteur on Indigenous rights, also called for the repeal of the legislation.²⁴⁴

The 2004 act was eventually repealed by new legislation in 2011. The preamble to the new law acknowledged the criticism that the prior act had received including from international bodies. It recognized inherent Māori rights and translated them into new forms of legal interests that are "inalienable, enduring, and able to be exercised so as to sustain all the people of New Zealand and the coastal marine environment for future generations".²⁴⁵ The eventual outcome suggests that sustained opposition to discriminatory legislation can be effective even in the Indigenous rights context, at least when Indigenous people are a significant (15 per cent of New Zealand's population) minority and the Māori party holds the balance of power. The UN special rapporteur has praised the abolition of the 2004 law, but raised some concerns about the 2011 legislation.²⁴⁶ This only affirms the iterative nature of a remedial process that involves both domestic and international law.

9.6 Conclusion

Devising remedies for violations of Indigenous rights is perhaps the most challenging of all the topics examined in this book. It is thus fitting that this chapter on remedies for violations of Indigenous rights is the last substantive chapter in this book.

²⁴² Ibid. at para 6.

²⁴³ Ibid. at paras 8–9.

²⁴⁴ United Nations Commission on Human Rights, Economic and Social Council, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN Doc E/CN.4/2006/78/Add.3 (13 March 2006), p.15; see also S. James Anaya, "Report of the Special Rapporteur on the Rights of Indigenous Peoples in the Situation of Maori People in New Zealand" (2015) 32 *Ariz. J. Int'l. Comp. L.* 1.

²⁴⁵ Marine and Coastal Area (Takutai Moana) Act 2011, No. 3.

²⁴⁶ Anaya, "Report of the Special Rapporteur on the Rights of Indigenous Peoples in the Situation of Maori People in New Zealand", pp.18–25.

Article 40 of UNDRIP speaks to the need for effective remedies, but also the need to take a bi-jural approach to remedies that is attentive to both relevant Indigenous law and human rights law. The two-track approach can be adapted so that courts provide first track remedies to protect Indigenous right from irreparable harm. They can also provide restitution and when that is not possible or disproportionate, full reparation for past harms. The IACtHR's jurisprudence demonstrates that restitution of land should be accomplished in a bi-jural way that involves both state and Indigenous law. At the same time with respect to second-track systemic remedies, courts should make room for Indigenous self-determination and free and informed prior consent. Even judges with the best of intentions should be careful to avoid the dangers of imposing neo-colonial solutions on Indigenous peoples.

Defensive remedies may be necessary for Indigenous people who undertake self-help or resistance to state actions. Courts should not hesitate to craft exemptions from otherwise valid laws for those exercising Indigenous rights. Courts should also pay attention to Indigenous claims and the state's duty to consult with Indigenous people when asked to grant injunctions against Indigenous protests in the defence of Indigenous lands and natural resources.

As in the last chapter dealing with SEC rights, the danger of remedial deterrence looms large in the area of Indigenous rights. It may explain why Canadian courts have retreated from ordering interim relief to halt developments that may cause irreparable harm to Indigenous rights and why the subsequent Canadian jurisprudence on the government's duty to consult stresses that Indigenous people do not have a veto over proposed developments. There is a danger that the duty to consult will degenerate into a procedural checklist that is more about gaining approval for resource extraction than creating modern Treaties. The duty to consult should be exercised in a manner that maximizes the possibility of consent and does not simply rely on the simplistic and self-defeating slogan of "no veto". It should aspire to produce consent and not focus on mandatory duties and checklists. Interim remedies should protect Indigenous people from irreparable harm as they consult. If the duty to consult is breached, there should be effective remedies including compensation and directions to ensure more respectful consultation in the future. Giving the state a second chance or a "re-do" is not sufficient.

Proportionality reasoning is preferable to vague reference to the equities of the case or the need for balancing when ordering remedies. Courts should not accept vague and inflated state objectives such as

"economic development". Courts should also attempt to integrate Indigenous perspectives, including multi-generational and environmental thinking, into their assessment of the overall balance struck when selecting between the remedies requested by Indigenous people and lesser or no remedies requested by the state.

With respect to future oriented systemic remedies, domestic and supra-national courts should have the humility to recognize that Indigenous communities are in the best position to determine their own future. When devising remedies for laws and state activities that violate Indigenous rights, domestic and supra-national courts should also recognize that Indigenous people have their own legal systems that can play an important role in regulating how Indigenous people exercise their land, harvesting, social, economic and cultural rights. More than in other contexts examined in this book, courts need to defer to the superior ability of other actors to devise systemic remedies. To be sure, courts should not hesitate to impose first-track remedies to prevent and repair violations of Indigenous rights. But they should also recognize the importance of consensual remedies to create a better future for us all.

TAB 56

No cover
image
available

The Oxford Handbook of Indigenous Peoples and International Law

(In Progress)

Mattias Åhrén (ed.) et al.

<https://doi.org/10.1093/oxfordhb/9780192887658.001.0001>

Published: 22 May 2024 -

Online ISBN: 9780191982002

Print ISBN: 9780192887658

Search in this book

CHAPTER

Indigenous Children and Children's Rights

Elsa Stamatopoulou

<https://doi.org/10.1093/oxfordhb/9780192887658.013.25>

Published: 21 August 2025

Abstract

Many fundamental issues of Indigenous Peoples for survival, sustainability, and well-being are reflected in the way Indigenous children live and are treated by the state and its institutions as well as by the majority or dominant society. It is no surprise then that the aspirations of Indigenous Peoples for justice can often be traced in their advocacy for children at all levels, political, social, cultural, legal, economic, and within multiple areas of those levels. Inspired by the dynamic nature of international law, especially in the field of human rights, this chapter first examines the broad normative framework of Indigenous children's rights, especially through the Convention on the Rights of the Child and the UN Declaration on the Rights of Indigenous Peoples. It also provides an analysis of the insights that the human rights-based approach gives for the implementation of Indigenous children's rights. The chapter examines the international monitoring mechanisms of Indigenous children's rights and policy pronouncements, especially through the Committee on the Rights of the Child, the UN Special Rapporteurs of the UN Human Rights Council, the Expert Mechanism on Indigenous Peoples Rights, and the UN Permanent Forum on Indigenous Issues. Highlighting the positive points and some gaps, the chapter concludes that international law provides a rich normative and operational ground for Indigenous children's rights and formulates suggestions for broad actions that are needed so that the norms of international law on Indigenous children's rights are embraced and pushed towards implementation.

Keywords: [Women's rights](#), [Indigenous girl](#), [Genocide](#), [EMRIP](#), [CRC General Comment 11](#), [CEDAW General Recommendation 39](#), [Rights-Based Approach](#), [Human rights monitoring](#), [UNDRIP](#), [UNPFII](#)

Subject: [Law and Society](#), [International Law](#), [Law](#)

Series: [Oxford Handbooks](#)

Collection: [Oxford Handbooks Online](#)

1. Introduction

On 5 April 2023, under the headline ‘Canada agrees to pay \$17 billion to compensate Indigenous families’, *Le Monde* published an account of a settlement that impacts some 300,000 people and closes a case brought before a human rights tribunal that found the government had underfunded Indigenous children’s services.¹

Canada has agreed to a revised settlement of Can\$23 billion (\$17 billion) to compensate Indigenous children and families for discrimination in the child welfare system. The final deal, announced on Wednesday, April 6, by the Canadian government and Indigenous groups the Assembly of First Nations and the First Nations Child and Family Caring Society, boosted the settlement a further Can\$3 billion from the Can\$20 billion agreed last year and expanded eligibility for compensation.

‘This \$23 billion final settlement agreement is a long overdue turning point for so many thousands of families,’ Cindy Woodhouse, Assembly of First Nations Manitoba Regional Chief, said in a statement. The settlement impacts some 300,000 children, adolescents and families and would close a case brought before a human rights tribunal more than 15 years ago that found the government had underfunded Indigenous children’s services compared to those for non-Indigenous children....

The settlement announced Wednesday will apply to those who were part of the welfare system between April 1, 1991, and March 31, 2022. Despite making up less than 8% of children under 14, Indigenous children account for more than half of those in Canada’s foster care, according to a 2016 census.

‘The compensation announced today is a historic amount, matched only by the historic amount of harm that occurred to First Nations children,’ said Marc Miller, Minister of Crown-Indigenous Relations, cited in a statement.

It is significant and revealing that historic truth and reconciliation initiatives in various countries have had Indigenous children as a focus.² In a number of developed countries/countries of the North, we have witnessed the recognition of historic injustices and the issuance of formal apologies in recent years: this was the case in Australia, where the first day of the new Parliament in February 2008 saw the declaration of a formal apology to the lost generation of Aboriginal peoples due to boarding schools’ policies. This was followed by a similar apology in spring 2008 by Canada, again regarding boarding schools. Intergenerational transmission of Indigenous languages is a clear criterion of well-being of Indigenous Peoples, as can be seen, for example, in the 2011 *Encyclopedia of Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation*.³ Indigenous languages are an even more specific focus of truth and reconciliation processes, with an impact on children and the community overall.

International law, especially through its human rights angle, has been dynamic in nature. Its progress after the Second World War has been increasingly covering Indigenous Peoples’ concerns.⁴ From the 1948 Universal Declaration of Human Rights and the Convention on the Prevention and Punishment of the Crime of Genocide, to the 1989 Convention on the Rights of the Child, to the 1989 Indigenous and Tribal Peoples in Independent Countries Convention No. 169 of the International Labour Organization, to the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), to the practice of UN bodies and mechanisms, Indigenous children’s rights are a focus and continuing battleground.

We could say that many fundamental issues of Indigenous Peoples for survival, sustainability, and well-being are reflected in the way Indigenous children live and are treated by the state and its institutions as well as by the majority or dominant society. It is no surprise then that the aspirations of Indigenous Peoples for justice can often be traced in their advocacy for children at all levels, political, social, cultural, legal, economic, and within multiple areas of those levels. The violation of Indigenous Peoples’ right to self-determination; their

deprivation and stealing of their lands, territories, and resources; their removal from their ancestral territories; the removal of their children by social services; the suppression of their cultures; the exploitation of their traditional knowledge; and sheer systemic discrimination—all these actions have their direct impact on Indigenous children and their well-being. Progress or stagnation of Indigenous children's rights is a significant indicator of the situation of the Indigenous People where the child belongs. Violations of the individual and/or collective rights of children have a direct impact on parents, grandparents, and communities, especially for Indigenous Peoples, given the intergenerational and kinship-based qualities of the cultures.

The Global Indigenous Youth Caucus has a strong presence during the sessions of the UN Permanent Forum on Indigenous Issues (UNPFII) and its statements are heard with moral, emotional, and political attention. Indigenous youth raise a variety of issues they face within and outside their communities: issues of land and resources, impacts of extractive corporations, access to work, access to education, loss of Indigenous languages, gender discrimination, violence both in peace and in wartime, discrimination linked to sexual orientation, climate change impacts, and lack of access to justice overall. Proposals of or about Indigenous children and youth are sometimes reflected in the recommendations of the Indigenous-related international bodies. The right to education, for example, has repeatedly been the focus of studies and policy recommendations by those bodies.⁵ In 2021, EMRIP issued a study on the rights of the Indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples, which concludes with advice No 14 on the rights of the Indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples—it is a strong study and offers advice and a valuable comprehensive action plan for states and other actors to implement.⁶

Significantly, the theme of the 2024 session of the UNPFII was 'Enhancing Indigenous Peoples' right to self-determination in the context of the United Nations Declaration on the Rights of Indigenous Peoples: emphasizing the voices of Indigenous youth'.⁷ After all, it is a clear mark in the memory of the international Indigenous Peoples' movement and its Elders that Indigenous youth has played and continues to play a pivotal role in the building of the movement in the past six decades.⁸

In the words of the Global Indigenous Youth Caucus representatives,

Indigenous Youth live between two worlds—the Indigenous and the non-Indigenous—and our battle to protect our Lands and Waters and our human rights is made immeasurably more difficult by the ignorance about us, by the lack of knowledge about our cultures, our heritage, and our everyday lives. The fact that we want to show you is this: that Indigeneity and modernity are not mutually exclusive; we live with our feet on our lands and phone in our hands, listening to our elders while we speak in both our Indigenous languages and colonial tongues understood by the rest of the world...

We, Indigenous Peoples, have been mowed down and burned, frozen and drowned, but our roots remained strong; we are sprouting and growing and we want you to witness our hybrid flowers blossoming. We demand the acknowledgement of our space in the contemporary world as Young, Indigenous and Living.⁹

2. Methodology

This chapter focuses on the rights of the Indigenous child in international law. It mainly examines three broad areas of law and practice in order to unveil the main normative parameters and theoretical underpinnings of Indigenous children's rights: (i) the Convention on the Rights of the Child and General Comment 11 (2009) of the Committee on the Rights of the Child on 'Indigenous children and their rights under the Convention'; (ii) the UN Declaration on the Rights of Indigenous Peoples; (iii) the Human Rights-Based Approach and how it informs public policies on Indigenous children. In addition to the normative aspects, the essay examines, as a fourth point, (iv) international human rights monitoring, promotion, and policy efforts towards the implementation of Indigenous children's rights, as they are pursued by a number of bodies, for example, by the Special Rapporteur on the Rights of Indigenous Peoples and other relevant special rapporteurs and by the UNPFII. Extensive original research conducted for this chapter has enabled our analysis and conclusions for this part.

Examples of national legal systems are mentioned to the extent possible within the length limitations of the chapter. It is organized according to the four main areas mentioned above. The analysis pursued also unveils some of the overlaps in terms of norms and practices at least at the international level.

The length of the chapter necessarily limits the scope of the research. The research can therefore not cover in an in-depth and extensive way state legal systems, Indigenous legal systems, institutions and practices, the operations of UN system organizations that address Indigenous children, or the work of all international human rights treaty bodies.

3. Indigenous Children and the Convention on the Rights of the Child

When we analyse the Convention on the Rights of the Child and its significance for Indigenous children, we keep in mind its four underlying principles: protection (right to life, survival, and development), non-discrimination, participation, and the principle of the best interests of the child. The Convention is one of the richest and most inspiring international human rights treaties, almost universally ratified (except one state).¹⁰ Articles 17, 29, and 30 specifically mention Indigenous children and are fully quoted below, Article 30 being the most focused provision.¹¹ At the same time, the whole Convention is relevant for Indigenous children, as has also been pointed out in General Comment (GC) No 11 of the Committee on the Rights of the Child on 'Indigenous children and their rights under the Convention'.¹² The GC points out those specifics and interprets the whole Convention as it applies to Indigenous children, thus clarifying the broad purview of international law on Indigenous children.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 29

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or 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 practise his or her own religion, or to use his or her own language.

3.1 The General Comment of the Committee on the Right of the Child

Given that the GC is essentially a broad overview of the state of international law regarding Indigenous children, it is important to analyse it and keep in mind the whole text. This part of the chapter highlights some points that the author considers especially important. The GC is organized in the following eight parts: Article 30 and general obligations of states; general principles; civil rights and freedoms; family environment and alternative care (including foster care, adoption, children outside their community); basic health and welfare; education (including boarding schools, language); special protection measures (including in armed conflict or internal arrest, border areas, areas coveted for natural resources, economic and sexual exploitation, incarceration); and states obligations and monitoring of implementation. In each of these parts of the GC, the Committee on the Rights of the Child expresses its concerns regarding specific violations of Indigenous children's rights, including serious discrimination as well as lack of appropriate access to health and education and various other concerns.

Overall, the GC on Indigenous children is quite comprehensive and touches on all the major issues, providing policy recommendations in each area. The rights-based approach is integrated well throughout, and the GC engages with the issue of collective rights and their relationship to individual rights at several points. There is a great deal of emphasis on the participation of the Indigenous child and of parents in the implementation of the Convention.

The GC benefits greatly from the article-by-article analysis of the Convention on the Rights of the Child as it applies to Indigenous children. This ensures that every single point being made is directly related to the Convention, which in turn implies that States Parties are accountable for complying with the broad spectrum of rights of Indigenous children. The GC also highlights and distinguishes both explicit and implicit references to Indigenous children in the Convention. The GC weaves in relevant references to other human rights instruments, such as the Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, ILO Convention No 169 concerning Indigenous and Tribal Peoples in Independent Countries, the UN Declaration on the Rights of Indigenous Peoples, and the Convention on the Rights of Persons with Disabilities, thus presenting the strong and multilayered normative and monitoring base of international law regarding Indigenous children. For example, the Committee on the Rights of the Child concurs with the Human Rights Committee that measures of protection are required not only against the acts of the state party itself, whether through its legislative, judicial, or administrative authorities, but also against the acts of other persons or entities within the state party, including the private sector. The fundamental right of Indigenous children not to be discriminated against is analysed as it pertains to all the above actors. The same is the case for special positive measures that should be taken.

The parts of the GC on culture/language/religion, identity, education, health, and well-being, as well as special protection rights, are well organized and well argued following the rights-based approach. They are succinct and highlight the major challenges for policies to comply with and protect the rights of Indigenous children. They also make explicit reference to articles of the Convention under each point.

The GC highlights the interconnectedness among rights, for example, of cultural rights with Indigenous lands, territories, and resources. It also links the right to life, survival, and development with Indigenous land and culture. The provisions of Article 30 are particularly relevant in nations that are built on a history of colonization where for generations, Indigenous children have been dispossessed of their cultures, languages, territories, and family and community ties—all of the foundational elements of healthy and whole Indigenous identities.¹³

The self-identification principle of international law regarding Indigenous Peoples is confirmed in the GC, which states that the presence of Indigenous Peoples is established by self-identification as the fundamental

criterion for determining their existence and that there is no requirement for States Parties to recognize Indigenous Peoples officially in order for them to exercise their rights.¹⁴

The human rights-based approach is strongly supported through the GC, which calls for data disaggregation and the development of indicators so that discrimination against Indigenous children can be unveiled.

When it comes to the implementation of the best interests of the child, one of the fundamentals of the Convention, the GC builds a wise balance between individual and collective rights and stresses the need for consultation and participation of the child, including in judicial and administrative proceedings that concern the child. The participation of Indigenous children and young people, when carried out in a culturally and age-appropriate way and based on free, prior, and informed consent, is an invaluable resource capable of empowering children and young people and informing Indigenous-related legislation and policy.¹⁵

Concluding the discussion of the General Comment on the Indigenous child adopted by the Committee on the Rights of the Child, we note a number of characteristics and theoretical underpinnings. The Committee follows a broad approach and analyses in depth the provisions that specifically mention Indigenous children, and also all the other articles of the Convention in terms of their meaning regarding Indigenous children. At the same time, in its analysis, the Committee effectively applies the four underlying principles of the Convention, namely protection (right to life, survival, and development), non-discrimination, participation, and the principle of the best interests of the child. The Committee intertwines relevant norms from other international human rights instruments and the work of their monitoring bodies, including the concept of non-discrimination, the principle of special and positive measures that must be taken for Indigenous children, the need to adopt culturally appropriate approaches, and the linking of Indigenous children's rights with Indigenous lands, territories, and resources. Considerable attention is paid by the Committee to the human rights-based approach, both when it discusses issues of economic and social rights of Indigenous children and also more broadly. The breadth and depth of the General Comment implies that the Committee on the Rights of the Child also sees the implementation of the rights of the Indigenous child as having remedial value for the profound injustices, historic and contemporary, suffered by Indigenous Peoples and their communities.¹⁶

It is noted that any reference to the Convention on the Prevention and Punishment of the Crime of Genocide is loudly absent in the General Comment, despite its relevance to Indigenous Peoples, including Indigenous children, and the reference to children in Article II of that Convention that defines genocide as:

... the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

The lack of reference to the anti-genocide Convention is surprising, especially given the repeated inclusion in the GC of concerns and other comments regarding boarding schools and Indigenous children as well as the importance of children being brought up by their own Indigenous families and participating in their Indigenous cultures.

Concerns of Indigenous families being deprived of their children and of cultural extraction suffered by Indigenous children and their peoples have been deep and go back in time. An excellent expert paper was prepared in 2008 under the aegis of the UNPFII on the topic of ‘Forms of Education of Indigenous Children as Crimes Against Humanity?’¹⁷ by Robert Dunbar and Tove Skutnabb-Kangas in collaboration with former Forum members Lars-Anders Baer and Ole Henrik Magga. The authors point out that:

for obvious reasons, no state or educational authority can today be expected to express *openly* an intention to ‘destroy’ a group or even to ‘seriously harm’ it or to ‘transfer its members to another group’. However, the intention can be inferred in other ways, by analysing those structural and ideological factors and those practices which cause the destruction, harm or transfer.... We claim that if state school authorities continue an educational policy which uses a dominant language as the main medium of education for indigenous and minority children, when the negative results of this policy have been known both through earlier concrete empirical feedback.

In the analysis in the next section, we will examine to what extent the adoption of the UNDRIP in 2007 may remedy the omission of the anti-genocide Convention in the General Comment of the Committee on the Rights of the Child.

3.2 CEDAW’s General Recommendation on Indigenous Women and Girls

It is important to highlight here the normative and operational contribution to international law of the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) through its General Recommendation (GR) 39 on Indigenous Women and Girls adopted in 2022, after meticulous preparations over several years.¹⁸ The points of the GR in this chapter are made, keeping the Indigenous girl in mind.

The recommendation first addresses general obligations of states: equality and non-discrimination, with a focus on Indigenous women and intersecting forms of discrimination, as well as access to justice and plural legal systems.

Then it addresses obligations of states specific to the situation of Indigenous women and girls. Under this category it deals with nine sets of rights: prevention of and protection from gender-based violence against Indigenous women and girls; right to effective participation in political and public life; right to education; right to work; right to health; right to culture; rights to land, territories, and natural resources; rights to food, water, and seeds; and rights to a clean, healthy, and sustainable environment.

There are many positive points in the GR. It clearly and substantively recognizes intersectionality in the discrimination faced by Indigenous women and girls, based on their gender, their ethnic descent, or identity, as well as other factors that may be present such as disability. It refers to both individual and collective rights of Indigenous women and girls, the broad spectrum of issues they face, and the obligations of states to respect all categories of human rights of Indigenous women and girls—civil, political, economic, social, and cultural. It underlines self-identification as a guiding principle in international law in determining the status of rights holders as Indigenous women and girls. It focuses on violence against Indigenous women and girls and its many expressions. It calls for data collection and disaggregation as fundamental to learning about the real situation of Indigenous women and girls and addressing the problems. The text includes clear recommendations to states and names real-life situations of violations of human rights that Indigenous women and girls face and that need to be resolved through a creative variety of measures.

If we ask the question whether the GR also responds to all the fundamental elements of the UNDRIP, we welcome that the GR states that ‘[t]he Committee (CEDAW) considers the Declaration (on the Rights of Indigenous Peoples) an authoritative framework for interpreting State’s obligations under the Convention on the Elimination of All Forms of Discrimination against Women’. The GR does cover the three pillars of UNDRIP

(self-determination; lands, territories, and resources; and cultural rights) as they apply to Indigenous women and girls. The UNDRIP is systematically referenced throughout the GR; it is mentioned no fewer than ten times. This is very important and positive because it presents one more affirmation that the Declaration is the most comprehensive framework of Indigenous Peoples' rights in international law; in the words of the UNPFII, it is the most universal, comprehensive, and fundamental instrument on Indigenous Peoples rights.¹⁹

4. The UN Declaration on the Rights of Indigenous Peoples: Deep Specificity

Five articles of UNDRIP explicitly mention children, covering the right to life and the prohibition of any act of genocide, including forcibly removing children from one group to another (Article 7), education-related rights (Article 14), labour-related rights and the prohibition of exploitation (Article 17), rights related to economic and social conditions (Article 21), and the requirement for special measures, including on violence and discrimination (Article 22).

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 14

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.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their

economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

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.

In addition to the above specific mentions of Indigenous children in articles of the Declaration, every time there is reference, explicit or implicit, to intergenerational transmission, for example, of culture or land, children and youth are in the centre of these provisions as well (eg Article 13 paragraph 1 and Article 25).

The Declaration is composed of three fundamental pillars of rights expressed in sets of articles, interlinked and occasionally overlapping: the right to self-determination; rights to land, territories, and resources; and cultural rights. Each of these three sets of rights, 'the pillars', is relevant for Indigenous children both as individuals and as members of an Indigenous collectivity. For example, in Aotearoa/New Zealand, the Maori consider crucial for their right to self-determination the possibility to support Indigenous children through their own institutions. This support is a significant aspect of the Maori's access to justice.²⁰

The composite/combined analysis of the two main international instruments that address Indigenous children's rights, CRC and UNDRIP, the relevant authoritative interpretations by the treaty bodies, and the synthesis of their underlying principles provide the normative and theoretical foundations of Indigenous children's rights. Other international instruments, such as the ILO Convention No 169, and the Convention on the Prevention and Punishment of the Crime of Genocide, provide additional normative support. ILO Convention No 169 explicitly mentions Indigenous children in Article 28 (education in Indigenous languages) and Article 29 (education of Indigenous children useful for living in their own communities and in the national community). The Convention clearly makes a contribution to Indigenous language rights, very relevant for Indigenous children, by also prescribing the minimum core obligations of states, namely that they must take some measures, even if they face difficulties (obligation to take steps). In addition, the ILO Convention underscores state obligations to provide communications in Indigenous languages where necessary, and not merely to induce Indigenous Peoples to learn the majority language.

While the rights in the CRC and UNDRIP are similar, and CEDAW's General Recommendation No 39 adds important points on the Indigenous girl, as mentioned above, these norms are complementary or overlapping in terms of their applicability to Indigenous children. It is relevant and important to underline that UNDRIP, in Article 7—and its complementary Article 8—does refer to the prohibition of any acts of genocide, including forcibly removing the children of the group to another group. This has profound meaning for Indigenous Peoples, whose children in several countries have been forcibly taken away for generations to boarding schools, adoption arrangements, and other institutions. UNDRIP thus corrects the gap, the omission we noted in the General Comment of the Committee on the Rights of the Child. Significantly, UNDRIP is the only international human rights instrument to mention genocide since the adoption of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.²¹

5. The Human Rights-based Approach

The human rights-based approach was originally cultivated at interstate level under the development agenda of the United Nations. Its importance is such that it has spread to other areas. Given the broad and fluid understanding of ‘development’, the international agenda, politics, funding, and action around development by now encompass a great variety of areas, often interconnected and interdependent, such as peace, education, health, and of course human rights. The human rights-based approach to development was conceptually defined via collaboration among many UN agencies from the mid-1990s until 2003, when the understanding of its elements was finally adopted.²² It is therefore important to explore these elements and their applicability to Indigenous children’s rights.

The UN human rights-based approach to development contributes the human rights normative framework to development, namely the components of state accountability, participation, non-discrimination, and attention to the most vulnerable.²³ In recent years, from the 2010s, especially through the recognition of Indigenous Peoples’ rights, international actors have also been exploring the concept of development with culture and identity, *vivir bien*/ living well, where Indigenous Peoples’ perspectives bring the idea that living well means that human beings are in harmony with nature, harmony with community and also enjoy spiritual well-being. Indigenous Peoples participated actively in the negotiations on the Sustainable Development Goals (SDGs)-the 2030 agenda to ensure that their concerns are reflected and their rights are protected in the SDGs.²⁴

The Indigenous Peoples Major Group identified five key priorities, along with targets and indicators in each area, for the SDGs: (i) a rights-based approach, incorporating international human rights standards including the UN Declaration on the Rights of Indigenous Peoples; (ii) ensuring recognition and respect for Indigenous Peoples’ rights to land, water, seeds, and other resources; self-determination; Treaty rights; and free, prior, and informed consent; (iii) respect and protection for traditional and local livelihoods, food sovereignty, and subsistence practices; (iv) recognition of culture as a component of sustainable development; and (v) full participation of Indigenous Peoples in decision-making in sustainable development programmes and policies at all stages and at all levels.²⁵ We can see that these priorities of Indigenous Peoples are part of the human rights-based approach. Indigenous Peoples also link the development agenda directly to UNDRIP, which has a rich component on Indigenous children.

The human rights-based approach to Indigenous children’s rights offers a number of analytical tools.²⁶

1. It provides the understanding that human rights (civil, cultural, economic, political, social) are intercomplementary, interdependent, and interrelated. In the case of Indigenous children’s rights, it would help to ask questions, for instance, about the links between Indigenous language and the right to adequate healthcare, or the right to work, or the right to education.
2. A human rights analysis identifies the duties of states in four main categories: respect, protect, fulfil, remedy. *Respect* (ie the duty of the state not to interfere with the free exercise of human rights), in this case, with the free practice of Indigenous cultures, such as ways of dressing, or use of traditional medicines by individual children and their communities in public and private spaces; *Protect* (ie the duty of the state to intervene and prevent non-state actors from interfering with the free exercise of human rights); for example, the state having to take action if a private company were to forbid Indigenous male children to enter their premises if they had long hair or to socialize in their Indigenous language in the workplace; *Fulfil* (the duty of the state to take specific positive measures, especially in terms of budgets, to support Indigenous children’s rights); it would mean, for example, providing mother tongue education as a medium of education; *Remedy* (ie the state taking measures for those affected by the denial or violation of their human rights); for example, special measures for Indigenous children and their communities whose languages are at risk of extinction due, in large part, to earlier negative boarding school practices.

3. The human rights approach provides specificity based on international law obligations of states, namely based on the major human rights treaties. Most states have ratified these treaties. The human rights approach is therefore linked to accountability. It helps answer the question who is responsible, who, concretely, is the duty bearer in a specific context for Indigenous children's rights. States must take specific measures, e.g. to provide access to schools for Indigenous children, legislative, administrative, judicial, and other measures. This in turn means that the international human rights mechanisms of the UN or of regional organizations can monitor state governments as to how they implement their treaty obligations and can adopt statements and recommendations for the respect of these rights. It also means that Indigenous institutions and organizations, non-governmental organizations, and other parts of civil society can cooperate with the international human rights bodies in holding states accountable in the monitoring and promotion of Indigenous children's rights. The human rights regime, in other words, gives a concrete legal and policy framework that surrounds, supports, and enhances Indigenous children's rights. The human rights regime also provides mechanisms of monitoring, redress, and of possible international cooperation and assistance.
4. A human rights approach brings in the fundamental norm of *non-discrimination and equality; this includes paying attention to the most vulnerable*. Article 2 of the Universal Declaration of Human Rights states that 'everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. Other fundamental human rights instruments confirm the anti-discrimination overarching principle, including UNDRIP. The prohibition of discrimination is thus part of *jus cogens*, a mandatory norm, and it is immediately relevant and applicable to Indigenous children.
5. A human-rights approach places emphasis on participation; in this case, the participation of Indigenous children, appropriate to their age, in discussions with state officials and in decision-making regarding the child's rights. This was also discussed above in connection with the Convention on the Rights of the Child.

Lack of remedies for what constitute human rights violations committed in the past, a very pertinent issue for Indigenous children, results in engaging state responsibility under international law. International legal thinking has formulated and analysed the concept of continuing violations of human rights—that is injustice that stems from far back—but the effects of which still continue in the present.²⁷ The Human Rights Committee that monitors the implementation of the International Covenant on Civil and Political Rights has defined a continuing violation as an affirmation by act or by clear implication, of the previous violations of the state party.²⁸ This norm of continuing violations of human rights is indeed applicable for Indigenous children's rights that are impacted by state actions in deep time. Consider in particular the work of Latin American human rights advocates, crystallized the international human rights norm of 'continuing violation'.²⁹ The point here is that international human rights law has been developing to address past violations, as is also evidenced by the establishment in 2011 by the UN Human Rights Council of the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence.³⁰

As we can see, human rights theory supports the analysis of Indigenous children's rights in many ways. The understanding of human rights as intercomplementary, interdependent, and interrelated is crucial so that Indigenous children's rights are seen as impacted by and impacting on civil, cultural, economic, political, and social rights. The concepts of 'respect, protect, fulfill, remedy' and that of 'minimum core obligations' developed through the practice of international human rights treaty bodies help outline the international law obligations of states and the monitoring and promotion of those rights.³¹

The human rights-based approach also reveals a gap in international norms and policies sexual orientation. Evolving gender social norms require attention to these rights, including the human rights of non-binary or trans Indigenous children. The Global Indigenous Youth Caucus has raised various issues during UNPFII sessions. The responses of the Permanent Forum and other international bodies have been inadequate or non-existent and this is certainly a gap to be filled.³²

We should underline that Indigenous children's rights are closely related with Indigenous cultures and their continuity as well as with the identity of persons and groups. Cultural identities, however, have often been oppressed by the state, fearing recognition of ethnicities through recognition of their cultural identities, including languages.³³ Many of these aspects are expressed through and by Indigenous children and youth. In fact states should rather fear the tremendous frustration created by the oppression of Indigenous children's rights.

6. Implementation, International Monitoring, and Other Policy Efforts for Indigenous Children's Rights

In this section, we examine the monitoring work of international human rights mechanisms and the policy contributions of international bodies towards the promotion of Indigenous children's rights.³⁴ We would like to assess the extent and depth of this monitoring and policy support.

6.1 Implementation by States and Monitoring Work of the Committee on the Rights of the Child

The periodic reports submitted to the Committee on the Rights of the Child by State Parties from 1 January 2009 until 11 July 2023 were reviewed for the purpose of this research. The year 2009 was selected as a marker, when the General Comment on the Indigenous Child was adopted, so we can observe the engagement of states with Indigenous issues after this important moment. Reports of state parties without Indigenous Peoples were not reviewed.³⁵ A grand total of sixty-two state parties in ninety state party reports referred to Indigenous children's rights, in other words some states included information on Indigenous children in more than one report.

The main criterion to achieve this count was whether the report contained the word 'Indigenous'. In some cases, the state party used other words to refer to Indigenous Peoples with or instead of 'Indigenous'. That was the case of Canada, for example, which may refer to 'First Nations', 'Inuit', or 'Metis'. Another case was New Zealand that referred to 'Māori' more often than to 'Indigenous'. Australia referred to Indigenous Peoples and its policies as 'Aboriginal'. The criterion of search for Finland, Norway, and Sweden, in addition to 'Indigenous', was 'Sami'. In other cases, the state party referred to Indigenous Peoples as 'ethnic minorities', while those peoples self-identify as Indigenous. That was the case of Bangladesh in its 2012 report.

Some states claimed having consulted with civil society organizations before issuing their reports.³⁶ Some states mentioned 'Indigenous' to add that there are no Indigenous Peoples in their country. Some states mentioned 'Indigenous' to state that all their inhabitants are Indigenous to the land.³⁷ In addition to the above, the number of times that 'Indigenous' appeared in a state report may have varied between years. This was the case for Brazil and Colombia; their 2021 reports had considerably fewer mentions of 'Indigenous'.

States also submitted reports under the Convention's Optional Protocol on the Involvement of Children in Armed Conflict (OPAC). A total of seventy-one state party reports were considered.³⁸ Among the reviewed reports, a total of six state parties referred to Indigenous children's rights in their reports.

Reports were also submitted under the Convention's Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC). A total of seventy-eight state party reports were considered under this category.³⁹ Among the reviewed reports, a total of ten State Parties referred to Indigenous children's rights in their reports. A total of twelve reports referred to Indigenous children's rights, meaning that some state parties referred to Indigenous children rights in more than one report.

In their reports to the Committee on the Rights of the Child, states often provide extensive information about measures they have taken to implement the Convention on the Rights of the Child. The Committee is quite meticulous in analysing state periodic reports and transmitting numerous questions to states, expecting responses during the presentation of the reports and the dialogue with the states. The Committee subsequently formulates its conclusions and recommendations to states and includes them in its annual report to the UN General Assembly.

Some examples of information included in state reports are mentioned below. States refer to important constitutional or other law provisions that are relevant for Indigenous children's rights, even if they don't mention them explicitly. For example, the Lao People's Democratic Republic stated, in its 2009 report, that each ethnic group is free to use its own language among its own members, but the official language comprises the Lao spoken and written language (Article 89 of the Constitution).⁴⁰

Language is a broad topic covered in state reports. For example, although the Constitution and many Namibian laws and policies have been translated into Indigenous languages, the Convention on the Rights of the Child has not and this hinders the dissemination to parents of information pertaining to the rights of their children.⁴¹ Norway reported that its Promotion of the Status and Quality of Teachers strategy also encompasses the Sami language.⁴²

Collaboration with Indigenous Peoples' organizations for the implementation of children's rights is another issue where states present their experiences. For example, Canada reported that Manitoba created a Leadership Council consisting of the political leaders of the Manitoba Métis and First Nations main organization and a Manitoba minister to discuss issues related to child and family services.⁴³ In the field of juvenile justice, Canada reported its partnership with Indigenous service providers; Ontario, for example, funds cultural competency and awareness training to youth justice staff.⁴⁴

Special protection measures are also mentioned by states. For example, in its 2012 report, Venezuela referred to a law stipulating that when entering Indigenous children and adolescents in the civil register the relevant authorities 'shall respect indigenous family names, given names and toponymies and shall in no case modify, alter or change them', and both the birth certificate and the identity card or other identity documents of persons belonging to Indigenous Peoples and communities must be issued in Spanish and in the language of the people or community concerned, respecting family names and given names specific to their languages; Indigenous persons are not obliged to be photographed in clothing different from that corresponding to their conventions, customs, and traditions.⁴⁵ Under special protection measures, and also linked to Indigenous languages, Zimbabwe reported that there are policies in place, in particular in the education sector, that allow primary school children to be taught in their Indigenous languages in the first four levels of their education.⁴⁶ Suriname pointed out that children belonging to Indigenous or tribal groups in the interior experience barriers in access to education, health, adequate housing, and other public services, such as clean water and sanitation.⁴⁷ In its extensive report in 2017 on a broad variety of special measures in various fields, Costa Rica reported that Indigenous languages and culture courses continue to be taught both in and outside the Indigenous territories, and 95 per cent coverage for Indigenous students is guaranteed; advisory services concerning human and linguistic rights are provided to teaching staff working in Indigenous areas; a reform of the Indigenous education system culminated in 2013 in the issuance of a decree whereby Cabécar, Bribri, Ngöbe Buglé, Maleku, Teribe, and Boruca are recognized as the mother tongues of the Indigenous Peoples of Costa Rica.⁴⁸

The research has shown that the Committee on the Rights of the Child is active in monitoring Indigenous children's rights, and states generally include information about Indigenous children in their reports. There are continuing concerns about the situation of Indigenous children expressed by Indigenous Peoples, including Indigenous youth, at international fora and reflected in reports and recommendations of international bodies, making it clear that satisfactory implementation of Indigenous children's rights still has a long way to go.

6.2 Monitoring by Special Rapporteurs of the UN Human Rights Council

The reports of five Special Rapporteurs were taken into consideration in the data collection for this research, the Special Rapporteurs on the rights of Indigenous Peoples, on education, on the sale and sexual exploitation of children, on the trafficking of persons, especially women and children, and on violence against women and girls. The reports taken into consideration included both the reports presented to the General Assembly and to the Human Rights Council, reporting on country visits or on thematic issues.

6.2.1 Special Rapporteur on the rights of Indigenous Peoples

Over the period studied, 2009–2023, the Special Rapporteur mentioned the term 'child' in reports to the United Nations General Assembly on eight occasions,⁴⁹ and in reports to the United Nations Human Rights Council on eleven occasions.⁵⁰ The reports sometimes mention the Convention on the Rights of the Child and the Committee on the Rights of the Child explicitly and two reports mention General Comment No 11 explicitly.⁵¹ Over the period studied, the Special Rapporteur mentioned the Convention on the Rights of the Child explicitly in the reports on three country visits.⁵² Overall, we can say that as would be expected, the references to Indigenous children's rights by this Special Rapporteur are visible and positive in their depth and engagement.

6.2.2 Special Rapporteur on the right to education

Over the period studied, the Special Rapporteur on the right to education referred to Indigenous children in reports to the United Nations General Assembly on three occasions⁵³ and in reports to the Human Rights Council on five occasions.⁵⁴ In the Rapporteur's reports to the General Assembly and to the Human Rights Council, we find references to General Comment No 11 only in two reports.⁵⁵

6.2.3 Special Rapporteur on the sale and sexual exploitation of children

Over the period studied, the Special Rapporteur on the sale and sexual exploitation of children referred to the Indigenous child in reports to the United Nations General Assembly on six occasions⁵⁶ and to the Human Rights Council on five occasions.⁵⁷ Out of all the above, no document mentions the Convention on the Rights of the Child explicitly in relation to 'Indigenous', nor General Comment No 11.

6.2.4 Special Rapporteur on violence against women and girls

Over the period studied, the Special Rapporteur on violence against women and girls referred to the Indigenous' child in reports to the United Nations General Assembly on three occasions⁵⁸ and in reports to the United Nations Human Rights Council on four occasions.⁵⁹ Out of the above, no document mentions the Convention on the Rights of the Child explicitly in relation to 'Indigenous', nor General Comment No 11. In a positive development, the Rapporteur's report in 2022 was devoted to violence against Indigenous women and girls and mentions General Comment No 11.⁶⁰

Over the period studied, the Special Rapporteur on violence against women and girls presented thirty-two reports related to country visits to the Human Rights Council, with no explicit mentions of General Comment No 11.

Something that became clear by reading the documents of the Special Rapporteurs is how little General Comment No 11 of the Committee on the Rights of the Child is mentioned or quoted, nor even the Convention itself, which is the most broadly ratified international treaty apart from the UN Charter. The Special Rapporteur on education often referred to the Convention under other contexts. While the Special Rapporteurs do not mention the Convention as it relates to Indigenous Peoples often, state parties do.

In concluding the analysis of international monitoring of Indigenous children's rights, the inadequate interface between international bodies is something to note, something about the sociology or the anthropology of the international system, international law included. In international organizations, the lack of an adequate relationship or interface between various bodies is referred to as a 'silo' effect or lack of coordination. The questions that arise are multifaceted. To what extent are the Special Rapporteurs engaging with the rich normative content of Indigenous children's rights? What challenges would they face in intensifying such efforts? To what extent do the Special Rapporteurs use the relevant analytical work of specialized bodies, such as the Committee on the Rights of the Child? What challenges are there in the multitude of Special Rapporteurs engaging with the ten international human rights treaty bodies? Does civil society, especially Indigenous Peoples and their institutions and organizations, submit relevant information on Indigenous children's rights to the various international human rights monitoring mechanisms? What can be done to strengthen the link between those bodies? Substantive responses to such questions are crucial and will require an in-depth study so that in-depth solutions can be pursued. The implementation of international law on Indigenous children requires just this.

6.3 The UN Permanent Forum on Indigenous Issues

The UNPFII's work is selected for analysis in this chapter as an indicator of the policies promoted at international level, based on the international norms on Indigenous children's rights.

At its second session in 2003, the UNPFII, the high policy body on Indigenous issues in the UN, selected Indigenous children and youth as its first special theme, indicating the profound significance of the topic for the Indigenous Peoples of the world. In its report of the session,⁶¹ the Permanent Forum reconfirmed its commitment since its first session to make Indigenous children and youth a focal point of its work in the years to come, and acknowledged the efforts made by organizations representing Indigenous Peoples, United Nations agencies, and states to tackle the urgent needs of the young generation. The recommendations of the Forum were broad and deep, many addressed to the United Nations Children's Fund (UNICEF), and also to other UN entities, as well as to government and Indigenous Peoples. Some of the recommendations, repeated and complemented in subsequent sessions of the Forum,⁶² are mentioned below to indicate the direction of policy advocacy creating, interpreting and responding to international law norms.

The Permanent Forum:

Encourages United Nations bodies whose activities have an impact on indigenous children and youth, including, but not limited to, the World Health Organization (WHO), the Joint United Nations Programme on HIV/AIDS (UNAIDS), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Food and Agriculture Organization of the United Nations (FAO), the International Labour Organization (ILO), the United Nations Development Programme (UNDP), the United Nations Development Fund for Women (UNIFEM), the United Nations Population Fund (UNFPA) the United Nations Human Settlements Programme (UN-Habitat), and the Department of Public Information of the United Nations Secretariat, to report regularly to the Forum. The reports should contain detailed information on and assess the progress made within programmes directed at, affecting and relating to indigenous adolescents.

Reiterates its recommendation that the United Nations Children's Fund (UNICEF), as the United Nations nodal agency on children, present a comprehensive report to the Forum on an annual basis, including budgetary allocations and an assessment of their impact, including details of all its initiatives undertaken in collaboration with other specialized bodies of the United Nations system relating to Indigenous children and those undertaken at the international or regional levels, as well as country initiatives, where applicable; provide information from the multi-indicator cluster survey being globally undertaken by UNICEF, disaggregating data on the antenatal health, birth, registration, immunization and early childhood development of indigenous children.

Recommends that the Inter-Agency Support Group discuss how to promote the cross-cutting issue of children and youth.

Notes that in order for it and the United Nations system to review the situation of indigenous children and youth, there is a need for country-specific situation analyses. Given UNICEF's unique and long experience and expertise in that area, the Forum invites UNICEF to initiate such situation analyses on Indigenous children by field offices in countries with Indigenous communities. The Forum also invites UNICEF to transmit such situation analyses to the Forum.

Is deeply concerned that particular problems and discrimination are faced by indigenous children and youth, including in the areas of education, health, culture, extreme poverty, mortality, incarceration, labour and other relevant areas. The Forum notes the need for new indicators to be developed by the United Nations that will specifically target those problems, and in that regard invites UNICEF to develop such new indicators and share them with other entities of the United Nations system, especially UNESCO.

Recommends that UNICEF consider the appointment of a goodwill ambassador of indigenous children and youth to raise public awareness and that it urge all UNICEF ambassadors to pay attention to the specific problems of indigenous children and youth.

Aware of the massive exodus of indigenous youth to the alien environments of cities around the world and the discrimination, socio-economic hardships, weakened family networks and drug abuse, inter alia, affecting those youngsters and "street children", the Forum requests the World Bank, the ILO and UNICEF to conduct an in-depth comparative study of legal frameworks and social programmes addressing indigenous urban youth in selected countries.

Recommends that the United Nations system, address issues related to the trafficking and sexual exploitation of indigenous girls, and urges States to create programmes of rehabilitation. The Forum invites the Special Rapporteur on the sale of children, child prostitution and child pornography, within the purview of his mandate, to pay special attention to and make recommendations concerning the rights of indigenous children.

Decides to organize an indigenous youth art competition for the design of a logo for the Forum.

Taking into account the large number of incarcerated indigenous children and youth and the need to assist them in reintegrating into society as soon as possible through socio-educational measures, recommends that the Economic and Social Council urge Governments to ensure greater protection and humane treatment of those children and youth while in prison and youth detention centres, and to provide them with socio-educational measures for their rehabilitation.

Recommends that both States and indigenous peoples' organizations consider the inclusion of youth representatives in their delegations attending the annual session of the Forum.

Recommends that in staffing the secretariat of the Forum, due consideration be given to qualified indigenous youth applicants.

Deeply concerned about the harmful and widespread impact of armed conflict on indigenous children, recommends that the Committee on the Rights of the Child make recommendations on the situation of the human rights of Indigenous children involved in armed conflict.

Indicative of the focus on Indigenous children is also an important pronouncement of the UNPFII in 2005 when the elements of the common understanding of free, prior, and informed consent (FPIC) were defined in that year's expert group meeting under the Permanent Forum. The main areas defined where FPIC is relevant include any policies or programmes that may lead to the removal of Indigenous children.⁶³

Given the profound interest, focus, and engagement of the UNPFII on issues of Indigenous children and youth,⁶⁴ it is also a welcome and inspiring development to see the extraordinary presence and visionary contributions of the Global Indigenous Youth Caucus during the Forum's annual sessions. Indigenous youth from around the world are not only supporting international law on Indigenous rights but also continue to interpret and expand it towards improved implementation. UNICEF has been an active participant in the work of the Permanent Forum, submitting reports and engaging in dialogue with the Forum, while promoting substantive work in the field. This and other UN entities as well as various other addressees of the Permanent Forum's recommendations still have to implement fully the policies promoted by the Permanent Forum.

7. Conclusion

The normative content of Indigenous children's rights is solidly defined in the various sources of international law analysed in this chapter. Summarizing them in this brief conclusion would risk missing important points and that would not be appropriate. There are certainly overlapping concepts that these international law sources bring out regarding Indigenous children's rights. They include prohibition of discrimination; states' obligations to respect, protect, fulfil, and remedy Indigenous children's rights, and the accountability of states in that regard; participation of Indigenous children; specificity of measures for their rights to be implemented; Indigenous children's rights, both as individual and as collective rights; the intercomplementarity and interconnectedness of Indigenous children's rights; gender focus in the implementation of Indigenous children's rights; and promotion of the best interests of the Indigenous child.

The international human rights instruments, together with the interpretative statements of treaty bodies (General Comment, GR, and others) are indeed substantive and can be used productively and creatively by all: Indigenous youth, Indigenous Peoples and their communities, Indigenous organizations overall, other civil society actors, including academia, the human rights treaty bodies and other related international mechanisms, UN and other agencies, and of course state mechanisms and institutions, including parliaments and courts. In other words, these norms and their authoritative interpretations can have a positive ripple effect and galvanize awareness, dialogue, and action for Indigenous children's rights around the world.

The specific recommendations to states regarding the Convention on the Rights of the Child, the Convention on the Eliminations of all Forms of Discrimination against Women, and UNDRIP are extensive and well formulated. This clarity provides an excellent practical tool for Indigenous advocates and related organizations, listing the topics on which they can collect information and send it to treaty and other bodies as well as to Special Rapporteurs during their examination of country reports.

What are the broad actions that are needed so that the norms of international law on Indigenous children's rights are embraced and pushed towards implementation?

The first one is to create awareness about the existence of the norms on Indigenous children's rights and the authoritative interpretative statements of the relevant bodies, and also the content of the norms and the possibilities they open for the defence of Indigenous children's rights. This awareness has to be built among Indigenous Peoples, Indigenous youth and their organizations, and Indigenous and other relevant organizations more broadly. It has to be built also among state governments and the civil service, parliaments, the judiciary as well as UN and other interstate agencies, so all actors, from their various angles, can contribute to the implementation of Indigenous children's rights.

Second, we need to popularize Indigenous children's rights, to create training modules or information sessions for different audiences, for example, and then to organize occasions for systematic information about Indigenous children's rights to be shared further and for people to understand how such information can be used.

Third, we need to build collaboration among various actors, so that each supports Indigenous children's rights using their special capacities. For example, statistical offices need to collaborate with Indigenous organizations on the collection and disaggregation of data that will unveil the real situation of Indigenous children. Academia should collaborate with Indigenous Peoples and organizations for the analysis of Indigenous children's rights, the preparation of material, and organization of workshops. Development agencies, whether of the UN, regional or national, should collaborate with Indigenous organizations and other relevant actors to promote Indigenous children's rights in their programmes and projects.

Indigenous children and their well-being permeate international dialogues, norms, and policies, even when they are not explicitly mentioned by Indigenous Peoples, states, and other international actors in all the debates. Looking and listening carefully, we can see Indigenous children as 'the spine' of Indigenous Peoples and as bringing forward fundamental issues: Indigenous Peoples' physical and cultural survival; the right to self-determination, including governance systems; Indigenous justice systems and definition of membership in each Indigenous nation; intergenerational transmission of identity, including language and traditional knowledge; Indigenous right to land, territories, and resources, education, health, and other areas—they all have Indigenous children as the linking thread. Given the above, it is no surprise that international law provides a rich normative and operational ground for Indigenous children's rights.

Attention to Indigenous children's rights can have real and practical effects. It can help strengthen public policies for the respect of the identity of Indigenous Peoples, and even mend historic injustices towards these peoples and their communities, as well as build positive inter-cultural relations and social cohesion. Attention to Indigenous children's rights can help heal the trauma inflicted upon Indigenous Peoples and their children. International law reveals a visionary horizon where the futures of Indigenous Peoples and their children can be embraced with hope, justice, equality, and well-being.

Notes

- 1 'Canada agrees to pay \$17 billion to compensate Indigenous families' *Le Monde* (Canada, 6 April 2023) <https://www.lemonde.fr/en/international/article/2023/04/06/canada-agrees-to-pay-17-billion-to-compensate-indigenous-families_6021886_4.html> accessed 30 August 2023.
- 2 There has been a trend to capitalize initials in the terms 'Indigenous' and 'Indigenous Peoples'. This chapter follows this approach. If a text is quoted that does not capitalize the initials, we follow the spelling of the original quotation.
- 3 The *Encyclopedia* was authored in 2011 by Vadim Turaev and others, Centre for Support of Indigenous Peoples of the North, Moscow. In his report on Russia to the Human Rights Council in 2010, the Special Rapporteur on the rights of Indigenous Peoples also recommended that priority should be given to ensuring Indigenous control over language preservation and development programmes. UNCHR, 'Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedom of Indigenous People, James Anaya' (2010) UN Doc A/HRC/15/37/Add [94].

- 4 Elsa Stamatopoulou, 'Indigenous Peoples and the United Nations: Human Rights as a Developing Dynamic' (1994) 16(1) Human Rights Quarterly 58–81.
- 5 See eg UN EMRIP, 'Study on Lessons Learned and Challenges to Achieve the Right of Indigenous Peoples to Education' (2009) UN Doc A/HRC/12/33.
- 6 UN HRC, 'Study of the Expert Mechanism on the Rights of Indigenous Peoples' (2021) UN Doc A/HRC/48/74.
- 7 Economic and Social Council, 'Report on the Twenty-Second Session' (2023) UN Doc E/2023/43 draft decision III.
- 8 The author expresses her appreciation to Professor Kristen Carpenter for her insightful comments on this chapter.
- 9 Qivioq Nivi Løvstrøm (Inuk, Greenland), Kibett Carson Kiburo (Endorois, Kenya), and Q'apaj Conde (Aymara, Plurinational State of Bolivia), Co-Chairs of the Global Indigenous Youth Caucus (2018–2019), 'Introduction' in *Global Indigenous Youth: Through Their Eyes* (Institute for the Study of Human Rights, Columbia University 2019) xv–xxvii <<https://doi.org/10.7916/d8-1bnv-z868>>. This book is entirely written by Indigenous youth, two authors from each of the seven Indigenous sociocultural regions. The book is edited by D Angel, VA Lopez-Carmen, and E Stamatopoulou. The following link provides access to the whole book <<https://academiccommons.columbia.edu/doi/10.7916/d8-dh2w-rz29>> accessed 4 July 2025.
- 10 UN Committee on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990).
- 11 *ibid.*
- 12 UN Committee on the Rights of the Child, 'General Comment No 11' (2009) UN Doc CRC/C/GC/11.
- 13 Margo Greenwood, 'Language, Culture, and Early Childhood: Indigenous Children's Rights in a Time of Transformation' (2016) 3(1) The Canadian Journal of Children's Rights 16–31.
- 14 UN Committee on the Rights of the Child, 'General Comment No 11' (2009) UN Doc CRC/C/GC/11 [19].
- 15 Holly Doel-Mackaway, *Indigenous Children's Right to Participate in Law and Policy Development* (Routledge 2021).
- 16 On the remedial nature of Indigenous Peoples rights, see James Anaya *Indigenous Peoples in International Law* (2nd edn, Oxford University Press 2004).
- 17 Economic and Social Council, 'Forms of education of Indigenous Children as Crimes Against Humanity?' (2008) UN Doc E/C.19/2008/7. See also 'Indigenous Peoples and Boarding Schools: a Comparative Study' UN (2010) Doc E/C.19/2010/11. Bartholomé Clavero, the extraordinary legal historian and member of the UNPFII from 2008 to 2011 prepared an in depth 'Study on International Criminal Law and the Judicial Defence of Indigenous Peoples' Rights' (2011) UN Doc E/C.19/2011/4. See also Bartolome Clavero, *Genocide or Ethnocide, 1933–2007: How to Make, Unmake and Remake Law Through Words* (Milano Giuffrè Editore 2008).
- 18 UN Committee for the Elimination of All Forms of Discrimination against Women, 'General Recommendation No 39 on the Rights of Indigenous Women and Girls' (31 October 2022) UN Doc CEDAW/C/GC/39.
- 19 Economic and Social Council, 'Permanent Forum on Indigenous Issues' (2009) UN Doc E/2009/43 Annex [6].
- 20 Valmaine Toki, 'Indigenous Children and Youth: the Case of Marae Courts in Aotearoa/ New Zealand' in Wilton Littlechild and Elsa Stamatopoulou (eds), *Indigenous Peoples' Access to Justice, Including Truth and Reconciliation Processes* (Institute for the Study of Human Rights, Columbia University 2014) 243–54 <<https://academiccommons.columbia.edu/doi/10.7916/D8GT5M1F>> accessed 16 July 2025.
- 21 See also Bartholomé Clavero, the extraordinary legal historian and member of the UNPFII from 2008 to 2011, Bartholomé Clavero, 'Study on International Criminal Law and the Judicial Defence of Indigenous Peoples' Rights' (2011) UN Doc E/C.19/2011/4.
- 22 For a number of years, the author, working then in the Office of the UN High Commissioner for Human Rights, chaired and interagency Working Group that was working to achieve that.
- 23 UNSDG, 'The Human Rights Based Approach to Development Cooperation Towards a Common Understanding among UN

- Agencies' (2003) <<https://unsdg.un.org/resources/human-rights-based-approach-development-cooperation-towards-common-understanding-among-un>> accessed 24 August 2023.
- 24 The final text of the SDGs adopted in 2015 by the UN General Assembly appears in UNGA, 'Transforming our World: 2030 Agenda for Sustainable Development' (2015) UN Doc A/RES/70/1 <https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf> accessed 4 July 2025.
 - 25 For more information on the Indigenous Peoples Major Group visit <<https://www.indigenouspeoples-sdg.org/index.php/english/>> accessed 4 July 2025.
 - 26 This is according to international human rights theory and practice developed by human rights treaty bodies, human rights rapporteurs, resolutions adopted by states at the United Nations and via policies adopted by the UN system agencies-in addition to the academic literature around the human rights approach, including the Common Understanding of the Human Rights Approach to Development adopted by UN agencies. Points i) to iv) in this part are adapted from the authors Robert Phillipson and Tove Skutnabb-Kangas, 'Time, Politics, and Linguistic Human Rights: Bringing Words to our Songs' in (eds) *Handbook of Linguistic Human Rights* (Wiley-Blackwell 2023) 195–209 <<https://onlinelibrary.wiley.com/doi/abs/10.1002/9781119753926.ch13>> accessed 4 July 2025>.
 - 27 For an essay on this topic see Elsa Stamatopoulou, 'The Challenge of Time and Responses of International Human Rights Law' in Wilton Littlechild and Elsa Stamatopoulou (eds), *Indigenous Peoples' Access to Justice, Including Truth and Reconciliation Processes* (Institute for the Study of Human Rights Columbia University 2014) 195–206.
 - 28 *Simunek v Czech Republic*, Case No 516/1992, para 6.4, fifty-fourth session.
 - 29 In a case that became famous, on 1 December 2000, Judge Juan Guzmán Tapia indicted the Chilean dictator Augusto Pinochet for the kidnapping of seventy-five opponents in the Caravan of Death case—on the grounds that the victims were forcibly 'disappeared'; this was a continuing violation and hence statute of limitations did not apply.
 - 30 Human Rights Council resolution 18/7.
 - 31 The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, UN Publication ST/HR/P/PT/12.
 - 32 See an excellent paper authored by Jessica Danforth and presented at the 2014 UN Expert Group Meeting, 'Sexual Health and Reproductive Rights: Articles 21, 22(1), 23 and 24 of the United Nations Declaration on the Rights of Indigenous Peoples' <https://www.un.org/esa/socdev/unpfii/documents/EGM_14_SHRR_paper_danforth.pdf>. See also D Angel, VA Lopez-Carmen, and E Stamatopoulou, *Global Indigenous Youth: Through Their Eyes* (Institute for the Study of Human Rights, Columbia University 2019). This book is entirely written by Indigenous youth, two authors from each of the seven Indigenous sociocultural regions. The whole book is also accessible electronically: <<https://academiccommons.columbia.edu/doi/10.7916/d8-dh2w-rz29>> accessed 4 July 2025.
 - 33 One of the most revealing histories in that sense was the drafting at the United Nations of the UDHR (art 27) and of the Convention on the Prevention and Punishment of the Crime of Genocide in the late 1940s, where the protection of languages was debated and subsequently deliberately left out.
 - 34 The author wishes to acknowledge with appreciation the excellent background research in the work of the Committee on the Rights of the Child and of five Special Rapporteurs of the UN Human Rights Council, carried out by Romina Quezada Morales, who holds a PhD in International and Comparative Education from Teachers College, Columbia University, and is Co-Chair of the Indigenous Knowledge and the Academy Special Interest Group at the Comparative and International Education Society. My comments on the monitoring work of those UN bodies regarding Indigenous children's rights are based on her background research.
 - 35 This research has followed the self-identification criterion regarding the understanding of who is Indigenous. This criterion is based the provisions of the UNDRIP and the practice of UN bodies over the decades.
 - 36 An example of this is Canada in UN Committee on the Rights of the Child, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Canada' (2019) UN Doc CRC/C/CAN/5-6 [2].
 - 37 An example of this is Kiribati in UN Committee on the Rights of the Child, 'Consideration of the Reports Submitted by

States Parties under Article 44 of the Convention' (2019) UN Doc CRC/C/KIR/2-4 [206].

- 38 The CRC considered a total of seventy-four state party reports on the OPAC presented by state parties between 1 January 2009 and February 2022. Between February 2022 and 22 July 2023, no state party reports on the OPAC have been presented by state parties to the Convention.
- 39 The CRC considered a total of seventy-two state party reports on the OPSC presented by state parties between 1 January 2009 and February 2022. Between February 2022 and 22 July 2023, no state party reports on the OPSC have been presented by state parties to the Convention.
- 40 UN Committee on the Rights of the Child, 'Consideration of Reports Submitted by States Parties under Article 44 of the Convention' (2011) UN Doc CRC/C/LAO/2 [163].
- 41 UN Committee on the Rights of the Child, 'Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Namibia' (2011) UN Doc CRC/C/NAM/2-3 [129].
- 42 UN Committee on the Rights of the Child, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Norway' (2018) UN Doc CRC/C/NOR/5-6 [241].
- 43 UN Committee on the Rights of the Child, 'Concluding Observations on the Combined Third and Fourth Periodic Report of Canada, Adopted by the Committee at its Sixty-First Session' (2012) UN Doc CRC/C/CAN/3-4 [473]. For the Child and Family Services Authorities Act, see CCSM c C90 (gov.mb.ca).
- 44 UN Committee on the Rights of the Child, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Canada' (2019) UN Doc CRC/C/CAN/5-6 [184], point 4.
- 45 UN Doc CRC/C/VEN/3-5, para 241. The citation comes from Decreto No 2686, Reglamento de la Ley Orgánica de Identificación para la Identificación de los Indígenas, published in *Gaceta Oficial*, Nr 37817, 13 November 2003. See *Gaceta Oficial—Tribunal Supremo de Justicia* (tsj.gob.ve).
- 46 UN Committee on the Rights of the Child, 'Consideration of Reports Submitted by States Parties under Article 44 of the Convention' (2015) UN Doc CRC/C/ZWE/2 [407].
- 47 UN Committee on the Rights of the Child, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Suriname' (2016) UN Doc CRC/C/SUR/3-4 [198].
- 48 UN Committee on the Rights of the Child, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Costa Rica' (2020) UN Doc CRC/C/CRI/5-6 [69] points 7, 8, and 9.
- 49 UNHRC, 'Second International Decade of the World's Indigenous People' (2009) UN Doc A/64/338; UNHRC, 'Resolution adopted by the General Assembly on 27 July 2012' (2012) UN Doc A/66/288; UNHRC, 'Rights of Indigenous Peoples' (2012) UN Doc A/67/301; UNGA, 'Rights of Indigenous Peoples, including Their Economic, Social and Cultural Rights in the post-2015 Development Framework' (2014) UN Doc A/69/267; UNHRC, 'Rights of Indigenous Peoples' (2018) UN Doc A/73/176; UNHR, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples' (2019) UN Doc A/74/149; UNHRC, 'Rights of Indigenous Peoples' (2020) UN Doc A/75/185; UNGA, 'Rights of Indigenous Peoples' (2021) UN Doc A/76/202.
- 50 UNHRC, 'Report on the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People' (2009) UN Doc A/HRC/12/34; UNHRC, 'Report on the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People' (2012) UN Doc A/HRC/21/47; UNGA, 'Report on the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People' (2013) UN Doc A/HRC/24/41; UNHRC, 'Report on the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People' (2014) UN Doc A/HRC/27/52 Add. 4; UNHRC, 'Report on the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People' (2017) UN Doc A/HRC/36/46; UNHRC, 'Report on the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People' (2018) UN Doc A/HRC/39/17; UNHRC, 'Rights of Indigenous Peoples' (2019) UN Doc A/HRC/42/37; UNGA, 'Rights of Indigenous Peoples' (2020) UN Doc A/HRC/45/34; UNHRC, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples' (2021) UN Doc A/HRC/48/54; UNHRC, 'Indigenous Women and the Development, Application and Transmission of Scientific and Technical Knowledge' (2022) UN Doc A/HRC/51/28.
- 51 UNHRC, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples' (2019) UN Doc A/HRC/42/37; and UNHRC,

- 'Indigenous Women and the Development, Application and Transmission of Scientific and Technical Knowledge' (2022) UN Doc A/HRC/51/28.
- 52 UNCHR, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Mission to Brazil' (2016) UN Doc A/HRC/33/42/Add.1; UNCHR, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Visit to Australia' (2017) UN Doc A/HRC/36/46/Add.2; Francisco Cali-Tzay, 'Visit to Denmark and Greenland, End of Mission Statement' (2023) <<https://www.ohchr.org/sites/default/files/documents/issues/indigenouspeoples/sr/statements/eom-statement-denmark-greenland-sr-indigenous-2023-02-10.pdf>> accessed 25 August 2023.
 - 53 UNGA, 'Right to Education' (2017) UN Doc A/72/496; UNGA, 'Right to Education' (2019) UN Doc A/74/243; UNGA, 'Right to Education' (2022) UN Doc A/77/324.
 - 54 UNCHR, 'Report of the Special Rapporteur on the Right to Education' (2010) UN Doc A/HRC/14/25/Add.1; UNCHR, 'Report of the Special Rapporteur on the Right to Education' (2011) UN Doc A/HRC/17/29; UNCHR, 'Report of the Special Rapporteur on the Right to Education' (2012) UN Doc A/HRC/20/21; UNCHR, 'Report of the Special Rapporteur on the Right to Education': Realizing the Right to Education Through Non-formal Education' (2017) UN Doc A/HRC/35/24; UNCHR, 'Report of the Special Rapporteur on the Right to Education on Governance and the Right to Education' (2018) UN Doc A/HRC/38/32.
 - 55 UNCHR, 'Report of the Special Rapporteur on the Rights of Indigenous People' (2019) UN Doc A/HRC/42/37; UNCHR, 'Report of Special Rapporteur on the Rights of Indigenous Peoples' (2022) UN Doc A/HRC/51/28.
 - 56 UNGA Res 67/291 (2013) GAOR 76th Session UN Doc A/67/291; UNGA, 'Effective Prevention Strategies in Combating the Sale and Sexual Exploitation of Children' (2013) 76th Session UN Doc A/68/275; UNGA, 'Sale and Sexual Exploitation of Children, Including Child Prostitution, Child Pornography and Other Child Sexual Abuse Material' (2018) 73rd Session UN Doc A/73/174; UNGA, 'Sale and Sexual Exploitation of Children, Including Child Prostitution, Child Pornography and Other Child Sexual Abuse Material' (2020) 75th Session UN Doc A/75/210; UNGA, 'Sale and Sexual Exploitation of Children, Including Child Prostitution, Child Pornography and Other Child Sexual Abuse Material' (2022) 77th Session UN Doc A/77/140.
 - 57 UNCHR, 'Joint report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography and the Special Representative of the Secretary-General on Violence against Children' (2011) 16th Session UN Doc A/HRC/16/56; UNCHR, 'Report on the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography' (2017) UN Doc A/HRC/34/55; UNCHR, 'Sale and Sexual Exploitation of Children' (2020) UN Doc A/HRC/43/40; UNCHR, 'Impact of Coronavirus Disease on Different Manifestations of Sale and Sexual Exploitation of Children' (2021) UN Doc A/HRC/46/31; UNCHR, 'Reparation for Child Victims and Survivors of Sale and Sexual Exploitation' (2023) UN Doc A/HRC/52/31.
 - 58 UNGA, 'Violence Against Women, Its Causes and Consequences' (2016) 71st Session UN Doc A/71/398; UNGA, 'Adequacy of the International Legal Framework on Violence Against Women' (2017) 72nd Session UN Doc A/72/134; UNGA, 'Violence Against Women, Its Causes and Consequences' 75th Session UN Doc A/75/144.
 - 59 UNCHR, 'Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Rashida Manjoo' (2010) UN Doc A/HRC/14/22; UNCHR, 'Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Rashida Manjoo' (2012) UN Doc A/HRC/20/16; UNCHR, 'Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences' (2016) UN Doc A/HRC/32/42; UNCHR, 'Violence against Indigenous Women and Girls' (2022) UN Doc A/HRC/50/26.
 - 60 UNCHR, 'Violence against Indigenous Women and Girls' (2022) UN Doc A/HRC/50/26.
 - 61 UN Permanent Forum on Indigenous Issues 'Report on the Second Session' (2003) UN Doc E/2003/43 [4]–[25] focus on the special theme.
 - 62 For example, at its 2005 session, when discussing Millennium Development Goal 2 on primary education for all by 2015, the UNPFII focused considerably on mother tongue as well as bilingual, intercultural education and adopted far-reaching recommendations, calling for such education as well as for effective participation of Indigenous communities in decisions regarding education. UNESCO, 'Permanent Forum on Indigenous Issues' (2005) UN Doc E/2005/43.
 - 63 'Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples' (2005) UNPFII, UN Doc E/C.19/2005/3 [46]. The recommendations of that meeting were subsequently supported

by the UNPFII itself, see for example UNESCO, 'Permanent Forum on Indigenous Issues' (2005) UN Doc E/2005/43 [137].

- 64 The UNPFII's database on Indigenous children and youth can be seen at
<<https://unpfii.desa.un.org/recommendations/area-of-work/indigenous%20children%20and%20youth>> accessed 27
August 2023.

© Oxford University Press