

# INDIGENOUS CHILDREN: RIGHTS AND REALITY



## A REPORT ON INDIGENOUS CHILDREN AND THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD

This report was prepared to assist the UN Committee on the Rights of the Child in the development of a General Comment on the topic of Indigenous children and youth, and for the general usage of the UN Sub-Group on Indigenous Children and Young People (ISG)

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## **Dedication**

**To Indigenous and non-Indigenous children  
and young people around the world – we  
care enough to courageously work to  
ensure that your distinct and sacred right to  
be who you are is recognized, now and  
forever.**

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# Indigenous Children: Rights and Reality

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## ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Rights
ACYA	Action for Children and Youth Aotearoa (New Zealand/Aotearoa)
AITPN	Asian Indigenous & Tribal Peoples' Network
CEH	<i>Comisión para el Esclarecimiento Histórico</i> [Commission for Historical Clarification] (Guatemala)
CORE	Centre for Organisation Research & Education (Manipur, India)
FNCFCS	First Nations Child and Family Caring Society (Canada)
HRC	(UN) Human Rights Council
ISG	"Indigenous Sub-Group"; full name: UN Sub-Group on Indigenous Children and Young People
NACNYC	Native American Council of New York City
SNAICC	Secretariat of National Aboriginal & Islander Child Care (Australia)
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNESCO	United Nations Education, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
WHO	World Health Organisation

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## FORWARD & ACKNOWLEDGMENTS

This report was authored by the newly formed UN Sub-Group on Indigenous Children and Young People (ISG), which is a member of the NGO Group for the Convention on the Rights of the Child. We see this report as a starting point for much further research and real-life progress on the rights of Indigenous children and youth. The dialogue is only just beginning.

Judith Rae did a large portion of the research and writing, and would like to thank all members of the ISG for their valuable contributions and feedback, especially: Cindy Blackstock, John Waldon, Peter Shuttleworth, Anna Pinto, and Ngima Tendup Sherpa.

The project was completed with the support of the First Nations Child and Family Caring Society of Canada, the June Callwood Foundation, Pro Bono Students Canada, and the Centre of Excellence for Child Welfare.

It is not possible, in the course of one report, to provide a comprehensive catalogue neither of abuses against Indigenous children's rights nor of positive efforts to realize those rights. Our goal in this report was to highlight some of the most salient, systemic issues, and provide illuminating examples.

A major difficulty encountered in the course of the research process was a lack of reliable information. There is a serious deficiency of good quality, disaggregated, relevant research on Indigenous children and youth (see the "State Reporting" section for more detail). The research that does exist is predominantly affected by several widespread problems:

- Subjects of research, researchers/authors and research institutions are often located in and focused on wealthy countries, not poorer countries
- Indigenous people and their organisations are usually not the authors of the research, nor are they usually partners in the research
- Indigenous children and youth are rarely given a direct, meaningful voice

Despite these challenges, efforts were made to include information on Indigenous children and youth from all regions, and to give voice directly to the perspectives of Indigenous leaders, organisations and youth. The result does not represent an ideal balance, but hopefully will encourage further research attention to neglected areas and topics in the future.

Judith Rae  
Toronto, July 2006

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## 1. Executive Summary

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The United Nations *Convention on the Rights of the Child* ('UNCRC' or 'the *Convention*') sets out to state parties minimum standards for the respect, nurturing, well-being, participation and protection of all children and young people (see UN, 1989). But in fact implementation is uneven, particularly when it comes to Indigenous children and youth.

Around the world, in countries both rich and poor, Indigenous children are severely marginalized. Their rights under the UNCRC and other human rights treaties are routinely violated, unimplemented, and ignored to a degree not often experienced by other children. This systemic discrimination and disadvantage must end.

This report comes from a new group at the United Nations called the UN Sub-Group on Indigenous Children and Young People ('Indigenous Sub-Group' or 'ISG'). Formed in October 2005, the ISG is the first and only international body dedicated to Indigenous children, and it is part of the NGO Group for the Convention on the Rights of the Child.

*Rights and Reality* was designed to be useful in the process of drafting a General Comment on the UNCRC and Indigenous children, described further below. We also hope that this report will be the start of much more discussion, research, and positive change for Indigenous children's rights.

### ***Fundamental Principles***

The following four principles are infused throughout this report, and should be primary considerations within all efforts to implement the rights of, and investigate the status of, Indigenous children and young people:

#### **Interdependence**

- Appreciation of the interconnectedness between children and communities, culture and context, as well as between various discrete rights, is crucial to understanding and realizing Indigenous children's rights.

#### **Cognizance of History**

- Indigenous children's present status cannot be understood without reference to the historical context. The issues outlined here are systemic, and form part of a much larger history of rights violations against Indigenous peoples.

#### **Self-Determination**

- State recognition of Indigenous self-determination is without a doubt the most consistent, universal demand made by Indigenous peoples worldwide. Obstacles to the exercise of this right remain the most significant barriers to the realization of Indigenous children's rights and well-being today.
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## Land

- When Indigenous peoples suffer the loss and degradation of their land and natural resources, a number of far-reaching rights violations against Indigenous children are set in motion. In addition, Indigenous knowledge about land use and sustainability is important for ensuring a productive and healthy natural environment can be passed on to all children.

### ***International Human Rights Law and the General Comment***

Until recently, Indigenous peoples' legal status has been determined almost exclusively by non-Indigenous peoples. The rise of human rights in international law has won Indigenous peoples a much stronger position. Indigenous peoples' movements have produced major, positive developments in the past few decades.

But the fact is that rights of general application on paper have not translated into rights in reality for many Indigenous children. One gap is the lack of protection for Indigenous peoples as such, and as collectives. The adoption of the UN's *Draft Declaration on the Rights of Indigenous Peoples* would be a major step forward.

This project is another step. The new UN Sub-Group on Indigenous Children and Young People, author of this report, is currently assisting the UN Committee on the Rights of the Child to develop a 'General Comment' on the UNCRC and Indigenous children and youth. This report is connected to that process. The anticipated General Comment will give direction to states on their obligations to Indigenous children under the *Convention*, and will be an important tool to promote Indigenous children's rights.

### ***Indigenous Customary Law and Children's Rights***

Indigenous peoples have their own systems of law and custom that are neither uniform nor static. Tragically, Indigenous legal systems have been subject to powerful forces of destruction. Damage to cultural cohesion, traditional knowledge, and community institutions has had very negative effects on Indigenous families and children. Yet Indigenous laws and customs have survived the sustained assault against them. This testifies to the strength and resilience of Indigenous peoples, and their will to survive.

Despite the great diversity in Indigenous customary law, there are certain principles that tend to be common to many Indigenous cultures. Principles that have important bearing on the rights of Indigenous children and youth include:

#### **Communal Approach**

- Pure individualism does not capture the way Indigenous peoples understand the positive interactions between individual and community in the real lives of Indigenous children and youth. Indigenous children will not enjoy their rights

unless they are living within healthy, strong communities with full rights to self-determination, traditional lands and resources, and cultural integrity.

### **Children as Rights Holders**

- In many Indigenous cultures, children participate in society in various ways, and are often seen as autonomous spiritual beings. The concept of 'children's rights' in the UNCRC resonates deeply with many Indigenous peoples today as comparable to, or at least compatible with, their own concepts of human dignity and childhood.

### **Land and Resources in Trust**

- The concept of trusteeship in land forms part of many Indigenous traditions. In this view, children are integral to the human-land relationship as they are meant to take on the role of trustee of their peoples' lands and resources as they mature, and pass it on to the next generation. Land loss and degradation affect all aspects of Indigenous children's health, development and survival; they are a major cause of poverty, conflict, instability and cultural breakdown.

## ***Clusters of Discrimination and Disadvantage***

Indigenous children face systematic discrimination and disadvantage in a number of areas, outlined below. These rights violations require urgent attention. However it is also important to keep in mind that current 'development indicators' do not necessarily reflect Indigenous peoples' worldview, and the kind of development they aspire to for their children. The reality described below is clearly untenable, but ideal child development and transition to adulthood will look different in each society. Real development is linked to self-determination, empowerment and human rights.

### **Education and Culture**

- Across the board, Indigenous children have lower school enrolment rates, receive fewer years of education, and graduate in smaller numbers than non-Indigenous children.
- The education Indigenous children do receive is often of poorer quality. Common problems include a lack of qualified teachers, grossly oversized classes, sub-standard facilities, and a lack of essential materials.
- Education is sometimes used as a policy of forced assimilation, or has this effect. This may include removing children from their family and community, failing to teach Indigenous languages, a lack of community input and control, neglect or denigration of Indigenous knowledge and culture, and discrimination by teachers and other students.
- Education systems fail to combat entrenched anti-Indigenous discrimination in the mainstream, often propagating stereotypes through the curriculum.

## Health and Well-Being

- For many Indigenous peoples, health includes not only physical but also emotional, intellectual, spiritual and other components.
- Any analysis of Indigenous children's health must pay close attention to structural risks rooted in the political, historical economic and social realms. For instance, Indigenous children around the world are largely living in poverty, which speaks enormously to the low status of their health.
- Indigenous children have less access to health and sanitation services in comparison with other groups. Access is particularly limited in remote areas.
- Health services need to be run with greater local Indigenous control; both mainstream and targeted services must be culturally appropriate and connected to the community.
- Available information on Indigenous children's current health status reveals significant concerns. Two 1999 World Health Organization reports indicated: Indigenous children can expect to live 10-20 years less than their peers; Indigenous infant mortality is on average 1.5-3 times higher than for others; Indigenous children suffer high rates of malnutrition that is often tied to land loss and degradation; suicide and other mental health issues are more frequent among Indigenous youth.

## Protection

- Indigenous children are often harmed and exploited due to their vulnerable position in society. Sometimes Indigenous children are abused for the very reason that they are Indigenous.
- *Juvenile Justice and Law Enforcement*: Indigenous children and youth experience both too much and too little contact with law enforcement. Security personnel often fail to protect Indigenous children, and in some areas they pose a significant threat to their safety. At the same time, Indigenous youth are over-represented in criminal justice systems. There is a need to address the causes of this pattern and to provide culturally-based services for rehabilitation.
- *Child Abuse/Neglect and Child Welfare Systems*: Indigenous children are at a higher risk of experiencing maltreatment from caregivers. Yet systems to prevent and cope with such abuse are failing – they do not address societal causes of maltreatment such as poverty, multi-generational trauma and social dislocation; they lead to further breakdown in Indigenous communities by removing large numbers of Indigenous children; and in some cases they attempt to erase the child's Indigenous identity.
- *Self-Harm – Substance Abuse and Suicide*: Extreme self-harming behaviours occur with alarming frequency among Indigenous youth in many places, and they speak volumes about the pain these youth are experiencing on an emotional and spiritual level. States must provide protection and support to

youth at risk, through policies and programs that are designed and run with input from Indigenous youth and their communities.

- *Child Labour*: A 2003 report from the International Labour Organization found Indigenous children are often over-represented in child labour, particularly in the most hazardous types of work. There is a need for greater dialogue with Indigenous peoples, and especially with children, to design appropriate and accessible education systems that are a real alternative to work, and to establish boundaries between light and exploitative work in different contexts.
- *Sexual Exploitation and Trafficking*: What is known about the commercial sex trade and child trafficking indicates that Indigenous children and youth are at disproportionate risk. Asia is a major area of concern, but Indigenous youth are at risk in other places as well. Not only do all sexually exploited children experience sexual violence by definition, they are often exposed to other forms of serious violence and to dangerous health risks.
- *Armed Conflict*: Indigenous peoples are at a higher risk of living in situations of armed conflict, and this poses significant risks to Indigenous children. Not only does conflict involve terrible human rights abuses against children wherever it occurs, but some conflicts have a racist or genocidal aspect that puts Indigenous children at extreme risk.

## **Identity**

- Indigenous children's most basic identity rights – to a name, birth registration and citizenship – are often unrecognized. State interference has also prevented some Indigenous children from being raised by and/or knowing their own family and cultural identity.
- In many cases, states engage in a range of practices that stifle and control Indigenous children's cultural, religious and/or political identity as Indigenous peoples. This may involve active repression, restricting who the state will recognize as Indigenous, or manipulating Indigenous cultural symbols.

## **State Reporting**

There is a lack of comprehensive, disaggregated data on Indigenous children and the status of their rights. This compromises monitoring efforts and the development of good policy to realize rights. States hold significant responsibility for this deficiency, as do academic institutions, international organisations and other researchers.

In most cases, little data is available at all. Where research is available, it usually was not conducted in partnership with Indigenous communities, or fails to distinguish among distinct Indigenous groups. Accurate, relevant information is crucial to understanding violations against Indigenous children's rights and formulating solutions.

State reporting to the Committee on the Rights of the Child needs to avoid bias, misrepresentation and omission when it comes to Indigenous children and youth. The role of independent NGOs is critical in the reporting process to ensure accountability, and the capacity of Indigenous organizations to participate needs to be strengthened.

### **Roles and Responsibilities**

Several actors have important roles in the realization of Indigenous children's rights:

#### **State Governments**

- The UNCRC is legally binding, and state parties must take their obligation to implement it seriously. To implement the Convention unequally, arbitrarily or minimally goes against its spirit, purpose and intent, and constitutes discrimination – prohibited in Article 2 of the treaty itself. Monitoring and reporting needs to be complete and honest. Most crucially, states have the responsibility to work in honest and respectful partnership with Indigenous peoples organisations in their implementation of Indigenous children's rights.

#### **Non-Indigenous Organisations**

- NGOs have important roles to play in monitoring and implementing rights in the UNCRC. Unfortunately, many non-Indigenous organisations tend to overlook Indigenous children, and some have been involved in colonizing activities. There is a need to move towards greater partnership with Indigenous peoples and their organisations.

#### **Indigenous Peoples' Organisations and Community Leaders**

- Fulfilling the promise of Indigenous children's rights involves a greater degree of autonomy and control over children's lives moving from the state level to the Indigenous community level. Indigenous Elders, representative leaders and other Indigenous organisations needed to be included at all stages of planning and decision-making.

#### **Child and Youth Participation**

- Under the UNCRC, Indigenous children and youth have the right to participate in decisions made about them, in efforts to realize their own rights and opportunities, and in expressing their point of view. Youth have already taken the lead in many cases, but they need greater support and inclusion from governments and other adults.

\* \* \*

The UN *Convention on the Rights of the Child* proclaims the world's convictions on child rights, but it is not enough. Indigenous children and young people are being consistently left behind. A bright future is possible for these children only if rights become reality.

## 2. Introduction

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There are an estimated 300-400 million Indigenous people, living in all regions of the world, in over 70 countries.

Most Indigenous people live in Asia, followed by Latin America.

Over 75% of the world's 6000 languages are Indigenous.

On average, 2 Indigenous languages are dying out every month. In some cases, this signals the extinction of the Indigenous group itself.

Sources: UNICEF, 2003; UNESCO, 2004

The *United Nations Convention on the Rights of the Child* ('UNCRC' or 'the *Convention*') and other international human rights instruments set out to state parties the minimum standards for the respect, nurturing, well-being, participation, and protection of all children and young people (see UN, 1989). Although the almost universal ratification of the UNCRC is a symbol of the value with which children are viewed worldwide, the reality is that implementation is uneven and often not prioritized by state parties.

This is particularly true in terms of how states implement the *Convention* for Indigenous peoples, who are the original landholders, and in many cases, formed the original governments of the lands that are now claimed to fall within more recently founded UN member states. Indigenous peoples' interests do not always align with those of today's UN states, and the UN system of international human rights, which relies on voluntary state cooperation, is not always well suited to respond to countries which continue to impose a particularly oppressive reality on Indigenous peoples.

Indigenous peoples are in many respects "states within states" in the UN system and thus their voice is always subsidiary to that of the recognized UN member states. The reality is that many UN member states have an interest in the continued oppression of Indigenous communities and governments and in continued non-recognition of Indigenous nations at the UN, and this has complicated the ability of the international community to respond to the disproportionate rights violations experienced by Indigenous children and young people worldwide. This is particularly evidenced in the extremely slow progress of the *United Nations Draft Declaration on the Rights of Indigenous Peoples* which, even after a comprehensive drafting process, has now been under review by UN member states for 12 years – far longer than any other human rights instrument – and has only now reached the stage of consideration by the General Assembly (HRC, *Report*, 2006). Additionally, human rights redress systems within states and internationally are not always well suited to identify and address systemic rights violations; most systems, where they exist, focus on individual complaints.

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There are four fundamental principles to understanding and realizing Indigenous children's rights: interdependence, cognizance of history, self-determination and the sacred relationship between indigenous peoples and the lands of their ancestors. These principles are infused throughout this report, and they should be primary considerations within all efforts to implement the rights of, and investigate the status of, Indigenous children and young people.

In their efforts to make Indigenous children's rights a reality, governments and other parties must take an approach that puts these four principles at the forefront.

### *Interdependence*

Appreciating the interconnectedness of culture, rights and context is crucial to understanding Indigenous children's rights, and making these rights a reality. Two instances of interdependence are especially important: the interdependence between children, their cultural communities, and land; and the interdependence between each of the rights children hold.

This framework is evident in a report by the Asian Indigenous & Tribal Peoples Network, who explain that the key to understanding why the broad spectrum of rights in the UNCRC and other treaties have not been implemented for Indigenous children lies in the status of the children's Indigenous communities overall:

“While children as individuals enjoy many of the rights provided under the United Nations Convention on the Rights of the Child, the enjoyment of such rights by the indigenous and minority children depends on the status of the these groups as a whole in the society and in the country.” (AITPN, 2003)

This raises the important point that children who are members of communities that are subjugated within states are much less likely to enjoy the fulfillment of their rights than their peers. Violations of the rights of individual Indigenous children can only be understood in this community context, and with reference in particular to pervasive land loss and resource degradation.

Moreover, rights violations tend to occur in clusters, and affect each other profoundly. Without culturally-relevant education, what of the right to an identity, or the right to use one's language? Without health, and most fundamentally survival, can a child truly be said to enjoy any other rights at all?

Children's rights to education, culture, health, protection, identity, self-expression, participation, etc. cannot be easily separated one from the other. The interdependence of these rights, and between individual children and their communities, should not be underestimated.

### *Cognizance of History*

Indigenous children's rights, and the widespread violations against them, cannot be understood without reference to historical context. It is insufficient to approach human rights violations in the abstract or in isolation, and especially so in the case of Indigenous children and youth. The issues outlined in this report are systemic, and form part of a much larger history of rights violations against Indigenous peoples.

In their literature review on First Nations children and child welfare in Canada, the First Nations Child and Family Caring Society of Canada explained the path to reconciliation and full realization of Canadian Indigenous children's rights in this way:

"The challenge ahead for all Canadians is to reconcile with the past, to learn from the past and to build a foundation for a respectful and honourable future for all our children." (Bennett et. al., 2005)

These words teach us that history does not disappear; it is the *foundation* of the present and the future. To build a new foundation, one that is positive for Indigenous children's rights rather than destructive, requires careful attention to the ways in which the previous and current 'foundations' operate as active sources of discrimination and disadvantage.

In many cases, to ignore the past would be to ignore the direct causes of Indigenous children's rights violations as they exist today. Muriel Bamblett, a Yorta Yorta woman and Chairperson of the Secretariat of National Aboriginal & Islander Child Care, highlights the importance of a genuine process of *reconciliation*:

"Australia has never had a treaty or formal document that recognizes the sovereignty of the Indigenous peoples. Reconciliation has been talked about but there can be no reconciliation without justice and there can be no justice without recognition of sovereign rights. The Aboriginal and Torres Strait Islander community today is disadvantaged due to the on-going effects of colonization and continues to suffer from policies of "protection," assimilation and child removal." (Bamblett, 2006)

Without real reconciliation and recognition of past wrongs, the same or similar wrongs are likely to be repeated in the future, argues Dr. Roy Laifungbam, Director of the Centre for Organisation Research and Education (CORE), an Indigenous peoples' organisation in north-east India and former co-chair of the UN Committee on Indigenous Health. "Without full recognition of these [past] wrongs," he says, "they will continue to be perpetrated." (Laifungbam, 2006)

The unique historical context in each state, and on each rights issue, must be taken into full account by all parties when dealing with individual and systemic rights violation

cases in depth. However, there is a common element that exists for all Indigenous peoples and affects every issue: the history of colonization and the associated subjugation of Indigenous peoples as groups. Knowledge of the historic role of colonization in human rights violations against Indigenous children is vital to any understanding of Indigenous children's current status and to the formulation of solutions and programs of change.

This overarching "root cause" of the poor human rights situation of Indigenous children and youth points to an overarching "fundamental resolution": decolonization through self-determination and group empowerment for Indigenous peoples. The principle of self-determination is explored further below.

### *Self-Determination*

The need for states to recognize the right of Indigenous peoples to self-determination is without a doubt the most consistent, universal demand made by Indigenous peoples worldwide. Self-determination does not describe any single political or social arrangement; it can take different forms in different places, contexts, and cultures. It is a principle, clearly described by Lois O'Donoghue of Australia's Aboriginal and Torres Strait Islander Commission to the UN General Assembly, at the launch of the International Decade of the World's Indigenous Peoples: "As indigenous people we ask no more than the basic human right of being given the opportunity to determine our own future." (NACNYC, 1994)

#### **Statements on Self-Determination Indigenous Leaders Speak to the UN General Assembly, 1994**

"What we want is to be the leaders in the solutions of our problems."

Marcial Arias Garcia: Continental Coordinating Committee of Indigenous Organizations and Nations

"[Nothing] can replace the desire of a people to maintain their independent identity – the desire of a people to be the masters of their own identity."

Lars Johansen: Premier, Greenland Home Rule Government

"Respect of our right to self-determination is paramount. Our right to subsistence, our rights to benefit from our own resources, our rights to self-government – many of our fundamental rights are contingent upon respect for our right to self-determination."

Mary Simon: Inuit Circumpolar Conference

Source: Native American Council of New York City, 1994

The right to self-determination for all peoples was one of the first principles enshrined by the United Nations, found among the first articles of both its founding *Charter of the United Nations* and the *International Covenant on Civil and Political Rights* (UN, 1945; UN, 1966). It is stated in Part I of the *Draft Declaration on the Rights of Indigenous Peoples* and is infused throughout the entirety of that document (UN, *Draft Decl.*, 2006). For many Indigenous peoples, it is an inherent right that exists within a people even if it is not recognized and realized in practice. A member of the Saami parliament in Sweden explained:

“The rights of the Saami and other indigenous people have not been granted us by the dominating societies in which we live, but our rights emanate from us as a people and from the community in which we live.” (Ahren, 1995)

Self-determination is absolutely necessary for the realization of Indigenous children’s rights. This point was known and emphasized 20 years ago by UN Special Rapporteur Martínez Cobo:

“Self-determination, in its many forms, is thus a basic pre-condition if indigenous peoples are to be able to enjoy their fundamental rights and determine their future, while at the same time preserving, developing and passing on their specific ethnic identity to future generations.” (Martínez Cobo, 1986)

Yet it remains the most significant barrier to the realization of Indigenous peoples’ rights and well-being today, as this statement based on the current experiences of African Indigenous peoples makes clear:

“The different types of human rights violations experienced by indigenous peoples all boil down to this fundamental issue: many marginalized indigenous peoples in Africa are denied the right to exist as peoples and to determine their own development.” (African Commission on Human and Peoples’ Rights, 2005)

### *Land*

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

UN Draft Declaration on the Rights of Indigenous Peoples, preamble

The significance of land to Indigenous children’s rights is discussed more fully in the last sub-section of the chapter on Indigenous Customary Law, “Land and Resources in

Trust". However it is important that land is mentioned here at the beginning, as it speaks to a fundamental principle within Indigenous children's rights and in this report.

For Indigenous peoples worldwide, the earth is not inanimate – it is the life giver, sustaining and shaping life itself. Ancestral lands have formed Indigenous cultures and societies in many ways, from the concept of land trusteeship to religious practices, traditional dress, language, foods, ceremonial items, and housing.

One of the starkest differences between Indigenous peoples and most dominant cultures relate to their understandings of the physical/ecological world. While many colonizing peoples traditionally see land as an object to be individually owned and exploited for unlimited human use, Indigenous peoples tend to see land as part of their community. Indigenous cultures often view the sustainability of the earth as key to their own survival and that of future generations. Their knowledge is important for ensuring a productive, healthy and safe natural environment can be passed on not only to Indigenous children but to all children.

When Indigenous peoples suffer the loss and degradation of their land and natural resources, a number of far-reaching rights violations against Indigenous children are set in motion. This theme is explored in more detail throughout the paper.

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These principles – interdependence, cognizance of history, self-determination, and land rights - form the underlying spirit in which this report is intended, and in which it will hopefully be used to make positive change for Indigenous children and youth.

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### 3. International Human Rights and the General Comment

#### a. *International Human Rights Law*

Important positive developments are taking place that advance the position of Indigenous peoples in international law, including the recent approval in June 2006 of the *Draft Declaration on the Rights of Indigenous Peoples* at the UN Human Rights Council (HRC, *Draft Declaration*, 2006). The *UN Convention on the Rights of the Child* is also located within international law. Greater awareness of this international legal human rights tradition *and* of Indigenous legal principles (next section) can together help the UNCRC work best for Indigenous children.

International law is traditionally defined as the law governing relations between states, though it is expanding to include others. For instance, Indigenous peoples continue to strongly advocate for equal recognition in political standing to UN member states but, by and large, states remain the fundamental unit in international law. States continue to make the rules, they are the primary subjects of the laws made, and they are the main actors (Rehman, 2003; Dixon, 2005).

#### **International Law**

- Law governing relations between states
- Law governing relations between entities with 'international personality'

The United Nations is the primary (though not the only) source of international law and locus of enforcement. However, it must be noted that the UN is itself an organization of member states, many of whom have colonial histories, and therefore it has limited efficacy in implementing human rights for groups which may not have favourable standing with UN members – including Indigenous peoples.

In general, sources of international law include:

- International Conventions
    - i.e. written treaties, such as human rights conventions and trade agreements (for example, the *Convention on the Rights of the Child*)
  - International Custom
  - General Principles of Law
  - Subsidiary Sources
    - i.e. judicial decisions, UN General Assembly resolutions, resolutions of other international organisations (for example, the ILO), etc.
  - Doctrine of *jus cogens*
    - Barring states from making international law that contradicts the highest norms of international law itself
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When states agree to a formal treaty, the usual process is for parties to *sign*, indicating their intention to be bound in the future, and then *ratify* at a later date once the state has done whatever is necessary to approve the treaty in their home country (UN Office of Legal Affairs, 2006; Dixon, 2005). Some countries allow their executive to ratify treaties on their own, while others may require approval by a body of representatives or by a certain portion of internal provinces/states (Dixon, 2005). Once a state party has fully consented to be bound, and the treaty *enters into force* (usually on a date specified in the treaty document), the treaty is legally binding on that state (UN Office of Legal Affairs, 2006; Dixon, 2005).

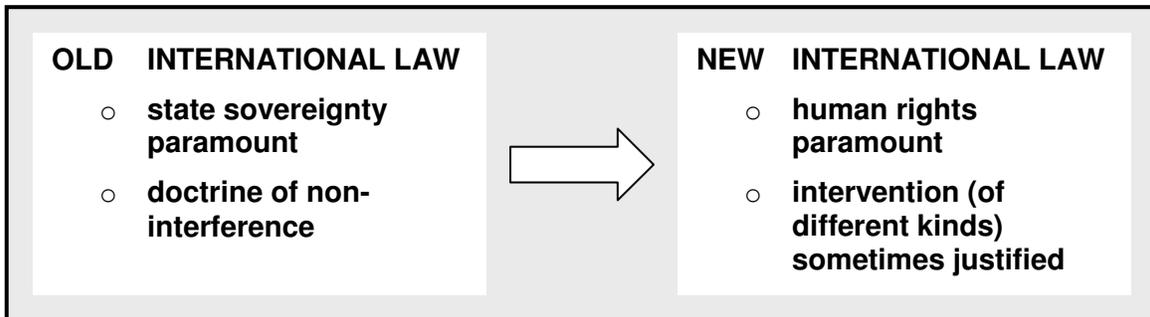
This makes the treaty binding in the international sphere – for instance, in international courts and in international diplomacy. However, it does not necessarily make the treaty binding within the domestic law of the state party. Some states hold to the “monist” theory, which sees no fundamental distinction between international and domestic law. For monist states, international treaties have automatic legal effect internally – for example, international laws can be used in national court cases and they take precedence over national laws. But most states hold to some variation of “dualism”; they see international law as operating exclusively in the international sphere – governing only relations between states – and having no effect on domestic law. For dualist states, international treaties are only binding internally if they have been *enacted* or *implemented* by domestic legislation that makes the treaty part of national law. (Dixon, 2005)

International law has other unique characteristics compared to other kinds of law. For instance, there is no single legislature, judiciary or executive (Rehman, 2003). However, there are bodies that take on some characteristics of these institutions, such as the UN General Assembly, the International Court of Justice and the International Criminal Court, and the UN Secretariat. There is also no clear, higher authority in international law, comparable to the way each state acts as an authority over its residents (Rehman, 2003). In principle there is a horizontal structure between states in international law, though in practice certain states have more power to enforce authority over others, for instance by virtue of permanent membership in the UN Security Council.

Because international law has limited enforcement capability and is often of limited legal effect without supporting domestic law, some people question if international law is really ‘law’ in the strict sense or just a form of ‘positive morality’, where norms exist but they are not regularly enforced by institutions (see e.g. Rehman, 2003; Dixon, 2005). Others argue that no system of law has perfect enforcement, and that international law is usually enforced in atypical ways, such as by political pressure (Dixon, 2005).

Human rights law is probably the most important area of international law for Indigenous children and youth, and includes the *Convention on the Rights of the Child*, the subject of this report. It is largely a product of the post-Second World War period, and constitutes a major paradigm shift in international law.

For several hundred years, the principle of state sovereignty was considered paramount. States were viewed as the only mechanism of protection for their own citizens, and a state's interests and the interests of that state's population were generally seen as more or less synonymous (Rehman, 2003). The doctrine of non-interference prevailed, holding that states should respect each other's complete sovereignty over their own territory and populace, and not interfere in each other's internal affairs (Rehman, 2003; Dixon, 2005).



The development of the concept of 'human rights' brought radically new principles to international law having developed primarily since the second world war. In the human rights framework, individuals and groups are recognized as requiring and deserving protection from abuse by their own state (Rehman, 2003). Gross violations of rights by states therefore become matters of international concern and possible intervention.

The *Universal Declaration of Human Rights* (1948) is the foundation of international human rights law, though it was intended as a non-binding document. The "core" instruments of international human rights law are binding treaties each with a built-in monitoring Committee at the UN. There are also many other instruments that are binding and/or persuasive, and may be enforced in different ways.

- "Core" Instruments of International Human Rights Law**
- International Covenant on Civil and Political Rights (1966)
  - International Covenant on Economic, Social and Cultural Rights (1966)
  - International Convention on the Elimination of All Forms of Racial Discrimination (1965)
  - Convention on the Elimination of All Forms of Discrimination Against Women (1979)
  - Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
  - **Convention on the Rights of the Child (1989)**
  - International Convention on the Protection of All Migrant Workers and Members of Their Families (1990)

The monitoring process for these core instruments usually requires each state that has ratified the Convention to *report* to the monitoring Committee periodically. For example, states that have ratified the *Convention on the Rights of the Child* must report to the Committee on the Rights of the Child every 5 years (UN, 1989). The Committee then makes comments on how well the state is upholding the treaty, called *concluding observations*.

A key problem with the reporting process is that states are essentially monitoring themselves, and often omit or wash over infringements. For this reason, the role of non-governmental organisations (NGOs) in the reporting process is critical, and is continuing to expand. Major obstacles to effective independent monitoring remain, particularly for Indigenous peoples' organisations – not least the financial cost of participating. This issue is explored further in the "State Reporting" section later on.

Of course, if a state has not ratified the treaty at all then there is no reporting process. Here it is noteworthy that the UNCRC, while ratified by almost all countries, has not been ratified by the United States (Committee on the Rights of the Child, <[www.ohchr.org](http://www.ohchr.org)>, as of May 2006).

Significant debates and areas of dynamic change remain within the international human rights law regime. The following debates are perhaps the most salient (see in part Rehman, 2003), and each has important applications to Indigenous peoples' rights:

- Debates about *Universalism* or *Regionalism*
  - Are all or some human rights truly universal, or culturally contingent?
  - Must Indigenous peoples accept human rights norms, and/or their current configuration?
- Debates about the *Hierarchy* or *Interdependence* of Rights
  - Are political and civil rights more legally binding or fundamental than social and economic rights? Or are all rights equal or interdependent?
  - How can we ensure Indigenous peoples' rights regarding culture, land, health and education are taken seriously?
- Debates about *Individual Rights* and *Group/Collective Rights*
  - Can the human rights regime accommodate collective rights in addition to the traditional focus on individual rights?
  - Will Indigenous peoples be recognized as collective right-bearing entities under international law?
- Debates about whether human rights laws can apply to *Private Actors*
  - Can private actors who violate rights be subject to enforcement, or can states be held vicariously responsible for their actions? And what should be the role of non-state actors as participants in international law?

- How can Indigenous peoples' representatives gain standing at the UN?  
And how can non-state actors who violate Indigenous peoples' rights be held accountable?
- Debates about whether the UN is in fact in a *Conflict of Interest*
  - Can the UN really monitor states' implementation of human rights if it is an organisation of member states? Would an independent, non-state mechanism be preferable, and how could it work?
  - Is it possible for Indigenous peoples' to hold states accountable for the protection of their human rights through the UN?

All of these debates are important to the current configuration and changing dynamics of Indigenous peoples' rights in international law, explored further below.

### ***b. Indigenous Peoples in International Law***

The place of Indigenous peoples in international law has varied considerably through history. Until recently, Indigenous peoples' legal status has been determined almost exclusively by non-Indigenous peoples within the Western legal tradition.

The following are some of the key normative frameworks that have governed the legal position of Indigenous peoples in international law through history (Anaya, 2004; Venne, 1998; United Nations, 1999; Lawlor, 2003; Ougamanam, 2003). They are unique, but often overlap, co-exist or combine in different ways. The human rights paradigm represents a positive shift from these older regimes, but unfortunately, none of the doctrines below has disappeared entirely.

- Doctrine of Discovery and *terra nullius*

This concept held that Indigenous peoples are not fully human, or not 'civilized' enough to be legally relevant. Therefore, the lands on which they lived were legally empty and could be appropriated immediately.
- Naturalist

Based in religious humanism, this view held that humans are governed by the 'higher law' of God and the natural order. Its main proponents were small numbers of Christian leaders who argued against the gross abuses committed by the majority of colonists. Yet they maintained that colonization and "civilization" were necessary for Indigenous people's own benefit, and "just wars" could justify conquest.
- Law of Nations (Early Modern State System)

After the Treaty of Westphalia, the 'law of nations' based on state sovereignty took root. The European model of the 'nation-state' (i.e. settled, 'civilized', hierarchical) automatically excluded Indigenous peoples from statehood.

- Positivism and ‘Scientific’ Racism

Scientific racism supported the idea of an ‘evolutionary’ ladder of human societies, dividing so-called ‘civilized’ and ‘un-civilized’ peoples. European states were placed at the top of this ladder, and no state could exist without recognition by existing states.

- Trusteeship and Secular Paternalism

Secular paternalism formed the basis of many colonizers’ attempts to ‘civilize’, control, and assimilate Indigenous peoples, particularly in the 19<sup>th</sup> and 20<sup>th</sup> centuries. In this view, the state is seen as a kind of father figure, with the responsibility to care for his Indigenous ‘children’, but also the authority to make decisions on their behalf.

By now, many non-European states have been included in the ‘family of nations’. The premise that statehood is based on recognition persists, but it competes with the premise that statehood can be based on a nation’s own declaration or other factors. And the rise of human rights in international law has won Indigenous peoples a much stronger position. Despite this, and the right of self-determination contained in many international treaties, Indigenous peoples have not been recognized by the United Nations as states or as possessing the “standing” required to participate in all formal proceedings. (Anaya, 2004)

However, many observers argue that Indigenous peoples are nevertheless in the process of developing what is sometimes called ‘international personality’, with much more legal recognition on the international stage, including at the UN. They are in the process of moving from a position as objects to one as subjects, achieving recognition under law, and gaining the capability and standing to act politically and judicially as collective legal entities. (Meijknecht, 2001; Anaya, 2004) Some argue that recent developments, including international case law, show that an international customary law regime on Indigenous peoples is already in existence, including minimum standards in land rights, self-determination and non-discrimination that every state is expected to uphold (Ougamanam, 2003; Anaya, 2004).

Major positive developments include the leadership of Indigenous peoples’ organizations in the Working Group on Indigenous Populations, at the Permanent Forum on Indigenous Issues, and in bringing claims to the Commission on Human Rights (now Human Rights Council). Progress is also evident in the creation of the *Draft Declaration on the Rights of Indigenous Peoples*, and in the project at hand: the creation of the Sub-Group on Indigenous Children and Young People within the NGO Group of the Committee on the Rights of the Child, and the involvement of that group in the development of a General Comment.

Crucially, the shift to human rights, as discussed above, now serves to limit a state’s sovereignty over internal individuals and groups. To begin with, individual Indigenous

people – including children – are, of course, covered by all existing universal human rights. For example, the *International Covenant on Civil and Political Rights* has several provisions that are especially relevant for Indigenous peoples (see box) (UN, 1966).

### **International Covenant on Civil and Political Rights**

Article 1: the right to self-determination of all “peoples”

Article 18: the right of parents to provide their children the “moral and religious” education of their choice

Article 23: the right to protection of the family

Article 24: the right of all children to protection, birth registration, name and nationality

Article 26: the right to be free from discrimination

Article 27: the right of “persons belonging to...minorities” to culture, religion and language “in community with the other members of their group”

The *International Convention on the Elimination of All Forms of Racial Discrimination* is also very relevant to Indigenous peoples (UN, 1965). Much of Indigenous peoples’ work internationally has gone through the “entry point” of racial discrimination. This includes the groundbreaking report of former UN Special Rapporteur José Martínez Cobo in 1986, the establishment of the Working Group on Indigenous Populations in 1982 (tied to the Economic and Social Council, but under a Sub-Committee that originally focused on discrimination), and the drafting of the *Draft Declaration* through the Working Group (Ougamanam, 2003).

### **International Convention on Racial Discrimination**

**Article 1(1):** Broad definition of “racial discrimination”

**Article 2(1):** States take on responsibility to condemn discrimination and pursue “all appropriate means” to eliminate it “without delay”

The *Convention on the Prevention and Punishment of the Crime of Genocide* is one of the earliest human rights instruments. It is legally binding and establishes genocide as a crime under international law, punishable through international courts (UN, 1951). A number of severe abuses, past and present, against Indigenous peoples could be lawfully characterized as genocide under this treaty, if they are committed with intent to destroy the group.

## **Genocide Convention**

### **Article II**

In the present Convention, genocide means any of 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.

Massacres are the most well-known form of genocide, and examples could include the activities of the “Native Police” in various parts of Australia in the 19<sup>th</sup> century, and the civil war against the Maya of Guatemala in the 1980s (Reynolds, 2001; CEH, 1999). Yet “forcibly transferring children” is also no stranger to Indigenous peoples’ experience, and has often occurred for the very purpose of destroying the child’s Indigenous group. Forced removal of Indigenous children, arguably with the intent to destroy their Indigenous group, has occurred in places such as Canada, Australia, and Sudan (Reynolds, 2001; Fein, 2002). Constant vigilance, and immediate response, are required to prevent and address genocides that may occur against Indigenous peoples in the future, or may be occurring at present.

There are a few documents that, while not geared entirely towards Indigenous rights, do mention them. The *Convention on the Rights of the Child* is discussed throughout this report and it should go without saying that it applies, in its entirety and with full force, to Indigenous children. However this convention is also the only “core” UN human rights treaty to refer particularly to Indigenous people, doing so in Article 17 (re. media), Article 29 (re. education) and Article 30, which specifically protects Indigenous children’s cultural rights and is replicated below (UN, 1989; UNICEF, 2003).

## **Convention on the Rights of the Child**

**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.

Several international legal documents on the topic of the environment include references to Indigenous rights. The 1992 *Convention on Biological Diversity* recognizes in Article 8(j) the importance of Indigenous peoples’ knowledge and practices for the conservation and sustainable use of biologically diverse ecosystems. Chapter 26 of *Agenda 21*, adopted in Rio de Janeiro at the 1992 UN Conference on Environment and

Development, recognizes Indigenous peoples as key players in environmental protection and encourages greater Indigenous control over their land and resources. (Stavenhagen, 2002)

Some regional organisations have human rights instruments as well, and some of these are particularly relevant to Indigenous children. These documents only apply regionally, and may be monitored by the regional organisation involved. For example, the African Union (formerly the Organization of African Unity) has adopted the *African Charter on Human and Peoples' Rights* and the *African Charter on the Rights and Welfare of the Child* among others (African Union, 1981 and 1990). The Organization of American States has adopted the *American Convention on Human Rights* and other human rights treaties, and has been in the process of negotiating a *Draft American Declaration on the Rights of Indigenous Peoples* for some time (OAS, 1969; OAS <[www.oas.org](http://www.oas.org)> as of June 2006).

But the fact is that existing individual-based human rights of general application have often failed to protect Indigenous communities and Indigenous children in practice. Current international laws are often not respected, implemented and enforced in protection of Indigenous children. The implementation of some laws may require special considerations for Indigenous children that have not been adequately made or followed through. Finally, there is a marked lack of protection for Indigenous peoples as such and as collectives.

The only international human rights instrument specifically devoted to the protection of Indigenous peoples' rights is the International Labour Organisation's *Convention No.169 Concerning Indigenous and Tribal Peoples in Independent Countries* (ILO, 1989), a 'subsidiary' form of international law, i.e. from an international organisation and not from the UN directly.

<b>ILO No.169 – sections especially relevant to children</b>	
Law and Criminal Justice	Articles 8-10
Land	Articles 13-19
Employment and Training	Articles 20-23
Health	Articles 24-25
Education and Language	Articles 26-31

The ILO had earlier conventions on Indigenous peoples, traced to the colonial period and based on the premise that Indigenous peoples were a 'problem' and a hindrance to economic development. When the earlier *Convention No.107* (1957) was opened up for review, Indigenous peoples' movements were growing in strength and international

presence, particularly tied to the Latin American region and democratic transitions ongoing there. (Rodríguez-Piñero, 2005)

These factors eventually produced a document that was substantially influenced by Indigenous peoples' movements. However, member states retained ultimate control of the drafting and approval process (Rodríguez-Piñero, 2005). Many Indigenous peoples' representatives felt that the process was frustrating and the final result somewhat disappointing. For example, Indigenous peoples were successful in their demands for the use of 'peoples' terminology rather than 'people' or 'populations', but Article 1(3) specifically indicates that the term is intended to be void of legal implications (*ILO No. 169, 1989*). Additionally, many felt that requirements for governments to solicit 'participation' and 'consultation' with Indigenous peoples still treated Indigenous peoples as objects, and the document should instead have been geared towards self-determination (Venne, 1998).

Furthermore, *ILO No.169* has only been ratified by thirteen countries, mostly from Latin America and Northern Europe. Twenty countries are still signed on to its predecessor, *ILO No.107*. (ILO, web, 2006)

#### **Indigenous Peoples' views on the *Draft Declaration***

"The Draft Declaration...is a precedent-setting international instrument. It is the first UN instrument to develop standards on Indigenous Peoples' rights. It is also the first UN instrument drafted with the direct participation by Indigenous Peoples in the process."

- Sharon Helen Venne, Cree & Blood nations, Author of *Our Elders Understand Our Rights*

"Most Indigenous Peoples have agreed that [the original version of the Draft Declaration] is the minimum acceptable standard required for the recognition, protection and defence of Indigenous Peoples' rights worldwide."

- International Indian Treaty Council, statement at the Permanent Forum on Indigenous Issues, 2005

"I believe that proof of the respect and acceptance of the Indigenous peoples by the international community would be the approval of the Declaration of Indigenous Peoples Rights by all member-states of the United Nations."

- Rigoberta Menchú, Mayan activist, Nobel Laureate, statement to the UN General Assembly, 1994

Sources: Venne, 1998; International Indian Treaty Council, 2005; NACNYC, 1994.

The adoption of the *Draft United Nations Declaration on the Rights of Indigenous Peoples* would be a major step forward in international human rights for the world's Indigenous peoples. Drafted by the Working Group on Indigenous Populations, under the UN Sub-

Commission on Prevention of Discrimination and Protection of Minorities (now Sub-Commission on Human Rights), the *Draft Declaration* was completed in 1994 and approved by the Sub-Commission at that time. It took 12 years for the *Declaration* to be passed by the Human Rights Council (formerly the Commission on Human Rights), an achievement which finally occurred in June 2006 despite opposition from Russia and Canada (HRC, *Report*, 2006). It has not yet been adopted by the General Assembly.

### **Indigenous Children in the *Draft Declaration*: Excerpts**

Preamble: “*Recognizing in particular* the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of children, consistent with the rights of the child;”

Article 7(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: Education rights – Right of Indigenous peoples to “establish and control” educational systems and institutions; Right of Indigenous people “particularly children” to access all state education without discrimination; State’s responsibility, exercised in conjunction with Indigenous peoples, to ensure access to education “particularly children”

Article 17(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: Rights to “improvement of [Indigenous peoples’] economic and social conditions” with “particular attention” to vulnerable groups including children and youth

Article 22: “Particular attention” must be paid to the “rights and special needs” of vulnerable groups including children and youth; States must ensure they “enjoy the full protection and guarantees against all forms of violence and discrimination.”

As it is a ‘declaration’ it would not be strictly binding in law. However, declarations are more “formal” and “solemn” than other resolutions such as ‘recommendations’. Some other declarations – such as the *Universal Declaration of Human Rights* – have become so well regarded as to be generally considered part of international custom, and therefore a source of international law. (Venne, 1998)

The *Draft Declaration* was developed through a participatory process in which Indigenous peoples’ representatives participated directly. The inclusion of non-state actors as primary players in an international law drafting process was “unique” and “exceptional” (Venne, 1998; Meijknecht, 2001). The document itself is much clearer and more powerful than *ILO No.169* with respect to issues such as culture, laws and the justice system, land and resource rights, education, health, etc. It also contains specific

provisions on self-determination and autonomy; cultural and intellectual property; protection against genocide, including ethnocide and cultural genocide; and protection against the removal of children from families and communities (UN, 2006).

Some Indigenous peoples' organisations worry not only that the *Draft Declaration* might be abandoned, but that it might be substantially weakened in the ongoing revision and negotiation process, which has been controlled by state governments and has been much less inclusive than the original drafting process (Venne, 1998; International Indian Treaty Council, 2005).

Yet, beyond the continuing struggle for the defence and adoption of the *Draft Declaration*, Indigenous peoples have also pursued other avenues in international law to secure their rights (Chakma, 2002; Meijknecht, 2001). These methods include (and are not limited to):

- Participation in state reporting and monitoring, through Committee procedures
- Use of individual litigation and complaints systems, such as the Human Rights Council, Special Rapporteurs, and the International Court of Justice
- International strategic organising between and among Indigenous peoples, such as at the Permanent Forum on Indigenous Issues
- Involvement in numerous international organisations, UN and otherwise
- Promotion of ethical international research
- Developing interpretive documents, such as the General Comment discussed here

### ***c. The Proposed "General Comment"***

The UN Committees that oversee the monitoring of the 'core' treaties occasionally issue 'General Comments'. These documents give directions to states on how to interpret and implement the treaty, and often revolve around a specific issue.

The grassroots creation of the Sub-Group on Indigenous Children and Young People (ISG) by Indigenous peoples' organisations is one of the ways Indigenous peoples' organizations are influencing, and negotiating within, international law. The Indigenous Sub-Group is part of the NGO Group of the Committee on the Rights of the Child, and has taken a leadership role in assisting the Committee develop a General Comment on the *Convention on the Rights of the Child* regarding Indigenous children.

The need for action and change in Indigenous children's rights is especially striking. Indigenous children are among the most vulnerable children in the world, and are also among the most vulnerable within Indigenous societies themselves. Their rights under the *Convention* are, at present, poorly implemented and severely infringed, as explored in the below section "Clusters of Discrimination and Disadvantage".

Violations of the rights of Indigenous children were given some attention at the UN level by reports of the Working Group on Indigenous Populations and the Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People, though no reports focused exclusively on this issue. The issue truly came to the fore when the Permanent Forum on Indigenous Issues encouraged the Committee on the Rights of the Child to hold a Day of General Discussion on Indigenous children, which occurred in 2003 (UN Committee on the Rights of the Child, 2003).

The recommendations of the Committee emerging from the Day of Discussion highlighted a number of areas in which states often fail to meet their obligations towards Indigenous children under the Convention; noted the deficiencies in data collection and state reporting with respect to Indigenous children; and gave interpretation to the application of various aspects of the Convention in light of the needs and unique position of Indigenous children (UN Committee on the Rights of the Child, 2003). The formation of the ISG followed the Day of Discussion, and it began to work towards the issue of a General Comment based on, and in light of, the Committee's above recommendations.

The aim of the General Comment is to increase state accountability in regards to Indigenous children's rights, given the disproportionate rights violations experienced by Indigenous children. As the *Convention on the Rights of the Child* binds state parties, it is important to note that the General Comment will focus on the role of states themselves and their duty to protect the rights of Indigenous children and communities.

The General Comment will be useful for the UN Committee on the Rights of the Child, Indigenous peoples' organisations, and other advocates for Indigenous children's rights in a number of ways. It will give state parties clear directions on their obligations towards Indigenous children under the *Convention*. In the state reporting process, it will give clear reporting guidelines regarding Indigenous children, and it will also mark out a clear performance standard against which states' implementation of Indigenous children's rights can be evaluated.

But "human rights issues are raised in political, economic, social and cultural interactions across the world," as well as in legal processes (McCorquodale, 1999). Like other human rights-related documents, the General Comment on Indigenous Children and Young People will also be an important tool in the political sphere and other creative avenues to promote Indigenous children's rights.

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## 4. Indigenous Customary Law and Children's Rights

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### a. *The Survival of Indigenous Law*

Indigenous peoples have their own systems of law and custom that often date back for millennia. Like all legal systems, Indigenous systems of customary law are dynamic: they change over time and adapt to new situations. In many ways, customary law, like other law, engages in a constant “dialectic between tradition... and modern life conditions,” where traditions themselves are a “dynamic force” (Svensson, 2002). Indigenous legal systems are also richly diverse: the laws, values and practices of each people are unique, though some elements may be shared with some, or even all, other peoples. In short, Indigenous customary legal systems are neither uniform nor static.

Aboriginal-Canadian legal scholar John Burrows commented recently on the dangers of essentializing Indigenous law with misguided notions of “authenticity”, either by freezing it in the past or by submitting to the powerful stereotypes that are often attached to Indigenous societies:

“Stereotypes must be jettisoned that imply Aboriginal peoples’ ancient governmental or legal traditions were uniformly savage or, alternatively romantic, existing in a state of continual harmony and peace. People must also reject ideas that hold Indigenous peoples lose their Aboriginality if they adopt contemporary codes of conduct. The authenticity of Indigenous law and governance is not measured by how closely they mirror the perceived past, but by how consistent they are with the current ideas of their communities.” (Burrows, 2005)

Indigenous communities trying to strengthen and promote their own customary legal systems face the challenges Burrows notes above, and also must cope with difficult questions surrounding the differences between customs and laws (if any), whether or not to codify what is most likely an oral legal tradition, and how to research, and if desired use, past laws that may have fallen into disuse (Clark, 1990).

One challenge is that many cultures, including some Indigenous cultures, retain customary laws and practices that may be harmful to children. Practices that are not compatible with children’s fundamental rights under the *Convention on the Rights of the Child* or other human rights instruments are not acceptable. These may include early marriage, female genital mutilation, and others (UNICEF, 2003). Ending such practices presents unique challenges, and to do so effectively requires creativity, respectful cooperation and trust-building between Indigenous peoples’ organisations, governments, and non-Indigenous NGOs.

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The largest challenge, however, is that Indigenous peoples and Indigenous legal systems have been – and continue to be – subject to powerful forces of destruction, and have not emerged unscathed. A great deal of knowledge, and many institutional structures, have been lost or remain only in a fragile condition. This has had very negative effects on Indigenous children and families.

For example, in Guatemala, state-perpetrated genocide left Mayan communities decimated. Traditional cultural institutions were often deliberately destroyed or militarized:

“The social repercussions of the armed conflict produced a breakdown in family and communal life, which affected the normal networks of child protection based in [the Mayas’] own culture and understanding of children’s development. The violation of the family environment, the intensification of poverty, the use of school buildings as military stations, the obligatory participation of youth in the PAC [local paramilitary organisations] and the [military] recruiting, both from the regular troops and the guerrillas, changed the social structure that existed in the communities before the conflict, with the result that children were forced to adopt new forms of behaviour to cope with their lives.” (Comisión para el Esclarecimiento Histórico [Commission for Historical Clarification], 1999, author’s translation)

In Australia and Canada, the forced removal of children to residential schools for several generations corroded the traditional child-rearing values and practices of many Indigenous individuals and communities (Bennett et. al., 2005; Mellor, 2002; SNAICC, 2004). In both countries, very high rates of child removals continue within the child welfare system, and this continues to corrode Indigenous parenting skills, the passing on of culture and identity, and the very institution of the family (Blackstock & Bennett, 2002; Bennett et. al., 2005; Law Reform Commission (Australia), 1986; SNAICC 2004; Bamblett, 2006).

“We have missed out on being members, strong members amongst our own family, strong members in their community out bush. We’ve missed all our ties of being and going through the laws and the rituals... And you know, we can’t pass it on to our children. And they’re left on the outside again, you know, out in the outer.” (Testimony of a survivor of Australia’s systematic removal program: Mellor, 2002)

“Residential schools denied children the opportunity to learn the traditions of their peoples, thus disrupting the intergenerational relationships and the passage of traditional knowledge from one generation to the next. For many Elders, residential schools resulted in a denial of one of their key roles which gave meaning and purpose to their lives – ensuring the sustainability of community and culture through the education and mentorship of children

and youth. Furthermore, children who eventually returned home after residential school were often disconnected from their family, community and culture.” (Bennett et. al., 2005)

Globalization can be a source of strength for Indigenous communities, providing new ways to advocate and network, to generate income, and to access education. It is equally true that it can also be a serious threat to traditional institutions and cultural systems, as more people – particularly young people – move from traditional homelands to urban areas, interact more intensively with non-Indigenous people and culture, and go to school and work in non-Indigenous institutions.

Yet the miracle of Indigenous law and custom is that it has survived the sustained assaults waged against it. Indigenous societies, cultures and legal institutions are making a resurgence, remaining vibrant, adaptable and dynamic. This very fact attests to the strength of Indigenous peoples, and their will to survive both physically and culturally.

With self-determination, Indigenous peoples are, and will be, able to govern their own societies in ways that reflect their own values and the values of their community members. Self-governance through customary law is “often at the top of communities’ lists of items to negotiate” with state powers (Clark, 1990).

Despite the great diversity in Indigenous customary law, there are certain principles that tend to be common to many Indigenous peoples. The following section explores some of these fundamental principles that have important bearing on the rights of Indigenous children. Readers should bear in mind, however, that each point may not apply, or apply in the same way, to all peoples; Indigenous customary law can only be applied through self-determination, where each society can decide for themselves what values they hold in common and what rules should govern their action.

### ***b. Collective Approach***

“Children are at the centre of a collective approach, with children and their families at the heart of the partnership. The child’s rights and well-being are connected within a community context. The community uses a collective approach but values each child.”

Leslie Du Toit, Director of Child and Youth Care Association for Development, South Africa, speaking of the perspectives of the Batlowka people (South Africa) and of First Nations in British Columbia (Canada), who worked in partnership on a children’s rights project

Collective rights do not always refer to the same things: they may reference a desire to be recognized as a collective entity; collective management of an institution, service or

resource within a framework of self-government; collective ownership of land; an appreciation of interconnectedness within a human and ecological community; and other ideas. Yet Indigenous peoples' recurring demand for the incorporation of collective rights into the human rights regime is in many respects a "fundamental challenge" to the individualist norm (Buchanan, 1993).

Children's rights as outlined in the *Convention on the Rights of the Child* are individual rights, i.e. they are held by each child as an individual. This is no surprise, given that individualism dominates the Western legal tradition and international human rights law in particular (see for example Saunders, 1991).

The mainstream view is that individual and collective rights are in diametric opposition, and inherently conflicting (see, for discussion: Johnston, 1989; Saunders, 1991; Holder, 2002). Individual rights are associated with the dominant liberal political-legal tradition, and some proponents of individual rights see collective rights as "dangerous and oppressive" (Johnston, 1989).

But Indigenous peoples have long challenged this view. They often argue that individual and collective rights are strongly interconnected, and that Indigenous peoples' collective rights must be respected for their rights to be realized overall.

Darlene Johnston, an Aboriginal-Canadian legal scholar, argues that a strictly individual view of rights "fail[s] to capture the reality of human experience," because it ignores the reality of social identity. Furthermore, she argues that any rights doctrine must make compromises between individual and collective rights, and in fact they are usually positively reinforcing. (Johnston, 1989)

"The Maori child is not to be viewed in isolation, or even as part of nuclear family, but as a member of a wider kin group or hapu [sub-tribe] community that has traditionally exercised responsibility for the child's care and placement. ...This needs emphasis. ...The physical, social and spiritual wellbeing of a Maori child is inextricably related to the sense of belonging to a wider whanau [extended family, kinship] group."

Maori Perspective Advisory Committee, 1988

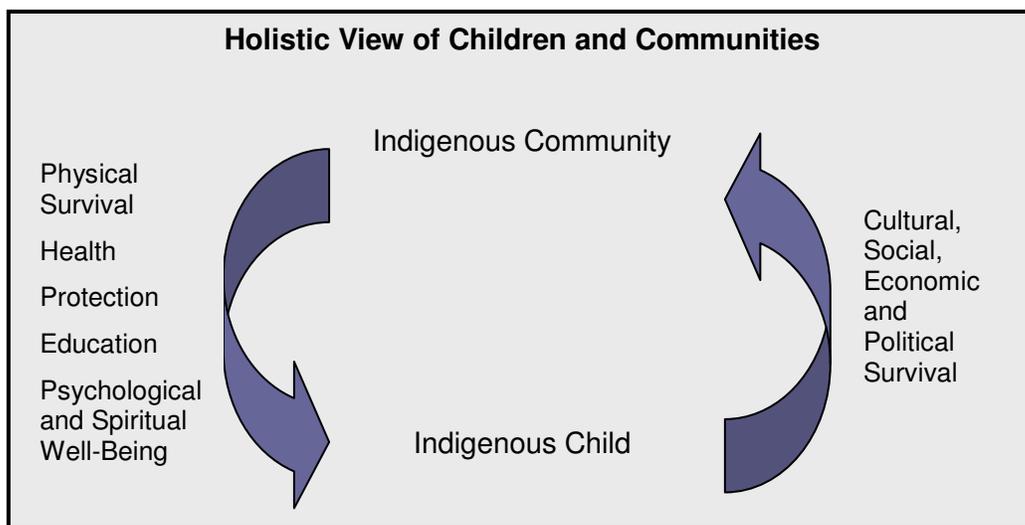
Holder and Corntassel, Native American scholars, argue that Indigenous peoples' knowledge systems generally view collective and individual rights as "mutually interactive" rather than conflicting, and tend to focus on material rather than abstract factors. Indigenous peoples often highlight the "tangible" benefits of strong communities for individuals' well-being, and vice versa (Holder & Corntassel, 2002). Collective rights are vital to secure human development and survival for individual people, and this is nowhere more true than for children.

UNICEF agrees that collective and individual rights are both important for Indigenous children’s well-being, as long as the “best interests of the child” principle remains paramount:

“As human rights, individual and collective rights are not only compatible, but may also be mutually reinforcing. The safeguard of the rights and well-being of any group lays the foundation for the realization of the rights of its individual members. In turn, the realization of the rights of, for example, each indigenous child is central to indigenous people and their cultures, both in the present and for the future.” (UNICEF, 2003)

Despite the challenges, collective rights are gaining currency in many quarters. Canada and India both have enshrined forms of collective rights (Saunders, 1991; Johnston, 1989). The *ILO Convention No.169* includes some provisions that speak to collective rights, and the *Draft Declaration* includes many (Meijknecht, 2001).

For Indigenous children and youth, the question of collective or communal rights is an urgent one. The sad fact is that the individual rights approach has often failed to protect Indigenous children, who are generally denied their rights both as individuals and as members of Indigenous communities, suffering within the larger scheme of oppression and marginalisation experienced by their group. Human rights promises made generally to “each individual” are routinely unrealized and overlooked when it comes to Indigenous children.



Additionally, pure individualism does not capture the way Indigenous peoples understand the positive interactions between individual and community in the real lives of Indigenous children and youth (Johnson, 1989; Holder & Corntassel, 2002). For Indigenous children, the link between community and individual exists in very concrete ways: in the ability of their community to protect them from violence and abuse; to

provide them with sufficient resources for health and survival; to educate them and enable them to thrive both within their Indigenous cultural community and within the larger society; and to give meaning and spiritual depth to their lives. Simultaneously, children are the only means by which Indigenous communities will continue to exist as cultural, social and political entities into the future.

Indigenous children will not enjoy the full benefit of their rights unless they are living within healthy, strong communities that enjoy full rights to self-determination, to enjoy their traditional land and resources, and to maintain their unique culture and society. For these reasons, the UNCRC must be interpreted in such a way as to account for the reality of community experienced by Indigenous children.

### ***c. Children as Rights Holders***

Indigenous peoples are diverse in their views about the exact meaning of childhood and the role of children. However, there is a tendency to value children themselves and their role in the community, and there is often an obligation to treat children with respect and consideration. In many Indigenous cultures, children are traditionally expected to participate in society in various ways, and are often seen as autonomous spiritual beings whose own views are important.

This statement from Canada describes how children were traditionally understood to be integral members of an interdependent community:

“First Nations children were best cared for prior to colonization. ...Although the specific values, beliefs and practices varied in keeping with the significant diversity of Aboriginal peoples in Canada, care was generally provided according to a holistic worldview that viewed children as important and respected members of an interdependent community and ecosystem.” (Blackstock & Bennett, 2002)

Jorge Pocaterra, a Wayuu linguist in Venezuela, translated the modern term ‘children’s rights’ as *sujutu tepichi*, which means ‘integral value of humanity’. He says that this concept “includes the spiritual, physical, wisdom, individual and collective knowledge,” (Blanchet-Cohen & Fernandez, 2003).

For a number of Indigenous peoples, it is customary to think about community members far into the past and future on a regular basis. The following statement by Oren Lyons, Chief and Faithkeeper of the Onondaga Nation of the Haudenosaunee, North America, were part of an explanation of his people’s Great Law of Peace (*Gayaneshakgowa*) and Law of the Seed, Life and Regeneration. It shows how even future children have rights in a certain sense, in that they are already members of the community and their needs merit real consideration:

“Our leaders were instructed... to make every decision on behalf of the seventh generation to come, to have compassion and love for those generations yet unborn.” (NACNYC, 1994)

In many Indigenous societies, children are not excluded from participating in community events and activities; rather they are encouraged and expected to take part in a way that accords with their age, skill and experience. Among the Wayruu, “children participate in everything”. They learn adult skills and values through constant participation from a young age, starting with simple observation. (Blanchet-Cohen & Fernandez, 2003)

Similar values are evident in this statement from Australia:

“Children were highly valued by their family and community. The education and socialization of young children took place within the rhythms of family life with an emphasis on observation, imitation and interaction with extended family and the land.” (Sue Atkinson, Yorta Yorta, Australia: SNAICC, 2004)

The Wayruu, like many other Indigenous cultures, also traditionally respect children as autonomous spiritual beings. For example, children are viewed as capable of having meaningful dreams and visions, and of acting based on those insights. A Wayruu child has the opportunity to “participate in his/her own spiritual health care by interpreting and carrying out instructions given through dreams,” and would “discuss dreams and their meanings with family members,” before deciding on a course of action in which they themselves take the lead. (Blanchet-Cohen & Fernandez, 2003)

Many Indigenous cultures place a strong emphasis on love and care not just for one’s own children, but also for other children in the community. For children, this provides love and strong attachments with multiple adults, and a strong network of care and protection within the community:

“We were instructed to love our children – indeed to love all children.” (Oren Lyons, Haudenosaunee leader, North America: NACNYC, 1994)

“I had four immediate mothers... How many fathers did I have? I had six fathers. So my parents were around me constantly. Was I starved? Did I have no food? No, I had everything I needed to sustain me in my day-to-day playfulness with other kids. I can never say, ‘Was I neglected in my love?’ because love is a part of life. That is not even questioned. If hugging, the demonstration of love, is the criteria to match it, my foot never touched the ground. I was hugged, tickled, rubbed, massaged, put to sleep in the arms of so many people for the full six, seven years of my life in that family setting.” (Survivor of Australia’s child removal policy, recalling life with his extended family before removal: Mellor, 2002)

As evident in the above statements, in many Indigenous cultures extended family members and the community play an important and direct role in a child's upbringing, in addition to biological parents. To Western eyes, this has sometimes created the impression of parental neglect and has contributed to high rates of child removals by child welfare authorities in Australia, Canada, the United States and other places (Clark, 1990; Bennett et. al., 2005; SNAICC, 2004; Law Reform Commission (Australia), 1986).

The importance of the child in the cycle and continuation of life, and as the very embodiment of the survival of culture and community, is often emphasized, as the statements in the box below demonstrate.

### **Children in the Cycle of Life, At the Heart of Community Survival**

"The young, as our future generations and children, are the continuity of our peoples, and it is they who are our own life."

- Noelí Pocaterra Uliani, Movimiento Indio por la Identidad Nacional [Indian Peoples' Movement for National Identity], Wayruu, Venezuela

"Lastly, the rights of the child must be acknowledged. ...For indigenous people, our children are our only hope."

- Venerable Bernal Bhikku, Chakma, Bangladesh

Source: NACNYC, 1994

The concept of children's rights in international law, as with other 'rights', is traced to Western origins. However, it is a concept broad enough that it resonates deeply with many Indigenous peoples as comparable to, or at least compatible with, their own concepts of human dignity and childhood.

#### ***d. Land and Resources in Trust***

Indigenous peoples often have deep connections to the land on which they are, or were, traditionally based. A UN document on land and Indigenous peoples put it this way:

"To Indigenous peoples, their lands possess spiritual, social, cultural, economic and political significance and are considered necessary for their survival and vitality as societies." (UN, 1999)

The same document cites an anonymous proverb attributed to one or more Indigenous peoples: "In the Indigenous world, it is said that land is not something you inherit from your ancestors, but something you borrow from your children." (UN, 1999)

The above quote points to the concept of *trusteeship* in land, which forms part of many Indigenous traditions. Children are integral to the human-land relationship in this view, as heirs to this perpetual trusteeship. They are meant to take on the role of “trustee” of their peoples’ lands and resources as they mature. Anna Pinto of the Centre for Organisation, Research and Education (CORE), based in predominantly-Indigenous areas of India’s northeast, explains:

“Indigenous adults acting and existing in the collective (which include the range of non-human members), simultaneously with their individual persona, are trustees of the total heritage of their peoples. The human child is the visible and recognised heir who in fact as soon as she or he assumes majority (by convention, domestic or indigenous standards) attains the status of trustee of this heritage.” (Pinto, 2005)

This form of trusteeship includes not only current but also future children. According to Professor Leroy Little Bear, of the Blood Indian Tribe in North America, Indigenous land ownership “extends to both past and future generations, who are as much a part of the [Indigenous] nation as are members of the present generation,” (paraphrasing Little Bear, quoted in Oakes, 1998). Understood in this way, land loss and degradation are perpetual assaults on the rights of each generation of Indigenous children.

Children and youth are affected by land rights violations immediately and profoundly. Land loss and degradation affect all aspects of Indigenous children’s health, development and survival, including physical, intellectual, emotional and spiritual components. In particular, land rights violations are a major cause of poverty, conflict and instability, and cultural breakdown. Pinto describes some of these effects:

“The rights of indigenous children to their lands and territories [and] to live and develop in peace are inalienable from their rights to survival and development. This right is linked most obviously to the children’s physical health and nutrition, to their physical, mental and emotional development, and to their well being as members of their peoples, which is integral to their psychological and spiritual survival. Indigenous children denied this right of access to their lands, territories and natural resources find themselves deeply traumatized and often vulnerable to substance abuse, engagement in violence, self harm and suicide and other health damaging situations. For indigenous children to be physically removed from their homelands and communities is a life altering ordeal, one from which full recovery is rare.” (Pinto, 2005)

Pinto also highlights the centrality of land rights to other children’s rights, such as the right to a culturally-relevant education (e.g. requiring experiential knowledge of land and biodiversity), rights to protection (e.g. premised on intact social institutions and a

peaceful environment), and religious and cultural rights (e.g. hinging on access to sacred sites) (Pinto, 2005).

The significance of land for Indigenous peoples' culture and identity is well-known at the UN level. Former UN Special Rapporteurs Jose Martínez Cobo and Erica-Irene Daes both commented extensively on the important spiritual and cultural relationship between Indigenous peoples and their territories, noting that Indigenous customs, knowledge and identity often have key connections to traditional lands (Martínez Cobo, 1987; Daes, 1997).

Other Indigenous and non-Indigenous writers have noted that Indigenous societies' entire view of the physical world is often fundamentally different from that of non-Indigenous societies. Western societies tend to see an essential break between human and non-human spaces, between 'civilization' and 'wilderness'. Indigenous peoples, however, tend to see all land as part of a "cultural landscape" in which humans and other beings interact. (Kulchyski, 1998; McCormack, 1998)

Professor Little Bear described land in this way: "We incorporate land into this constant flux, into this interrelational network that is always happening. Land is the place where the renewal processes occur," (Little Bear, 1998).

Special Rapporteur Daes relied on the work of Canadian Aboriginal scholar James Sákéj (Youngblood) Henderson in the following passage:

"The Aboriginal vision of property was ecological space that creates our consciousness... Their vision is of different realms enfolded into a sacred space... It is fundamental to their identity, personality and humanity... [The] notion of self does not end with their flesh, but continues with the reach of their senses into the land." (Daes, 1997)

Giichi Nomura, Executive Director of the Ainu Association of Hokkaido, Japan, explained that a key concept in Ainu culture is "*Ureshipamoshiri*," the "concept of the world as an interrelated community of all living things," (NACNYC, 1994).

One writer explained the relationship for many Adivasi (Indigenous) peoples in India to their land by emphasizing the connections between land and virtually all aspects of Adivasis' culture: "Adivasis belong to their territories, which are the essence of their existence; the abode of the spirits and their dead and the source of their science, technology, way of life, their religion and culture." (Bijoy, 2001)

A Canadian Aboriginal man trying to stop a pipeline development project in his people's territory made clear links between his Indigenous identity and his relationship to the land:

“It is very clear to me that it is an important and special thing to be an Indian. Being Indian means being able to understand and live with this world in a very special way. It means living with the land, with the animals, with the birds and fish, as though they were your sisters and brothers. It means saying the land is an old friend and an old friend that your father knew, your grandfather knew, indeed your people always have known...” (quoted in Johnson, 1989)

Another Canadian, a Cree language instructor and counsellor, emphasized the spiritual connections between humans and land: “We all need to remember that the spirit of the land is connected to the spirit within each of us which in turn connects us to the Creator.” (Vanderbroeck, 1998)

Land loss and degradation deprives Indigenous children and youth culturally and spiritually, leaving social disintegration in its wake. It also deprives them of their resources and the physical means to survive and prosper. Traditionally, land has provided Indigenous children with their material needs, sustaining the society’s economy. The World Health Organisation’s 1999 report on Indigenous peoples’ health states the following:

“Land displacement and contamination affects the food supply of indigenous people, increasing the likelihood [of] malnutrition and starvation. The same holds true for indigenous communities who find themselves in the vicinity of extractive industries that are prone to damage the environment.” (Alderete, 1999)

Land is often relied upon by Indigenous societies as a direct material resource, in hunter-gatherer, pastoral and agricultural societies. In today’s world, land may also be a source of income and sustenance through a wide variety of means – including sustainable resource use, eco-tourism, or just simply as a location on which to conduct any kind of business or activity. Land loss and degradation rob Indigenous peoples of both direct and indirect use of their resources, and is a major cause of the widespread and extreme poverty experienced by so many Indigenous children.

Examples abound of the concrete connection between land rights, poverty and children’s rights and well-being. The Batwa (Pygmy) peoples of central Africa have lost large amounts of forest territory, and are now living in extreme poverty. “[W]ith neither land nor other resources with which to feed themselves, [the Batwa] are among the first to suffer,” in difficult times. Naturally, they “believe that if they still lived in their forests, their lives would be better,” (ACHPR, 2005).

Approximately 90,000 Indigenous people in Bangladesh have been displaced due to armed conflict and the settlement of half a million settlers from the dominant population in their territories. They “suffer starvation conditions, with little or no access to any

kind of service.” More people, including the entire Khyang tribe, have been displaced by the creation of large forest reserves without any compensation or assistance. “The impact on indigenous peoples is severe as this includes small farmers’ registered holdings, homestead, farmlands in the process of registration, and forest and grazing commons held in accordance with customary law.” People are left in extreme poverty, with dire consequences for child health and survival. (AITPN, 2003)

Past land loss to Japanese and Russian national interests left the Ainu people with their entire economic base destroyed (NACNYC, Nomura, 1994). In Venezuela, Indigenous peoples find that “progressive environmental degradation... is destroying the indigenous family, lessening our sources of nourishment, affecting our quality of life, and our dignity as people,” (quoting Noelí Pocaterra Uliani, NACNYC, 1994).

Chief James Gosnell of the Nisga’a in western Canada said that the main reason a land settlement agreement was so important to his people was to secure an “economic base upon which to survive” (Svensson, 2002).

In Vietnam, land loss has been caused by government-supported settlement of the dominant population, large-scale development projects, alleged border security issues (i.e. a large part of Indigenous territory has been titled an “economic defence zone” with “strategic” forests) and discrimination in the land title allocation program involving non-recognition of communal title and a belief that Indigenous people will not “develop” the land in “rational” manner. The result has been worsening poverty and marginalization. (AIPTN, 2001)

Brazil’s Indigenous peoples are today facing an ongoing and escalating threat to “their safety, and even their future survival,” due to land loss and related violent attacks. “Businesses, prospectors, cattle ranchers, landowners, logging companies and the military,” are all working against Indigenous Brazilians, and have used tactics that include “death threats, violent attacks and killings,” – with complete impunity – to drive Indigenous people off their ancestral land and discourage leaders from pursuing land claims. The impact on children is severe; for instance, “infant mortality in [Guarani-Kaiowá] indigenous areas has surged in recent years, reportedly largely due to hunger and malnutrition,” that even government officials trace to land loss (Amnesty International, 2005)

In so many ways, the spiritual/cultural and physical/economic aspects of land rights are inseparable. A Sarawak woman and her husband, holding deep fears about the effects of logging-related land loss and degradation on their children, undoubtedly are thinking of both aspects in this story relayed by their community leader:

“A woman I know who has seven children once came to me and said, “This logging is like a big tree that has fallen on my chest. I often wake in the middle of the night, and my husband and I talk endlessly about the future of

our children. I always ask myself 'When will it end?'" (Statement of Anderson Muutang Urud: NACNYC, 1994)

Violations of Indigenous peoples' rights to land and resources must end. These violations have disastrous effects on Indigenous children's rights.

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## 5. Clusters of Discrimination and Disadvantage

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### a. Overview

Around the world, in countries both rich and poor, Indigenous children are among the most severely marginalized people in society. Their rights under the *UN Convention on the Rights of the Child* and other treaties are routinely violated, unimplemented, and ignored to a degree not often experienced by other children. This discrimination and disadvantage must be brought to an end without delay.

The discrimination and disadvantage faced by Indigenous children is chronicled here by looking at 4 “clusters” of issues: Education and Culture; Health and Well-Being; Protection; and Identity. As the UN Permanent Forum on Indigenous Issues has repeatedly commented, there is a substantial lack of reliable, disaggregated data on Indigenous children. For this reason, and due to the enormity of the issues, the exploration in this paper is far from comprehensive. Furthermore, the situation of each Indigenous people is unique, hence the need for far greater self-determination, and so Indigenous children in different places will have their own constellation of needs. However, existing research points to some clear, systematic issues, which tend to affect many Indigenous children worldwide.

Yet before building this picture, it is crucial to recognize that current indicators do not necessarily reflect Indigenous peoples’ worldview, and the kind of development they aspire to for their children. For instance, numerous studies have found that Indigenous children all over the world are not receiving as many years of education as their peers, and not performing as well in school, but how do we interpret these facts? The simplistic view is that Indigenous children are just ‘behind’ in that area of ‘development’. But we know that knowledge is highly valued amongst Indigenous peoples, often seen as a sacred trust passed through generations, so there is no lack of interest in education among Indigenous people. Instead, these kinds of statistics should provoke a detailed examination of both the availability of quality education and the degree to which education programs reflect Indigenous children’s identity, learning style, culture and practical knowledge needs.

‘Development’ is a loaded term – what is development, and who decides? Unfortunately, outdated, narrow models of development continue to affect Indigenous peoples in adverse ways.

One understanding of development, ‘modernisation’ theory, holds that all societies are on the same linear path of progress. Post-industrial, wealthy countries are farther along this path than poor countries, but social, economic and cultural change will inevitably bring poorer countries into line, leading them to eventually look just like wealthy Western societies (Handelman, 2000). For example, when Indigenous lands in Southeast

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Asia are stolen for the sake of 'national development projects', and this is justified by calling Indigenous peoples 'primitive' and 'backward', we can see "development as a civilizing mission" in which modernization theory works against Indigenous peoples' rights (Duncan, 2004).

In reaction to this model, 'dependency' or 'under-development' theory argues that poor countries (the periphery) have been actively brought into a position of disadvantage by virtue of their relationship with rich countries (the centre), and poor countries are trapped in this ongoing dependent relationship (Handelman, 2000). Yet this theory still fails to recognize that *internal* marginalized groups may be exploited by dominant populations in rich and poor countries alike. It also ignores the fact that distinct societies may see the content of their own development in a fundamentally different way, with unique goals and needs. For example, when many African governments insist that they have no Indigenous peoples because all of their population is 'equally Indigenous' in comparison with outside colonisers, we see under-development theory can also work against Indigenous peoples' rights (see ACHPR, 2005).

"The underlying attitude towards the indigenous peoples question is manifested in the development model utilized. The effect of a model that measures success in terms of assimilation and mainstream development has tended to leave the indigenous peoples of Africa in poverty."

African Commission on Human and Peoples' Rights, 2005

There are other ways to conceptualize development. Many Indigenous peoples see development as linked to self-determination, empowerment and human rights. Nobel laureate Amartya Sen advocates a similar theory, arguing that development is ultimately about the freedom and opportunity to realize one's own goals (Sen, 1999). This kind of view accords with Indigenous peoples' own demands to determine the content of their own development, particularly as it pertains to the education, health, protection and identity of their children.

For example, it is not uncommon for Indigenous peoples to question the mainstream development goals of wealth accumulation and the unencumbered exploitation of resources. Poka Laenui, a Hawaiian Indigenous person and former President of the Pacific Asia Council of Indigenous Peoples, told the United Nations that there is an urgent need to re-evaluate the usual notions of progress and development (NACNYC, 1994). Similarly, Anderson Muutang Urud, an Indigenous leader from Sarawak, Malaysia, told the same gathering:

"We must not blindly follow the model of progress invented by Western civilization. ...[T]he riches of indigenous communities lie not in money or

commodities but in community, in tradition, and the sense of belonging to a special place.” (NACNYC, 1994)

Different Indigenous communities may decide on different development goals. Thus the fundamental principle of self-determination must be borne in mind throughout this section, recalling that ideal child development and transition to adulthood will not look the same in each society.

### ***b. Education and Culture***

Three problems in the implementation of Indigenous children’s education rights are overwhelmingly prevalent: lack of access, poor quality, and cultural inappropriateness/lack of local control. They are profoundly interrelated, but will be discussed in turn for clarity.

We are now in the midst of the UN Literacy Decade (2003-2012), and as part of this effort the Human Rights Commission (now Human Rights Council) urged all states:

“(a) To give full effect to the right to education and to guarantee that this right is recognized and exercised without discrimination of any kind; (b) To take all appropriate measures to eliminate obstacles limiting effective access to education, notably by girls, including pregnant girls, children living in rural areas, children belonging to minority groups, *indigenous children*, migrant children, refugee children, internally displaced children, children affected by armed conflicts, children with disabilities, children with human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) and children deprived of their liberty.” (HRC, 2002; emphasis added)

Rodolfo Stavenhagen, UN Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People, dedicated his 2005 report to the subject of education. Citing both the denial of access to decent quality facilities, and the assimilative nature of most existing institutions, he found that “many indigenous organizations describe the problem of education as one of the fundamental issues affecting the full exercise of their human rights.” This is indeed the case.

#### *Lack of Access*

Lack of access is a complete breach of the right to education. Across the board, Indigenous children have lower enrolment rates, receive fewer years of schooling, and graduate in smaller numbers than non-Indigenous children.

For example, primary school enrolment for Indigenous children in Vietnam is only at 50-60%, compared to 91% enrolment for other children (AITPN, 2001). In many parts of

Africa, school attendance for Indigenous children is less than 50% of the national average, and literacy rates “are also usually very low” (African Commission on Human and Peoples’ Rights, 2005). Graduation rates have increased somewhat in the Canadian Arctic, but overall graduation remains low, while drop-out rates remain high (Hicks, 2005).

**Factors Underlying Lack of Access Include:**

**Government Neglect** → Indigenous regions and communities are often neglected by central governments, who fail to provide adequate educational infrastructure and resources in comparison with those provided to other populations

**Remote Locations** → Some Indigenous communities live in remote areas, which pose additional challenges for making schools available locally and are susceptible to neglect

**Poverty** → Given high poverty rates among Indigenous families, school fees and supplies are sometimes too expensive, or students may have no choice but to leave school to find work

**Poor Quality and Cultural Disjoint** → These factors are discussed in themselves below, but they may also contribute to lack of access. Parents and students may give up on a system that is not serving their needs or that discriminates against them, or students may not be able to access the current system structure (e.g. lack of mobile schools for nomadic peoples)

**Social Difficulties** → Indigenous students may be dealing with more family and social problems than other students, due to social upheaval and dislocation, making it difficult to focus on school, stay in school, and achieve

According to Hindou Oumarou Ibrahim, a young Peul women’s group leader, virtually all nomadic Peul (Fulani) children in Chad attend no school whatsoever. In cities, a few Peul attend school but tend to drop out facing discrimination. Girls are particularly disadvantaged: “In the whole of Chad there are currently less than a dozen Peul girls who have completed their secondary education,” (Ibrahim, 2005).

Similarly, San children in Angola, Zambia and Zimbabwe tend to have no access to school at all. Their families are often too poor to pay school fees and purchase required supplies. In Angola, some San communities have been completely without access to any functioning school in their area since 1975. (ACHPR, 2005)

Discrimination keeps most Batwa (Pygmy) children away from school in Rwanda, Burundi and Uganda. “Even those who start [school] do not finish, merely because of the contempt and discrimination of their teachers and classmates.” Negative stereotypes about the mental capacity of Batwa people, such as calling them “good for nothing”, “mentally retarded”, and “backward”, are widely used against Batwa children. Poverty exacerbates the problem; it feeds into discrimination when Batwa children struggle to have adequate clothing, school supplies and nutrition compared with other students. (ACHPR, 2005)

In some places, poor quality descends into complete lack of access. Human Rights Watch reported that Indigenous children in some regions of Guerrero, Mexico, “have been unable to attend primary school due to an absence of teachers where they live.” (HRW, 2004)

Across Latin America, Indigenous children still receive substantially less education than their peers. In Bolivia, non-Indigenous children receive on average 9.6 years of education, while Indigenous children receive 5.9. In Guatemala, non-Indigenous children receive 5.7 years, but Indigenous children receive a mere 2.5 average years of schooling, on average. (Hall & Patrinos, 2004)

### *Poor Quality*

Second, the education that Indigenous children do receive is of poorer quality than that received by their non-Indigenous peers.

For example, not only is education inaccessible for Indigenous youth in the Filipino Cordillera, often due to distance and cost, but it is also of abysmal quality in terms of content and teaching (Raquel, 2005). In Bangladesh, the real education received by Indigenous children is much worse than indicated by official enrolment statistics because “the schools are run down or non-existent and many of the teachers are absent or have never actually visited the school,” (AITPN, 2003). In Latin America, the fact of poorer quality has been measured in performance outcomes; Indigenous children do not perform as well on tests as other children, and fail or repeat grades more often (Hall & Patrinos, 2004).

In many countries, a shortage of teachers in Indigenous areas results in massive class sizes, one teacher instructing many grade levels simultaneously, or the use of unqualified teachers (UNICEF, 2003; Stavenhagen, 2005). School buildings are often inadequate, and vital materials such as textbooks are often lacking or outdated (UNICEF, 2003). Due mostly to poverty, higher numbers of Indigenous children both work and attend school, which often compromises their learning (Hall & Patrinos, 2004).

For instance, in Vietnam education is virtually all in Vietnamese, despite the existence of legal guarantees for mother tongue education. The 1.5 million Indigenous children who speak no Vietnamese have ended up with very poor educational experiences. The few attempts at bilingual education that have been offered have been of very poor quality. There are few teachers willing to work in mountainous areas, and these teachers generally lack the expertise necessary to teach Indigenous children effectively and sensitively. Programs to train Indigenous teachers lack funding. Children end up falling behind and/or dropping out. (AITPN, 2001)

### *Cultural Inappropriateness and Lack of Community Control*

Finally, and most importantly, the content of formal education curricula tends to be culturally inappropriate for Indigenous children, and fails to work against discrimination in the mainstream. Materials often propagate negative stereotypes, ignore or belittle Indigenous knowledge, and focus on content that is remote from, or irrelevant to, Indigenous children's experiences. Teachers are overwhelmingly non-Indigenous, and Indigenous languages are rarely taught (Stavenhagen, 2005).

The African Commission on Human and Peoples' Rights, in a report developed by their Working Group of Experts on Indigenous Populations/Communities, spoke to the heart of the issue:

"[T]he aspects of 'education for what', 'education for whom' and 'which education?' are questions which need to be answered. The role of cultural and language rights is integral to the question of education. Is it to be education for assimilationist purposes? It is important that it is recognized that education is not value-free." (ACHPR, 2005)

#### **Former UN Special Rapporteur Jose Martínez Cobo, 1986:**

"...such education [as has been provided to Indigenous children] continues to be characterized to a greater or lesser extent by a marked tendency to deprive Indigenous pupils of everything Indigenous."

Materials and curricula for non-Indigenous students generally "fail to combat and eliminate misconceptions and prejudice against Indigenous populations."

Similarly, James Youngblood (Sákéj) Henderson, a Indigenous Canadian writer, argues that "the imposing ideology of formal education" is Eurocentrism, in which Indigenous heritages and worldviews are usually ignored completely, and if given attention they are portrayed as inferior and exotic (Youngblood Henderson, 2002).

These issues are present for virtually all Indigenous children and youth. To cite merely a few examples, youth organisations in the Philippines report that the content of education in the Indigenous Cordilleran region is often openly discriminatory, and does not include Indigenous knowledge systems (Raquel, 2005). In New Zealand, Maori children are often forced to learn the "real" English names for places, replacing the Maori names they may have previously used (McGovern, 2000). In Tanzania, Indigenous knowledge is generally considered "unimportant" and education tends to promote national unity and identity, including the national language and the customs and beliefs of the dominant group, at the expense of Indigenous identity (Semali, 1999).

In many Southeast Asian countries (among others), education is often provided to Indigenous communities for the very reason of teaching the national language and/or the national culture and political ideology (Duncan, 2004). For instance in Thailand, education aims to “instil a ‘Thai nation’ ideology and to discipline youth in the ‘Thai national’ culture, in order to transform them into ‘qualified Thai citizens’,” (Buadaeng, 2005).

In the primarily Indigenous Chittagong Hill Tracts of Bangladesh, the government has made no effort to implement mother tongue education despite promises to do so in a 1997 Peace Accord. The Asian Indigenous and Tribal Peoples’ Network indicates that the inappropriate content of education, particularly in language, is a major cause of the high drop out rate among Indigenous youth in that country (AITPN, 2003). Their report describes:

“[T]he curriculum is prepared for the [non-Indigenous] Bengali plains. As part of the government’s overall scheme to bring indigenous people’ culture into the mainstream, the curriculum is entirely oriented to the dominant Bengali model, allowing no space for the religious values, ideas and aspirations of hill tribal culture. Conformity to the Bengali ‘norm’ lies at the heart of the lessons, which are themselves communicated by approximately 95% Bengali teachers, with some schools having no indigenous teachers at all.” (AITPN, 2003)

Johnson Ole Kaunga, founder of several Kenyan pastoralist peoples’ organisations, writes that in Kenya education is used as a tool of control to build ‘national unity’, ‘loyalty’ and ‘development’. Not only is there no mother tongue instruction, students are punished for speaking Indigenous languages at all. Children are also discouraged from wearing traditional clothing, and the structure of the school system and calendar compromises traditional activities within the community (Kaunga, 2005).

Since many African governments still maintain that ‘all Africans are indigenous’, efforts to ‘indigenize’ education have also tended to promote national unity and identity, including the language, customs and beliefs of the dominant group (Semali, 1999; ACHPR, 2005).

“Until our culture is recognized for its richness and complexity, and given this recognition by education authorities, we will always have to live with the derogatory stereotype that lowers the self-esteem of our children and causes them to feel that the education system has no relevance to them whatsoever.”

Oodgeroo Noonucal, Australian Aboriginal activist

Source: Smallwood, 1995.

Many communities find that education is only available at a great distance, where students must leave home and reside in boarding schools at a young age. This can be alienating and painful for Indigenous children and their families, and it makes it difficult if not impossible for Indigenous children to learn and develop their Indigenous culture and identity, and to take part in their home community. It should be recalled that the mass removal of children, if committed with the intent to destroy a people, is listed as a ground for the crime of genocide under the *Genocide Convention*, discussed earlier.

In Canada and Australia, former residential school programs for Indigenous children are now viewed as human rights tragedies, and have contributed substantially to widespread, multi-generational parenting and substance-abuse problems in many Indigenous communities. As described in the “International Human Rights Law” section, these programs may even constitute genocide. Yet it appears that similar practices are occurring today in other areas.

For instance in Botswana, instead of finding a way to provide education locally, the government has opted for a “hostel system” with “fixed location schools”, where San/Basarwa children live away from their homes and communities for the entire school term. The children are taught only in the dominant language, which “is alien to them.” San families feel this system turns their children into “children of the government” and deprives them of their culture and way of life (ACHPR, 2005). San in Namibia and South Africa as well as Botswana have reported that they are profoundly dissatisfied with the current system, in which they feel their children are “stolen” by a process of physical and cultural removal (Hayes & Siegruhn, 2005). Further investigation of these and other cases is deserved.

Forced removal of children, particularly for assimilative educational programs, is unacceptable. Even where removal is well-intentioned and aims only to provide needed education, the result may be disastrous for the children and their communities. Any education program located far from home must have the full consent and support of the children, families and Indigenous communities involved. In most cases, it is preferable to make education available locally, where children can remain with their families and grow up within their own culture.

Of particular concern is the critical need to preserve Indigenous languages around the world. With Indigenous languages around the world disappearing at a rate of two per month the situation is critical. Numerous Indigenous communities have echoed the recommendation of the United Nations Committee on the Rights of the Child that Indigenous children must be provided with bilingual education, in both their local Indigenous language (which is often the mother tongue of the students) and a national or dominant language (see e.g. *The Coolangatta Statement*, WIPCE, 1999).

“The essence of the language is the essence of what the land is all about. It is the essence of what the sky is about and it is the essence of who we are as people. Our language relates the landscape, both in our spirit and in the land.”

Tobasonakwut Kinew, Anishinaabe Elder from North America (Kinew, 1998)

The United Nations Education, Scientific and Cultural Organization (UNESCO) has widely acknowledged that teaching Indigenous children their mother tongue not only ensures the preservation of the language and the world view that informs it, it also provides a better foundation for learning success in other languages (UN News Centre, 2004). Likewise, UNICEF has found that Indigenous children thrown into an entirely dominant-language-medium educational environment, especially without Indigenous teachers, are often at a major disadvantage. They may end up with poor competency in both languages, and weak prospects for educational advancement (UNICEF, 2003).

Furthermore, Indigenous knowledge, language and culture are closely linked. Without a strong knowledge of their own language, Indigenous children and youth are deprived of the full enjoyment of their culture and identity (UN Special Rapporteur Rodolfo Stavenhagen, 2005).

Incorporating Indigenous knowledge into education, and making education relevant and effective for Indigenous children and young people, requires structural change and greater local control. Sometimes the term “culturally appropriate” can be twisted around to justify token, minor changes in educational or other services, but what is needed are services that are actually *based* within the Indigenous culture and community.

Indigenous knowledge is not just information, it is “different sources of knowledge and the different methods for teaching and learning that exist within the social, cultural, ecological, and epistemological contexts of local communities,” (McGovern, 2000). Integrating Indigenous realities into education cannot be tokenistic and shallow; it requires community participation, more local teachers, the involvement of extended families, community leaders and Elders, and greater local Indigenous control in planning, management and development.

Bilingual and/or intercultural education programs exist in a number of Latin American countries, but “many of the programs have limited coverage, and some have inferior quality,” (Hall & Patrinos, 2004). For instance, Ecuador, Peru and Bolivia have all endorsed some form of ‘Bilingual Intercultural Education’. Yet these programs are poorly developed, and include only bits and pieces of Indigenous knowledge. They do not teach Indigenous knowledge holistically or experientially, and they fail to involve the community at both the classroom and planning levels (Vagner, 2005).

Sometimes when Indigenous peoples operate their own education programmes the government refuses to recognize them, causing further problems for Indigenous children and youth. In Chiapas, Indigenous peoples' organisations developed a local education program featuring more local content, community participation, and a teaching style that promotes children's creativity and builds on their strengths. However their system is not recognized by the government, which limits the students' options at graduation, and starting a local system 'from scratch' presents numerous difficulties (Kroijer, 2005).

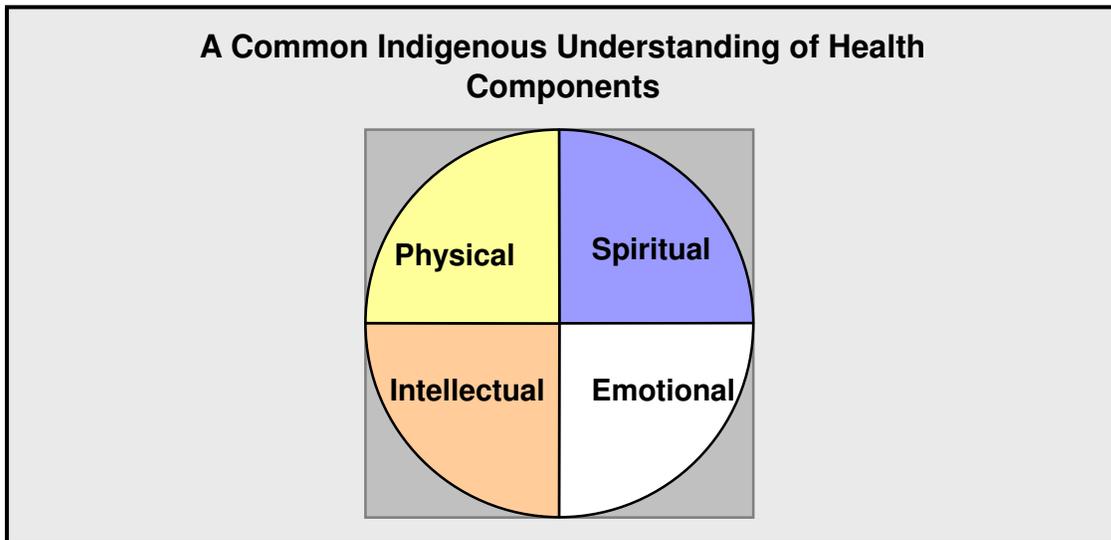
Similarly, in Nepal, many Sherpa and other Indigenous children in the Himalayan region participate in the local Buddhist educational system. Not only has the government refused to recognize this system, it has also failed to provide officially approved facilities as an alternative. Young people bear the costs, as the certificates they earn are not accepted in certain professions and post-secondary institutions, including in government service (Sherpa, 2006).

The *Coolangatta Statement*, signed at the World Indigenous Peoples' Conference on Education in 1999, raises many of the same issues contained here and proposes a strong framework for Indigenous children's rights in education (WIPCE, 1999). Governments should be working closely with Indigenous peoples organisations towards the achievement of these goals.

Under Articles 28 and 29 of the UNCRC, Indigenous children have the right to education, and further to an education that recognizes their cultural identity and language, respects human rights and fundamental freedoms, and occurs in a spirit of understanding, peace, tolerance, and friendship with all groups including "persons of indigenous origin". Article 2 indicates that all rights must be implemented without discrimination of any kind, and Article 4 provides that they must be implemented to the maximum extent of the state's resources. Article 30 also indicates that Indigenous children "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." (UN, 1989) Major improvements are needed before Indigenous children and young people will enjoy their full educational and cultural rights.

### **c. Health and Well-Being**

Health is often understood somewhat differently in Indigenous communities than in mainstream society. In Western culture, health is seen as the absence of illness, and as something mainly within the physical realm (though these views are beginning to change). For many Indigenous peoples, health involves positive elements (energy, spiritual strength, etc.) as well as the absence of negative elements. It also tends to be holistic, including not only physical but also emotional, intellectual, spiritual and other components. (Alderete, 1999)

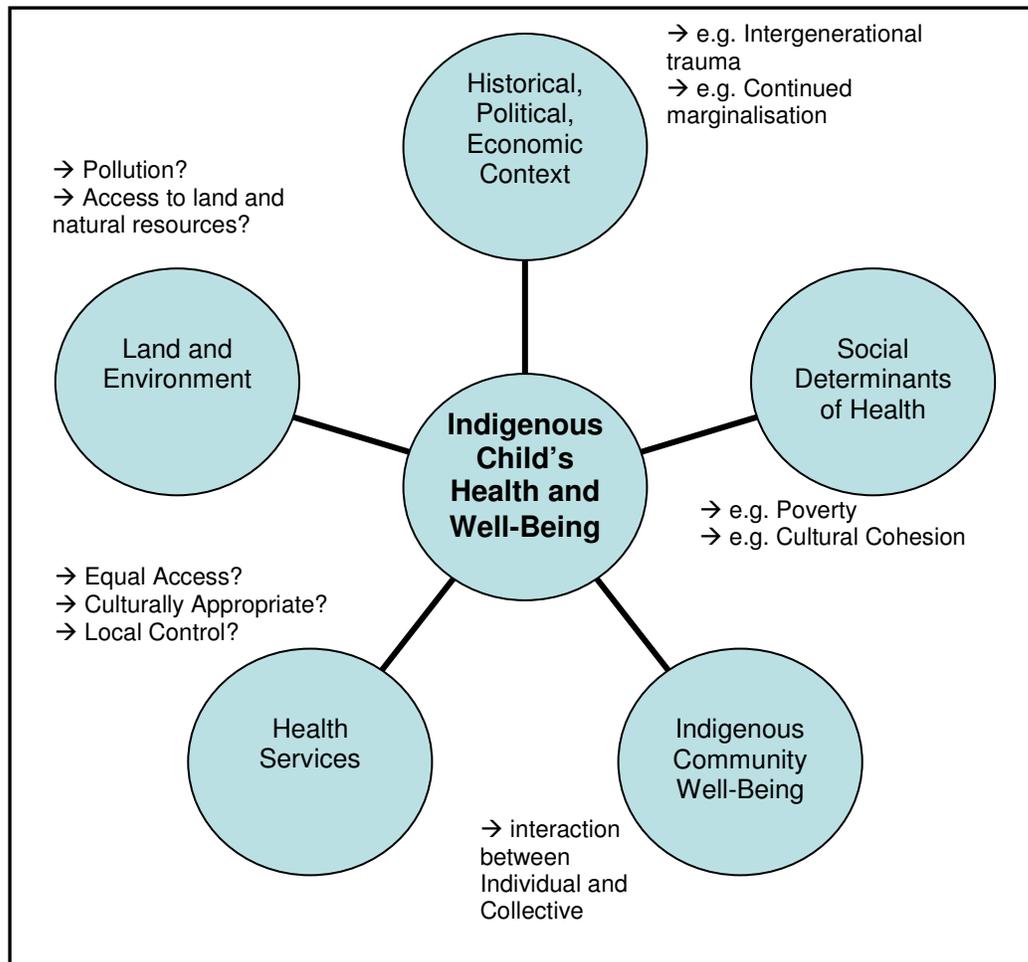


A Maori woman described health this way:

“Health is the strength of the body, the pride of the youth... the dignity of age... Health is the true knowledge of Maori, the spirit of Maori. Health is our mana [power] and our right... To know and to understand where I come from, where I am going, our history.” (Maori Health Decade, 1994, quoted in Alderete, 1999)

#### *Determinants of Health*

Indigenous children’s rights to life and to health services should be understood within the interrelated framework of well-being described above. But beyond this most proximate level of analysis, an individual’s health, even broadly defined, cannot be understood in isolation. As the “collective approach” section demonstrates, Indigenous children’s well-being is intimately wrapped up in the well-being of their communities, society, and the world at large. Thus any analysis of Indigenous children’s health must necessarily include an analysis of structural risks to child health, rooted in the political, historical, economic and social realms.



Poverty is one of these factors, and is a crucial determinant of health and other child development outcomes (see, for instance, the WHO reports: Alderete, 1999; Cohen, 1999). National and regional data (samples below) confirm that Indigenous children around the world, in rich and poor countries alike, are largely living in poverty. This speaks enormously to the low status of Indigenous children's health.

In Vietnam, the dominant population has seen a dramatic decline in poverty and in 1998 had a poverty rate of 31%. However, the poverty rate among the Indigenous population in the same year was at 75% (AITPN, 2001).

In Latin America, World Bank study of Indigenous peoples' human development between 1994 and 2004 found that there were "few gains" in poverty alleviation. Poverty rates hardly changed at all, and in countries where incomes did improve they increased much slower than for the dominant population. Overall, Indigenous people remained at a much higher risk of living in poverty than others, as shown by some sample figures below. Rates of "extreme poverty" were also several times higher for Indigenous peoples in that region. (Hall & Patrinos, 2004)

<b>Indigenous Peoples and Poverty in Latin America</b>		
	<b>Non-Indigenous Poverty Rate</b>	<b>Indigenous Poverty Rate</b>
Ecuador	61%	87%
Guatemala	38%	74%
Mexico	47%	90%

Source: Hall & Patrinos, 2004

The recent report of the African Commission likewise stresses that the poor health status of African Indigenous peoples “has to be seen in connection with the general marginalisation that indigenous peoples suffer from economically and politically.” In each case discussed – including various San peoples in southern Africa, a number of Batwa/Pygmy peoples in the central region, and different pastoralist peoples in northern and eastern regions – health problems were very closely tied to extreme poverty and marginalisation (ACHPR, 2005).

Indigenous children in wealthy nations are far from immune to poverty. For instance, only half of the Aboriginal households on reserve in Canada are living in homes that meet basic housing standards. Indigenous people in Canada are 4 times more likely than non-Indigenous Canadians to report experiencing hunger, and 60% of Indigenous children under age 6 are in poverty compared to 25% of non-Indigenous children. (Blackstock et. al., 2004)

It is important to remember that the poverty and associated health and survival risks experienced by Indigenous children and youth are often tied to loss of land. In addition, other abusive political and social interventions directed at the Indigenous community as a whole – including displacement, cultural repression and assimilation, the forced removal of children, child abuse within state institutions, armed conflict, discrimination, and others – often leave deep emotional, mental, spiritual and physical traumas that may affect generations to come (see, for instance, Cohen, 1999).

According to the World Health Organisation, the maintenance of culture and community cohesion can be a “protective factor” against poor health. It went on to say that the current poor health situations experienced by Indigenous people are due to structural factors:

“These situations are the result of hundreds of years of colonialism, enslavement, land dispossession, and the systematic destruction of indigenous people’s complex social, cultural, political, spiritual, economic, and environmental order.” (Alderete, 1999)

Realizing the health rights of Indigenous children and youth means redressing these structural inequalities, paying particular attention to land rights, poverty and cultural vibrancy.

### *Health Services*

Along with the social and historical determinants of health, there are major deficiencies in health services. Indigenous children have a right to reasonable and equal access to health and sanitation services. In practice, their access to services is “limited and inadequate”, far below the access levels of non-Indigenous children, and is particularly limited in remote areas (Alderete, 1999).

For example, few doctors are willing to work in the predominantly Indigenous Chittagong Hill Tracts of Bangladesh, and 60% of positions are vacant. The region has a “severe lack of health facilities” (AITPN, 2003). Similarly, the Indigenous highland regions of Vietnam have “inadequate health care, and a lack of safe water and sanitation facilities,” (AITPN, 2001). Less than half of Indigenous families in Vietnam and Cambodia have access to safe water (UNICEF, 2003).

In Guatemala, only 5% of Indigenous people have health insurance of any kind (Hall & Patrinos, 2004). While 80% of Mexicans have access to sewage facilities, only 40% of Indigenous Mexicans do (Hall & Patrinos, 2004).

Many Indigenous communities in Africa lack access to clean water and sanitation. Some San communities in Angola have not had access to a mobile health clinic for 25 years. In Burundi, the Indigenous Batwa are in fact eligible for free access to health services but most lack the identity cards required in the system. (ACHPR, 2005)

Health services should be administered through local control to the maximum extent possible, and both mainstream and targeted services must be culturally appropriate. This includes integrating Indigenous approaches to health and/or offering multiple treatment options, training and hiring Indigenous professionals, and making services and materials available in Indigenous languages where needed.

Yet according to the WHO, “in general, [health] services and programmes are culturally inappropriate,” for Indigenous peoples. Indigenous peoples and observers report discrimination, disrespect for and a lack of integration of Indigenous healing systems and personnel, language barriers, uncomfortable treatment environments, and a lack of local control and leadership. Problems with the quality and structure of service can also feed into access problems, since Indigenous people may be unwilling or unable to access culturally inappropriate services. (Alderete, 1999)

Moreover, while the universality of all health knowledge is debated, cultural differences may be even greater in mental health. The WHO stresses that not only do many cultures

“conceptualize well-being” differently and prefer different treatment strategies, but there are also different “idioms of distress”, i.e. culturally contingent ways of communicating mental/emotional problems. Symptoms of certain conditions may be different among different peoples, and entirely new categories of disorders may be appropriate in some instances (Cohen, 1999).

Dr. Roy Laifungbam is a member of the Meitei nation, Director of the Indian Indigenous organisation CORE, and co-chair of the UN Committee on Indigenous Health. He argues that reconciliation is the first step to effective and ethical health policy for Indigenous peoples, which requires respect for human rights, recognition of Indigenous peoples, and the political will of the state. Consultations between the WHO and Indigenous peoples, says Dr. Laifungbam, conducted in 1999, led to a three-part framework: interconnectedness, self-determination and equity are the main themes that should form the basis of Indigenous peoples’ health policy development (Laifungbam, 2006). These principles require urgent implementation if Indigenous children and youth are to survive, develop and live in good health.

The results of such health policies can be impressive. Action for Children and Youth Aotearoa says that while significant health problems remain for Indigenous children in New Zealand, major improvements are linked to increased self-determination:

“The rapid gains in Maori health can be largely attributed to improved access to ‘by Maori for Maori’ health service provision, acceptability of the messages and messengers, community focussed health promotion and prevention strategies.” (ACYA, 2003)

The WHO echoes the demands of Indigenous organisations when it states that “community ownership and participation” in health services are urgently required (Alderete, 1999). It is important to note that as with other programs, the changes needed are much more than minor adaptations of existing programs, with tokenistic elements of Indigenous culture(s) thrown in. It is also, as UNICEF points out, not about “a polarization between ‘traditional’ and ‘modern’ medicine,” (UNICEF, 2003). What is needed in health services, as in other areas, is a shift in the centre of control towards Indigenous peoples. Effective health services are dependent upon greater Indigenous self-determination.

#### *Outcomes and Health Status*

It is difficult to present an accurate snapshot of Indigenous children’s health and well-being outcomes. As with other subjects relating to Indigenous children, there is a major shortage of reliable, disaggregated data on Indigenous children’s actual health status.

## **Regional Health Outcomes for Indigenous Children & Youth**

### **Asia**

Infant and under-five mortality rates are higher for Indigenous children in Bangladesh than for others, and malnutrition, diarrhoea and malaria are also serious problems (AITPN, 2003). Vietnamese Indigenous children experience high rates of malaria, dysentery, malnutrition, and respiratory infection. The Orang Asli in Malaysia have twice as many deaths from tuberculosis compared with the national average, and higher child malnutrition. Indian Adivasis have high rates of child mortality and malnutrition, and the underlying poverty is often tied to land loss and/or armed conflict. (Alderete, 1999; CORE, 1997)

### **Latin America**

Indigenous children in Latin America suffer from high rates of malnutrition, often at least twice the rate of non-Indigenous children. In Ecuador and Mexico, 59% and 44% of Indigenous children are stunted respectively, versus only 29% and 14% of non-Indigenous children (Hall & Patrinos, 2004). In Honduras, 90% of Indigenous children are undernourished (Alderete, 1999). Evidence indicates that the health status of most Indigenous communities in Brazil is worsening, and many Indigenous children in Paraguay became ill or passed away in a wave of infectious disease in 1996 (Alderete, 1999). Many Guatemalan Mayan children who survived the period of armed conflict suffer psychological trauma and loss of hope (Cohen, 1999).

### **North America and Arctic**

Indigenous children and youth are at a greater risk of diabetes, violent and accidental death, substance-related illnesses, injury, and tuberculosis. Infant mortality is higher than for the dominant population, and many infants and young children are not fully vaccinated. Particularly in the north, environmental contamination is high and there are more health problems associated with rapid changes in diet (Alderete, 1999). Youth suicide, depression and substance abuse are major problems; in Canada, Aboriginal youth suicide rates are 2-6 times higher than the national average (Cohen, 1999; Many Hands One Dream, 2006).

### **Pacific**

Pacific Islanders suffer from “enormous” environmental problems connected to health, including hazardous waste, chemical burn-off, nuclear contamination, deforestation, mining, dams, tourism, over-exploitation of resources. In some areas, locally grown food is completely unsafe. A number of health problems are connected to sudden changes to a Western-style diet. In New Zealand, over 4 in 10 Maori babies were exposed to alcohol in the womb, and Maori youth are admitted to hospital for psychiatric conditions 2-3 more often than non-Indigenous youth (Alderete, 1999). Infant mortality for Indigenous Australians is 3 times above the national average (UNICEF, 2003). Male youth suicide has risen sharply in Hawaii, Micronesia and Samoa (Cohen, 1999).

### **Africa**

Indigenous children born in the African continent face “low and decreasing life expectancy owing to poor nutritional standards and basic health care status.” Many communities lack clean water and adequate sanitation facilities, leading to high levels of communicable disease. There are high rates of child and infant mortality, malnutrition, malaria, tuberculosis, and diarrhoea. Without maternal and natal care, many mothers and infants die during childbirth. Newer problems such as HIV/AIDS, alcohol abuse and high rates of domestic violence, crime and depression now plague many communities (ACHPR, 2005).

In some regions, such as North America, there is a great deal of research on particular topics, but little research has been done in partnership with Indigenous communities and thus may not come from an understanding of Indigenous people's own views of their well-being. Where data on health outcomes is not available, Indigenous children's health status can only be inferred indirectly, particularly from reports of extreme poverty.

Two major WHO reports were completed in 1999 on Indigenous peoples' physical and mental health. While noting significant regional, gender and community disparities, an overall picture of poor health status emerged clearly. Indigenous children can expect to live 10-20 years less than their non-Indigenous peers, and Indigenous infant mortality tends to be 1.5 – 3 times higher. Malnutrition is high, often related to displacement from land and/or food source contamination. A number of communities have high suicide rates, particularly among youth. Mental health problems – though poorly documented – are estimated to be quite high given the massive degree of trauma and dislocation, particularly depopulation, violence, dislocation, poverty and repression of culture. (Alderete, 1999; Cohen, 1999)

Article 6 of the *UN Convention on the Rights of the Child* guarantees the child's right to life, and commits state parties to ensure all children's survival and development "to the maximum extent possible". Article 24 guarantees the right of all children to health care services, and specifically urges "full implementation" in the following areas: infant and child mortality; primary health care; combating disease and malnutrition with attention to clean drinking water, food, and environmental pollution; pre-natal and post-natal care; health education; and preventative health care. These duties have not been fulfilled towards Indigenous children and youth, particularly not with the use of the maximum possible resources (Article 4), with sensitivity to cultural difference (Article 30), and without discrimination (Article 2).

#### **d. Protection**

As stated in the Preamble and Article 3 of the UNCRC, children are entitled to special care and protection in their best interests. This basic principle also forms part of the *Universal Declaration of Human Rights* (UN, 1948).

A number of provisions of the *Convention* deal more specifically with children's rights to protection (see box). However, in reality Indigenous children are often harmed and exploited due to their vulnerable position within society. This harm and exploitation, terrible against any child, occurs at disproportionate rates against Indigenous children, and may occur for the very reason that they are Indigenous. All states, organisations and individuals must work urgently and immediately to end these abuses and protect Indigenous children.

## **Child Protection in the *Convention on the Rights of the Child***

### **Integrity of Families**

**5** (respect for family and community), **9** (no separation from parents unless in best interests of child, by legal determination), **18** (parents and guardians have primary responsibility, states must provide assistance), **21** (regulation of adoption), **27** (financial support to families as necessary)

### **Child Abuse and Child Welfare Systems**

**19** (duty of states to protect against abuse, and to provide an effective child welfare system), **20** (children who cannot remain with families are entitled to state-directed care, with regard to cultural continuity whenever possible), **25** (children in care have right to regular review of treatment), **33–36** (protection from drugs, sexual exploitation, trafficking, all other exploitation)

### **Sexual Exploitation**

**34** (sexual abuse and exploitation), **35** (trafficking), **36** (all other exploitation)

### **Juvenile Justice**

**37** (treatment of child offenders), **40** (basic rights of child offenders)

### **Child Labour**

**32** (no exploitative labour), **31** (right to rest and play)

### **Substance Abuse**

**33** (protection from use of drugs, production and trafficking)

### **Armed Conflict**

**38** (protection in the context of armed conflict)

### **Rehabilitation**

**39** (recovery and reintegration of child victims of all kinds of abuses)

“One of the best ways,” wrote UNICEF, “to guarantee that an indigenous child receives adequate protection from violence, abuse and exploitation is to support and build on the strengths of his or her family, kinship network and community.” (UNICEF, 2003) This necessarily involves an analysis of structural risks sourced at a societal and state level.

### *Juvenile Justice and Law Enforcement*

Indigenous children and youth experience both too much and too little contact with law enforcement, and this is complicated by a dearth of support for culturally based justice systems. When Indigenous young people are harassed and attacked by others, police and other officials may be absent, ineffective, or may turn a blind eye. At worst, they are the attackers themselves. For example, in the Amazon region of Brazil, Indigenous people – including children on their way to school – report harassment and serious violence from people connected to the commercial exploitation of natural resources who view Indigenous peoples as “obstacles” to their economic interests. Law enforcement has not come to their protection (UNICEF, 2003). UNICEF also reports that “in the US,

many of the 1.4 million American Indians living on or near Indian Lands lack access to basic law enforcement services,” (UNICEF, 2003).

In north-east India, long-term low-grade armed conflict has resulted in heavy militarization of the mainly Indigenous mountain areas. Security personnel in that region present a serious threat to Indigenous children, having committed numerous acts of sexual assault, torture and murder, rather than providing them protection (CORE, c.1997).

In addition, Indigenous youth are seriously over-represented in criminal justice systems in many countries. For instance, Aboriginal youth make up only 3.9% of Canada’s youth population, but 23% of the youth in secure and open custody (Blackstock et. al., 2004).

Given the exclusion and marginalisation of Indigenous communities economically, socially, politically, and culturally, as well as the history of trauma and abuse within so many families and peoples, it is hardly surprising that a disproportionate number of youth end up acting out negative behaviour on themselves and others. However, not only is far too little attention paid to the factors driving initial contact between Indigenous youth and justice systems, there are also significant inequities in the way justice systems operate with respect to Indigenous youth once contact occurs.

Evidence of discrimination and unequal treatment by officials against Indigenous youth is often denied or ignored (e.g. with reference to Canada: Blackstock et. al., 2004). In Guatemala, Maya children often go without legal representation and interpreters are not always provided (UNICEF, 2003).

UNICEF described a number of problems in the juvenile justice system for Native American youth, which echo similar findings in other jurisdictions:

“Juvenile justice systems in tribal communities are severely underfunded and lack comprehensive programmes that focus on preventing juvenile delinquency, providing intervention services and imposing appropriate sanctions. Moreover, law enforcement and justice personnel in American Indian communities are said to receive insufficient and inadequate training.” (UNICEF, 2003)

There is an insufficient degree of Indigenous self-government in juvenile justice, and inadequate recognition of cultural differences in approaches to delinquent behaviour. For example, Australia’s Law Reform Commission found that Australian law and Aboriginal customary law differed in all major aspects of criminal law: the substance and categories of offences, procedure, and sentencing and resolution. It recommended greater Aboriginal control over criminal matters, better inclusion of Aboriginal law into

the mainstream, and an increased focus on the root causes of criminal activity (Law Reform Commission (Australia), 1986).

Quite similarly, Canada's First Nations Child and Family Caring Society recommends, among other things: innovative youth justice programs that "include the perspectives of First Nations young people," and incorporate "best practices in alternative youth justice programs"; cultural training for personnel in the criminal justice system; and a stronger focus on the "socio-economic inequities" that drive the issue.

Indigenous children and youth need equal protection under the law and by law enforcement personnel. Additionally, Indigenous communities need the resources, support and control to address the causes of the over-representation of Indigenous youth in criminal justice systems, and to provide culturally appropriate services for their rehabilitation and reintegration.

#### *Child Abuse/Neglect and Child Welfare Systems*

There is some evidence that Indigenous children face a disproportionate risk of child abuse and neglect, referring to maltreatment by caregivers and by other individuals in positions of day-to-day power over the child. Additionally, there are many indications that most systems to prevent and address such abuse are failing Indigenous children as they focus primarily on mediating risk at the level of the family and fail to address the societal factors (poverty, poor housing, discrimination, dislocation, etc.) which have the most significant impact on child maltreatment experienced by Indigenous children.

A great deal of child abuse against Indigenous children has occurred outside the home, in institutional settings such as residential schools, jails and reformatories, and group homes. Many states forcibly removed Indigenous children and placed them in these institutions for the purpose of assimilating them. Thus Indigenous children not only went into these institutions more often than non Indigenous children, but the motive for placement was, in some cases, to destroy Indigenous society rather than optimize the potential of each child.

These institutions are often run or at least authorized by governments, and may be conducive to abuse in a number of ways: by removing children from protective and watchful factors like parents and community; by stigmatizing children as bad, inferior, abnormal, untrustworthy or unwanted; by setting up great power imbalances between children and caregivers; by providing insufficient monitoring and oversight, and insufficient screening of staff; by acting as a "total institution" where the child has little interaction with the outside world; and by limiting opportunities for the child to safely report abuse. (Law Commission of Canada, 2000)

Some of these institutions, like residential schools in Canada and Australia, have deliberately targeted Indigenous children. While some of these institutions have been

recently been closed, the education of Indigenous children in other countries continues to rely heavily on boarding-style schools (see e.g. ACHPR, 2005; UNICEF, 2003; Buadaeng, 2005; and previous section on “Education and Culture”). Additionally, Indigenous children and youth in many places continue to be disproportionately represented in out-of-home institutions connected to the criminal justice (see above) and child welfare systems (Law Commission of Canada, 2000; Bennett et. al., 2005; UNICEF, 2003; Law Reform Commission (Australia), 1986; ACHPR, 2005; AITPN, 2003). The over-representation of Indigenous children in child welfare systems and the lack of community control and cultural sensitivity within those systems are serious concerns.

For example, in 2001-2002, Indigenous Australian children were 6 times more likely to be in out-of-home care in the child welfare system (UNICEF, 2003). Approximately 30-40% of all children in the care of child welfare systems in Canada are Aboriginal (Indigenous), despite the fact that Aboriginal children make up only 4-5% of the Canadian youth population (Blackstock et. al., 2004; Bennett et. al., 2005).

To some extent, these figures speak to the high degree of destitution and breakdown within many Indigenous families, and this is an urgent area of concern. High rates of family violence and child neglect in a number of Indigenous communities is a real threat to the safety and development of Indigenous children, and requires greater governmental attention. In New Zealand, a Maori Taskforce on family (*whānau*) violence characterized violence in Maori homes as “an epidemic” (Second Māori Taskforce on Whānau Violence, 2004). The Secretariat of National Aboriginal & Islander Child Care in Australia has found that rates of abuse and neglect for Indigenous children across Australia are high (Pocock, 2003).

But there is also considerable evidence demonstrating that removing Indigenous children from their homes in large numbers – a practice occurring in some countries – is making things worse, not better, for both Indigenous children and their communities. While removal may be the best option in some cases, research from Canada and Australia shows that in-home support would be a far better response than removal for most Indigenous children (Bennett et. al., 2005; SNAICC, 2004). In all cases, it needs to be recognized that separated Indigenous children face substantial new threats in ‘the system’. They tend to experience a lack of permanence, feelings of not belonging and not being loved, and are sometimes exposed to further abuse (Bennett et. al., 2005). Additionally, Indigenous children removed from their families are usually removed from their culture, causing additional anxiety and loss, and rupturing the transmission of Indigenous culture and identity from generation to generation (Bennett et. al., 2005).

Abuse and neglect do not occur in a vacuum. A growing body of child protection research suggests that the main sources of child maltreatment risk to Indigenous children exist at a structural level, and not at the level of the family (Blackstock & Trocmé, 2004). In both Canada and Australia, neglect (rather than abuse) is the main

cause of child welfare involvement for Indigenous families, and SNAICC notes that neglect is “brought about by endemic inter-generational poverty, unemployment, homelessness and dispossession,” (Pocock, 2003). Responsibility for structural risks such as poverty-related neglect is often inappropriately placed at the feet of the family instead of with the state. In fact, excessive focus on the family over structural factors can impede the development of effective solutions, and exacerbate the mass removal of Indigenous children (Blackstock & Trocmé, 2004).

Beyond higher poverty rates, Indigenous peoples worldwide have disproportionately suffered many other kinds of trauma that can lead to family dysfunction, including armed conflict, displacement and land loss, cultural disintegration, and discrimination. Speaking about the experience of Canadian Indigenous families, the First Nations Child and Family Caring Society explains:

“The separation of children from their families coupled with the trauma of attending residential school has resulted in multi-generational grief and dysfunction in many [Indigenous] communities,” (Blackstock et. al., 2004).

“For us to deal with child abuse and neglect in our society today, we cannot pretend that the past does not exist, as the symptoms of today are the results of the past colonial practices of abuse.”

Comment from an Australian Aboriginal survivor of childhood abuse and poverty, whose father was forcibly removed from his own parents

Smallwood, 1995

Cultural differences in child care have also contributed to higher child welfare involvement. This may include the failure of non-Indigenous authorities to recognize the important role of extended family in many Indigenous communities and an associated “failure to recognize Aboriginal child care arrangements,” (Law Reform Commission (Australia), 1986).

Indigenous families and the organisations working closely with them lack the support they need to prevent the continued removal of Indigenous children from their families and communities, and to ensure that Indigenous children enjoy their rights to a healthy family environment. For instance, the Canadian government provides a “lack of in home family support for children at risk,” and “inequitable service access,” to First Nations children in comparison with other children (Blackstock et. al., 2004). The report of Judge Michael Brown in New Zealand found that there is often “great enthusiasm to devolve responsibility but not control” to Maori social service providers, and agencies have a real need for more training and program development (Brown, 2000).

In some regions, there are few reports about Indigenous children's experiences with child abuse and child welfare involvement. Unfortunately, this is likely not an indication that Indigenous children are free from abuse and neglect. In terms of child welfare specifically, some poorer countries may not have a well-developed child welfare system at all, may have a system that only addresses the most extreme cases, or the system may not operate in Indigenous regions. A report by the NGO Group for the Convention on the Rights of the Child analysed NGOs' "alternative reports" to the Committee on the Rights of the Child with respect to violence against children, commenting:

"The absence of data on violence in different settings or on different types of violence is a key issue. This absence does not necessarily mean a low incidence of violence. The low reporting can be due to many factors: problems of definition, lack of information, lack of awareness, cultural values, or indeed low incidence of violence. ... In certain regions, some types of violence are so prevalent that other forms may not receive adequate attention. [Given the variations in the reporting capacity of NGOs in different regions,] there is a compelling need to improve the reporting function as a whole." (NGO Group, 2006)

Considering what we know of the trauma, violence, cultural disruption and extreme poverty within so many Indigenous communities around the world, child abuse and neglect could be estimated as high.

In some places, child welfare involvement may be reported as minimal because authorities might be neglectful of Indigenous children and families, or affected by negative stereotypes and discrimination. According to SNAICC, this is what has happened in Australia's Northern Territory, despite laws on neglect:

"Indigenous children who are not having their most basic needs of food and shelter met are ignored by child welfare authorities who seemingly view their situation as 'normal' for Aboriginal communities and therefore 'acceptable'." (Pocock, 2003)

Indigenous children and youth have the right to grow up in strong Indigenous families, participating in their culture and community, free from abuse and neglect. To achieve this, it is important that states move to increase Indigenous self-government in child welfare; recognize cultural differences in child rearing and child protection practices; address the root causes of neglect and abuse; provide support to families to prevent the removal of children and promote healing; and place children within the same community/culture whenever possible if removal is necessary (see Blackstock & Bennett, 2002; Blackstock et. al., 2004; Bennett et. al., 2005; Law Reform Commission (Australia), 1986; SNAICC, 2004; Second Māori Taskforce, 2004).

### *Self-Harm: Substance Abuse and Suicide*

Substance abuse and suicide are two examples of extreme self-harming behaviour that occur with above-average frequency among Indigenous youth in many countries, and they speak volumes about the pain many Indigenous youth experience on an emotional and spiritual level. Common contributing factors include: experiences of childhood abuse or other trauma; unemployment, poverty and feelings of hopelessness; and feelings of inferiority or “lack of belonging” tied to Indigenous identity (see e.g. Wessendorf & Parellada, 2005; Cohen, 1999; Blackstock et. al., 2004).

#### **Indigenous Youth at Risk**

- Alcoholism has become a growing problem among the Ainu in Japan and the Indigenous peoples of Taiwan, including youth (Alderete, 1999; Cohen, 1999).
- Increased alcohol and other substance abuse among Indigenous youth and adults in Papua New Guinea is contributing to an increase in violence, crime, and inter-group armed conflict. (Cohen, 1999)
- In Micronesia and Samoa, suicide has become the leading cause of death for male Indigenous youth, and its rise coordinates with the onset of massive social disruption beginning in the 1950s. Male youth suicide in Hawaii is exhibiting a similar pattern. (Cohen, 1999)
- 22% of youth on Canada’s native reserves are “chronic solvent users” (Alderete, 1999). Indigenous youth in Canada’s Northwest Territory are 11 times more likely than other youth to have abuse solvents or aerosols and 3.5 times more likely to use LSD, speed, cocaine, crack, or heroin (see Blackstock et. al., 2004).
- Suicide rates among Indigenous youth in the United States are above average (Alderete, 1999).
- Both substance abuse and suicide are high among Indigenous youth in Australia. In New Zealand, Maori youth show higher rates of drug and alcohol abuse. (Cohen, 1999)

In many cases, substance abuse is embedded within the community the youth are raised in, causing serious problems for children’s safety and development whether or not children become users themselves. The African Commission’s 2005 report on Indigenous rights argues that substance abuse in Indigenous African communities at once comes from poverty and social breakdown and also contributes to these ills, feeding back into a cycle of despair. Furthermore, it is tied up in a number of issues that affect child protection and development. Speaking of the San in southern Africa, the Commission wrote:

“Alcoholism is both a symptom of marginalization and despondency, as well as a cause of poor health. Many people drink alcohol to deal with hunger. Alcohol-related trauma injuries are often presented at the clinics. Domestic violence is also a recurring crime, often linked to alcohol.” (ACHPR, 2005)

Indigenous children and youth exhibiting or at risk of self-harm require protection and support, which must be developed and provided in a manner that recognizes and respects their rights as individuals and as Indigenous people, and must be mindful of the structural and root causes of their actions. As suicide and substance abuse are intertwined so closely with other forms of marginalization and trauma within Indigenous communities, protecting Indigenous children requires a focus on prevention, cultural strength and community regeneration.

Under Article 33 of the *Convention*, states must “protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties.” The right to life, survival and development (Article 6), as well as the right to health and health care (Article 24) indicate that youth suicide should be an urgent matter of state concern. States must provide appropriate protection and support to Indigenous youth at risk of serious self-harming behaviours. Preventative and rehabilitative policies should be designed with substantial youth input and participation, and with broader Indigenous community ownership.

#### *Child Labour*

In his 1986 report, UN Special Rapporteur José Martínez Cobo wrote:

“By law, exploitative labour systems such as serfdom, debt bondage and the numerous types of compulsory personal services have generally been abolished. Despite legal provisions, however, there is evidence that such practices still continue today and that the victims very frequently include Indigenous people.” (Martínez Cobo, 1986)

Twenty years later, this statement is, shamefully, still true – and Indigenous children are often the victims of these and other forms of child labour. A recent report by Peter Bille Larson of the International Labour Organization (ILO) states that Indigenous children are over-represented in certain types of child labour, and particularly in the most hazardous types of work:

“There are indications of high numbers of worst forms of child labour among indigenous peoples in certain countries in South Asia, Southeast Asia and Latin America. Indigenous and tribal children are found to make up a large part of child labourers in certain risk areas, such as debt-bondage in South Asia, migratory agricultural wage labour in Central America and Mexico, and trafficking in Southeast Asia.” (Larsen, 2003)

ILO *Convention No. 138 (Minimum Age Convention)* and *Convention No. 182 (Worst Forms of Child Labour Convention)* are clear prohibitions against child labour in international law, ratified by the vast majority of states (ILO, 1973; ILO, 1999). In addition, the UNCRC affirms children's rights to be protected from exploitative labour (Article 31), to enjoy time for rest and play (Article 32) and to receive a good education (Articles 28-29). Like other children, Indigenous children and youth clearly have the right to be free from labour exploitation. Yet as Larsen's report makes clear, Indigenous children are disproportionately affected by child labour and particularly its worst forms.

Major causes of the higher incidence of child labour among Indigenous children are the high incidence of poverty; land loss and cultural disintegration; an absence of available, quality, culturally relevant education; and racial discrimination. Police and other officials may see some kinds of child labour performed by Indigenous children as "natural", while taking a more active response to other children in the same circumstance. In some places, a lack of "citizenship, national identity cards, or basic civil rights" for Indigenous peoples has put Indigenous children more at risk. For instance, one reason traffickers in Thailand are known to target Indigenous girls is because 70% of Thailand's hill tribe population lacks citizenship. (Larsen, 2003)

Across Latin America, disproportionate numbers of Indigenous children are combining work and school, and working without attending school at all (Hall & Patrinos, 2004). In Guatemala, there are almost twice as many Indigenous children in child labour as others, though they make up only half the child population nationally. They work in firecracker factories, agriculture, mining, quarrying, garbage picking, domestic service and other industries (UNICEF, 2003). Likewise, four times as many Indigenous Bolivian children aged 9 to 11 are working compared with non-Indigenous children (Hall & Patrinos, 2004). Many child labourers in Mexico are migrants, driven by poverty and loss of ancestral lands in the south to work in the plantations of the north (Larsen, 2003).

A number of Indigenous children, such as Manobo children in the Philippines, actually work as wage labourers on their own ancestral lands.

Larsen, 2003

A Philippino youth worker writes that Indigenous youth are often driven into marginal labour out of poverty, including work in agriculture, theft, and prostitution. Many leave home or even the country in search of employment (Raquel, 2005).

In South Asia, multi-generational debt-bondage persists in some areas, affecting the lowest castes and Adivasis (Indigenous peoples), in which children may inherit their parents' debt and/or are sold into what can only be called slavery. They work in mines, quarries, agriculture, and domestic service. The Indian states of Rajasthan, Orissa, Madya Pradesh, Andra Pradesh, Jharkand and Bihar are particularly affected. (Larsen, 2003)

Recruitment into armed forces and commercial sexual exploitation are also among the worst forms of child labour affecting Indigenous children disproportionately, and these are explored further in the sections on “Sexual Exploitation and Trafficking” and “Armed Conflict”, below.

“Child labour” describes work that is exploitative, dangerous, or compromises the child’s rights to education, play, rest and health. But as UNICEF notes, not all productive tasks performed by children are negative:

“[I]t is important to distinguish [from ‘child labour’] light work and tasks which, from a certain age and under appropriate conditions, are compatible with international standards and respectful of the child’s development and capacity. In many indigenous communities, light work such as this is considered to promote the child’s dignity and sense of responsibility.” (UNICEF, 2003)

As the ILO points out, the boundary between “light work” and “child labour” is at times unclear, and even more so in the case of Indigenous children. For instance, child labour is often contrasted with formal education, held up as the best place for all children to be. Yet we know that formal education has been a “double-edged sword” in Indigenous communities. Traditional forms of Indigenous education, which usually involve light work in the course of learning a traditional livelihood, are dramatically under-recognized. While traditional work/education practices should not be accepted uncritically, many are better adapted to local surroundings and livelihood options than formal educational systems, not to mention more closely connected to Indigenous culture and society. (Larsen, 2003)

On the other hand, governments, employers and others often try to justify exploitative child labour involving Indigenous children on the basis that such work is part of the children’s traditional culture. This is unacceptable. As the ILO’s report urges, there is a real need for greater “dialogue”, including “the voices of the children and their communities,” to establish meaningful boundaries between light and exploitative work, and to design appropriate education systems, in various Indigenous community contexts. (Larsen, 2003)

Children in exploitative work situations are generally stuck in extreme poverty, deprived of any real education, exposed to numerous health and safety hazards, and vulnerable to abuse of all kinds (UNICEF, 2003; Wessendorf & Parellada, 2005). Much more must be done to prevent child labour amongst all children, and particularly Indigenous children, who are more vulnerable to the worst forms of exploitation. A rights-based approach should be taken – considering Indigenous, child and labour rights – that addresses structural root causes.

### *Sexual Exploitation and Trafficking*

It is difficult to obtain accurate and detailed information on the sex trade and child trafficking. However what is known seems to indicate that disproportionate numbers of Indigenous children and youth are victimized by commercial sexual exploitation, which sometimes also involves human trafficking. UNICEF writes: "it is likely that significant numbers of children from indigenous groups are involved... Young girls from hill tribes and indigenous rural communities in Taiwan, Northern Thailand, Myanmar [Burma], China and other countries in the Mekong Delta are thought to be especially at risk." (UNICEF, 2003) While girls are most commonly involved, boys may be as well.

In Taiwan, Indigenous peoples represent only 1.6% of the population, but reports indicate that Indigenous girls and women comprise 20-40% of those involved in the sex industry. Young Indigenous girls in Taiwan are particularly vulnerable to the worst practices, including lifetime debt-bondage. (Larsen, 2003)

Adivasi (Indigenous) girls in India are also at high risk. There are reports of vast slave networks, especially targeting Adivasi girls from Bihar state, that transport girls around the country where they are sometimes auctioned off in open markets. Larsen's 2003 ILO report states:

"In India, abduction, trafficking of *Adivasi* girls linked to brothels, forced concubinage and the overall inadequacy of legal protection available to *Adivasi* women at risk of rape or trafficking requires urgent action. [Some writers] note that traffickers still continue to purchase *Adivasi* children and women openly, often a price cheaper than that paid to 'purchase animals'." (Larsen, 2003)

One researcher in Thailand found that poverty was the primary driving factor behind the entry of Indigenous youth into the sex industry, both male and female. Some were sold into brothels by very poor families, some had become 'street children' out of extreme poverty before ending up in the sex trade, and others moved from other forms of work loosely connected to the sex industry (such as waitressing in commercial sex venues) before being sexually exploited themselves (Buadeng, 2005).

Indigenous children are often at a higher risk of trafficking and commercial sex industry involvement outside Asia as well. For example, researchers found disproportionate numbers of Indigenous children and youth in Guatemala's sex industry (UNICEF, 2003). Neither are wealthy industrial countries immune. For instance, Indigenous youth, especially girls, form a disproportionate number of sex workers in Canada. Canadian studies have found that a number of social factors that contribute to a young person's risk of entering sex work disproportionately affect Indigenous youth, including extreme poverty, a history of sexual and physical abuse, drug use, and disconnection from one's family, community and culture (Blackstock et. al., 2004).

Not only do all sexually exploited children and youth experience sexual violence by definition, they are often exposed to additional serious violence – not uncommonly murder – and are at a high risk of contracting HIV and other diseases. States need to take their obligations to protect Indigenous children far more seriously if this violence is to be stopped and prevented.

### *Armed Conflict*

For a number of reasons, Indigenous children are at a higher risk of living in situations of armed conflict:

“Often indigenous communities become caught up in conflict because they occupy land with valuable resources, because their remote territories offer a base from which armed groups can operate and where the state is all but absent, or because they live on and around contested frontiers.” (UNICEF, 2003)

Armed conflict inevitably poses grave dangers to children, and may pose additional threats to Indigenous children due to racism and higher marginalisation:

“A study of minority and Indigenous children affected by conflict in Guatemala, Somalia and Bangladesh found children had experienced ‘physical injury and death; torture and rape; the witnessing of atrocities; separation from parents and community; lost access to health care, education and housing; eviction and forced displacement; the destruction of villages, crops and wells; and neglect during humanitarian relief and reconstruction programmes.’ ” (UNICEF, 2003)

Other risks include recruitment (sometimes forced), the trauma associated with having committed atrocities themselves, sexual exploitation by soldiers, an environment of general economic collapse, and cultural disintegration.

In north-east India, armed conflict and the associated use of “special powers” legislation has put Indigenous children at risk in a wide variety of ways. Not only have children been the direct victims of all kinds of violence, but the long-term presence of security forces has also contributed to increased child prostitution, labour, and drug use (CORE, c.1997).

In Colombia, Indigenous peoples are caught between opponents in contested territory covering their traditional lands. Children have been forcibly recruited, injured and killed, and their health has been seriously affected by herbicide spraying directed at eradicating drug cultivation. Communities have lost large amounts of land, causing greater poverty and social breakdown (UNICEF, 2003).

In Vietnam, many Indigenous peoples continue to face added discrimination because of their ties to American forces during the war of the 1960s and 70s. In addition, recent democratic uprisings in the central highlands region in February 2001 were met with government repression, causing internal displacement and an exodus of mostly Indigenous refugees into Cambodia. A “large number” of the displaced were “infants and small children”, and many others were older youth. Some refugees were repatriated against their will, and reports indicate that these, including children, faced serious persecution upon their return to Vietnam. (AITPN, 2001)

Some groups of Hmong in Laos are still considered enemies of the state, though the war in that region ended several decades ago. The Lao government often directs persecution at Hmong in general, including children.

- In December 2005, the government detained 27 Hmong, mostly children, who had been forcibly returned to Lao after fleeing to Thailand. As of May 2006, Amnesty International has been unable to contact or locate these children.
- In April 2006, Laotian government troops massacred a group of at least 26 unarmed Hmong, “mostly women and children,” who were part of a group living in hiding in the jungle.

Amnesty International, 2006

Grinding poverty can leave youth vulnerable to military recruitment by either side. Anger and frustration with government oppression against one’s Indigenous community, coupled with promises by rebel groups to right such wrongs, may also encourage youth to join armed factions. This has occurred to some extent in places such as the Philippines, India, Nepal and Guatemala. (Raquel, 2005; CORE, circa.1997; Tamang, 2005; CEH, 1999)

More often, Indigenous peoples and their children are caught in the middle. Nepalese Indigenous youth activist Luisang Waiba Tamang writes that Indigenous peoples in his country are “victimized both by the government and the [rebel] CPN Maoists” (Tamang, 2005). Isolated Indigenous communities may be forced to provide support to one side, and then will face violent attack by the other. This has certainly occurred in Nepal and Guatemala, among other places (Tamang, 2003; CEH, 1999). The perception of support for one side may arise any number of ways, but crucially it is perception, rather than reality, that instigates further attacks.

In other cases, violence specifically directed against one or more Indigenous peoples is a central aspect of the conflict. Conflict may revolve around seizing Indigenous land, or may be centred on racist group hatred.

The Guatemalan truth commission found that genocide (as defined in the *Genocide Convention*) was perpetrated by the state of Guatemala against the Mayan people, at least during the 1981-83 period of that state’s recent civil conflict. The genocide was

concentrated in certain highland regions, though “similar acts occurred and were repeated in other regions inhabited by Mayan people.” The abuses, and the ideology and authority behind them, exhibited “intent to annihilate the group, physically and spiritually.” (CEH, 1999)

The CEH describes some aspects of the genocide in this excerpt from their report:

“The Army’s perception of Mayan communities as natural allies of the guerrillas contributed to increasing and aggravating the human rights violations perpetrated against them, demonstrating an aggressive racist component of extreme cruelty that led to the extermination, en masse, of defenceless Mayan communities purportedly linked to the guerrillas – including children, women and the elderly – through methods whose cruelty has outraged the moral conscience of the civilised world. ...[T]he cultural rights of the Mayan people were also violated. The Army destroyed ceremonial centres, sacred places and cultural symbols. Language and dress, as well as other elements of cultural identification, were targets of repression.” (CEH, 1999)

A significant number of Mayan youth, particularly males, were coercively recruited into army organisations and forced to commit abuses against their own people. Thousands of Mayan children experienced terrible human rights violations of all kinds:

“The CEH has confirmed with particular concern that a large number of children were also among the direct victims of arbitrary execution, forced disappearance, torture, rape and other violations of their fundamental rights. Moreover, the armed confrontation left a large number of children orphaned and abandoned, especially among the Mayan population, who saw their families destroyed and the possibility of living a normal childhood within the norms of their culture, lost.” (CEH, 1999)

The ongoing situation in the Chittagong Hill Tracts (CHTs) of Bangladesh is another conflict in which Indigenous peoples, including children, are a central target. Despite the 1997 Peace Accord, Indigenous children in that region still face serious threats. The settlement of non-Indigenous people from the plains – sponsored by the government, in clear violation of the Peace Accord – has increased rather than abated, causing land loss, exacerbating poverty, and contributing to further conflict. Religious and ethnic discrimination is increasing in the region. (AITPN, 2003)

The rape of Indigenous Jumma girls and women continues to be widespread in the CHTs, often committed by the armed forces, law enforcement and illegal settlers. In 2001, the UN Special Rapporteur on Religious Intolerance indicated that these rapes are systematic, ethnically based, and designed to denigrate the whole Indigenous community by assaulting the ‘honour’ of its female members. (AITPN, 2003)

Indigenous children in the CHTs face other rights violations linked to the conflict:

“The indigenous children, especially in the Chittagong Hill Tracts, continue to face torture, rape, denial of freedom of association and assembly, violation of the right to life, denial of freedom of thought, conscience and religion, etc. There are no juvenile detention centres in the CHTs and all arrested indigenous children are kept in police or army custody or in normal prisons with the adults.” (AITPN, 2003)

In Sudan, many Indigenous Dinka, Nuer and Nuba children were killed, displaced, starved, and raped in the course of a two-decade civil war between north and south that has been only nominally resolved. In the 1990s, many Nuba were confined to “peace camps” where practices included the removal of children from their parents for Islamization programs, and sexual assault and mutilation of children and adults (Fein, 2002). “Abduction raids” during the war led to the capture, sale, and enslavement of thousands of Dinka children (Fein, 2002; Larsen, 2003). Based on these and many other incidents, some experts argue that state-sanctioned genocide was perpetrated against the Dinka, Nuer and Nuba of southern Sudan in the 1980s and 90s (in addition to the more recent genocide perpetrated by similar forces against other groups in the western Darfur region) (Feitlowitz, 2002).

Armed conflict involves terrible human rights abuses wherever it occurs. Distressingly, conflict seems to affect Indigenous peoples with greater frequency, due to factors beyond their control. Conflicts may also involve acts of greater savagery against Indigenous persons and communities, including children, because the confrontation may include a racist or even genocidal component. Indigenous children need immediate and urgent protection in these situations.

#### ***e. Identity***

Each Indigenous child has the right to recognition of their identity, including the right to a name, nationality, birth registration, and “as far as possible, the right to know and be cared for by his or her parents” (Article 7). Indigenous children also have the right to express and develop their personal and cultural identity, and to have their identity protected and respected. These basic rights are denied to many Indigenous young people, despite the requirements on identity in Articles 7 and 8 of the UNCRC, as well as the provisions respecting freedom of expression and the mass media in Articles 13-17, the right to a culturally-sensitive education in Articles 28-29, and the protection of culture, religion and language in Article 30.

Indigenous children’s most basic identity rights – to a name, birth registration and citizenship – are often officially unrecognized and/or repressed. In Morocco, the

Amazigh (Berber) people are forced to register their children with Arabic names rather than with their own Indigenous names (UNICEF, 2003; UNICEF, 2005). Birth registration rates are low in many Indigenous communities, and unregistered children may be precluded from receiving services, voting, or being counted in statistics. Only 21-45% of Amazonian children in Ecuador and Brazil are registered, while the national averages are 70-90% (UNICEF, 2003). Indigenous children are sometimes denied the right to citizenship that should be theirs from birth. As mentioned previously, over 70% of Thai Indigenous people lack citizenship (Larsen, 2003).

As discussed in the “Child Welfare” section, state interference through child welfare systems has often prevented Indigenous children from being raised by their own family (Article 7) and knowing their identity through their family relations (Article 8). The results of such policies for Indigenous children, and particularly during the adolescent stage, often involve drastic negative effects on all aspects of health and well-being. One Canadian researcher interviewed a number of First Nations adults who had been adopted as children into non-Aboriginal homes. “The major loss identified by the adoptees,” wrote Carriere, “was identity.” The loss of family origins, relationships, and First Nations culture contributed to a number of poor health outcomes, such as substance abuse, suicidal tendencies, anxiety, eating disorders, depression, running away, and particularly feeling unwanted, confused, “like an outsider”, and “wanting to belong”. (Carriere, 2005)

In many cases, states engage in a range of practices designed to stifle, restrict and control Indigenous children’s cultural, religious and/or political identity as Indigenous peoples. In China’s Xinjiang province, all Uighur people (the majority in this large, western region) face extremely harsh state repression, but in some respects children and youth are targeted even more severely. Minors (under 18) are specifically prohibited by law from participating in religious activities of any kind, and while religious rights are compromised across China, Xinjiang is the only place to have this absolute ban. Schools are often the site of repressive controls, where (traditionally Muslim) Uighur students can be expelled, and quite possibly worse, for possessing a Koran, praying, fasting, wearing a beard or headscarf, or even talking about religion. Xinjiani schools often engage in “clean-ups” to purge religious and “separatist” Uighur elements, as well as “special campaigns” to indoctrinate students against any hint of Uigher religious, cultural or political identity. Human Rights Watch found the Uighurs see religious persecution as an attack on their identity, particularly given the focus on children:

“For most Uighurs the paramount issue is not religion per se, but the perceived threat that religious repression poses to their distinct identity coupled with their acute feeling of being colonized. They view the tight restrictions placed by the Chinese authorities on Uighur Islam as an attempt to debase their very identity, as Islam is an essential component of their traditional identity and culture.” (Human Rights Watch, 2005)

State interference with cultural identity often begins with imposing restrictions on who the state will or will not recognize as being Indigenous or holding Indigenous rights. For example, using one single marker of Indigenous identity, either formally or informally, is limiting. An Indigenous student living in Denmark writes that language is relied upon too heavily in informal determinations of Greenlandic identity, effectively excluding Danish speakers such as herself (Chemnitz, 2005). Both Canada and the United States maintain race-based legislation that influences many aspects of Indigenous peoples' lives, and particularly gives blood-quantum criteria to determine which Indigenous individuals the state will recognize (Anaya, 2004). In India, the 'Scheduled Tribes' system fails to include many Indigenous peoples in its official list, and excluded groups are not accorded certain rights enjoyed by listed groups, are more marginalised, and face added pressure to assimilate (CORE, c.1997; Bijoy, 2001).

Many states attempt to control Indigenous identity in more subtle ways. For instance, a number of countries are increasingly commercializing token aspects of Indigenous culture to attract tourist dollars (Dean & Levi, 2003). This often involves expressive arts (dance, dress, music, visual art), naming (of hotels, streets), and in many cases not only ignores Indigenous cultural property rights but also distorts Indigenous identity, by freezing it in a false idealized past and accentuating isolated cultural elements.

State distortion and control of Indigenous cultural identity can be especially traumatic for Indigenous youth, who often confront complicated personal/cultural identity issues at this stage in their growth and development (see e.g. Wessendorf & Parellada, 2005). Youth need understanding and support from all sectors of society in this regard, and the freedom to define themselves with dignity and respect.

A member of a Phillipino Indigenous youth organisation warns that some youth, especially when isolated, can easily fall into 'traps' such as assimilation, where all aspects of Indigenous culture are regarded as inferior and rejected, or essentialism, where certain elements of Indigenous traditions are exalted but are frozen rather than living and dynamic (Raquel, 2005). Testimony from a Saami individual describes the feelings of inferiority, denial and shame that many youth experience:

"I soon learned that outside of school it was better for me to demonstrate my Sámi roots as little as possible. Despite that I was called 'Sámi devil' every day. I tried to pretend that I did not hear, but each time a thorn stuck into my heart, and eventually I carried inside me a whole forest of thorns. I tried to suppress my feelings and wrapped the thorns into all kinds of excuses, so they wouldn't hurt anymore. We Sámi in town learned fast that the best, and certainly the easiest, way to cope was to adapt, and as fast as possible become Swedish. Unfortunately, this drove many of us into self-denial. Once I saw some Sámi youths purposely avoiding their parents in order not to demonstrate their Sámi origin. It hurt me unbelievably, and filled me

with feelings of shame. To be absolutely honest, it could have been me, who felt forced to act the same way,” (Larsen, 2003, citing Terra Lingua 2001)

Negotiating an identity that is meaningful to themselves, to their Indigenous communities, and to the changing modern world is truly a difficult challenge for Indigenous youth. Many feel torn between Indigenous and mainstream cultures, which sometimes results in a feeling of “lack of belonging” (Wessendorf & Parellada, 2005). An Aymara student from Bolivia described herself as a “transformer” shifting between cultures, and wrote that for her, “being indigenous comes from a process of self-recognition,” (Madani, 2005).

In sum, Indigenous children and youth need greater official recognition of their very existence as individuals, and greater respect for their right to define their own cultural identity. States too often feel legitimized in interfering with the development and delineation of Indigenous children’s identity, to a degree they would not consider imposing on other citizens and which is unacceptable.

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## 6. State Reporting

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### *a. Insufficient and Unethical Data Collection*

States do not report sufficiently or accurately on the status of Indigenous children in part because of a lack of comprehensive, disaggregated data on the subject. States are themselves partly responsible for this lack of data, as are researchers associated with academic institutions, international organisations, and others.

Numerous international organisations have pointed to the seriousness of this problem. The World Bank, speaking of Indigenous peoples in Latin America, wrote that: “reliable and consistent data remain a problem. Better data are required in order to improve the analysis of the socioeconomic conditions of indigenous people,” (Hall & Patrinos, 2004).

The WHO has deplored the fact that there is no systematic collection of disaggregated data on Indigenous peoples and their health, and noted specifically the lack of information on mental health: “very few data exist concerning the mental health status and treatment needs of the indigenous peoples of the world,” (Alderete, 1999; Cohen, 1999). It found that what research does exist was often conducted without enough attention to cultural difference (Cohen, 1999).

UNICEF, in its latest *State of the World's Children* report, wrote that “reliable data on excluded and invisible children are usually in short supply,” despite the fact that good research is essential for figuring out root causes and developing effective solutions, not to mention in monitoring progress (UNICEF, 2005).

The seriousness of this problem for policy development is emphasized by Terry Cross, Executive Director of the National Indian Child Welfare Association in the United States:

“Currently, decisions about policy, funding and practice are not based on solid knowledge and accurate data... Tribes and agencies that serve American Indian and Alaskan Native children increasingly have empirically-based data and research needs that are mostly unmet.” (Cross, 2006)

Without a doubt the collection of accurate, detailed information, and the dissemination of such information, is crucial to understanding and ending violations against Indigenous children's rights. As the Venerable Bimal Bhikku, representative of the Chakma people in Bangladesh, said to the United Nations: “Currently, the truth of the situations is too often hidden. Our only force is truthful information. Our lives are menaced because our situations are often unknown.” (NACNYC, 1994)

UNICEF echoed these findings in a 2003 report on Indigenous children:

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“Good quality, disaggregated data are essential for planning, policy design and implementation and resource allocation. They are also indispensable for monitoring progress in the realization of indigenous children’s rights.” (UNICEF, 2003)

When information is available at all, it tends to wash over important differences between and among Indigenous peoples. Often these differences present a key to identifying particular risks and to understanding where policy is going right and where it is going wrong; they are crucial for helping governments and Indigenous peoples organisations to form working solutions.

For instance, important differences among Indigenous children in Canada may occur along numerous lines, including between First Nations, Métis and Inuit macro-cultural groups; between individual nations and communities; between “status” and “non-status” First Nations; between people living on-reserve and off-reserve; and between urban, rural and remote northern settings. Yet despite this diversity,

“Most studies explore the experiences of all Aboriginal peoples and fail to account for the significant differences amongst different cultural groups. Studies that do disaggregate the experiences of Aboriginal people suggest important differences in experience are evident.” (Blackstock et. al., 2004)

Researchers also tend to use simplistic, unreliable or inconsistent markers of who is ‘Indigenous’. The World Bank, in its recent report on Indigenous peoples in Latin America, recommends that a standardized list of questions be developed for that region that identifies ‘indigenusness’ on multiple levels, creating a more nuanced and consistent picture of Indigenous identity and reality. It advises that questions should be included on self-identification, language, community of residence, specific Indigenous group membership, etc. (Hall & Patrinos, 2004).

Not only is current data collection entirely insufficient, it is also frequently unethical. The majority of research *on* Indigenous communities fails to be conducted in partnership *with* Indigenous communities. The result is weaker research – as discussed, Indigenous peoples may see their history, reality and needs differently than outsiders – and a violation of Indigenous peoples’ collective intellectual property rights.

In the United States, Crazy Bull noted that there has in fact been a large volume of research on Indigenous peoples, but not much it has been useful to Indigenous communities:

“Native people in the United States are among the most researched people in the world. Outsiders have studied everything – our religions, our hunting practices, our sexual lives, and our health and education. Very little of that research has benefited us.” (Crazy Bull 1997: quoted in Cross, 2006)

Blackstock and Bennett wrote about this problem from their perspective within a Canadian Indigenous peoples' organisation:

“Research has long been the domain of the ‘privileged Westerner’, the ‘elite scientist.’ Research has been conducted on Indigenous peoples and their lands by ‘outsiders,’ ‘experts,’ ‘authorities,’ who have all too often dissected, labeled, dehumanized Indigenous peoples while acting as helpers in the colonial dispossession of Indigenous land and cultural heritage. Volumes of research and data and theory on Aboriginal people in Canada have been generated, but there is relatively little research that Aboriginal peoples have been able to determine for themselves.” (Blackstock & Bennett, 2002)

Action for Children and Youth Aotearoa reports that research in New Zealand is rarely in tune with Maori and Pacific Indigenous children and youth, and also highlights the disaggregation problems discussed above:

“[Despite some improvements] the amount of disaggregated data on children is still deficient. ...Available quantitative information uses an inconsistent variety of age ranges and does not describe the heterogeneity within Maori or Pacific peoples [and other minorities]; published information does not often reflect the values, experiences and views of Maori [or] Pacific people...nor of children and youth.” (ACYA, 2003)

Where reliable research does exist that was conducted with respect for the intellectual and cultural property rights of Indigenous peoples, it is too often confined to developed countries – i.e. the subject of research is usually Indigenous peoples within developed countries' boundaries, and the researchers usually hail from developed countries as well. Even in the culmination of this report, there are significant gaps in reliable information respecting Indigenous peoples from economically poor countries, countries in transition, as well as countries that are known to have high populations of Indigenous peoples but for whom little information is publicly available (e.g. China).

The “monumental goal” is to “decolonize the research process” (Blackstock & Bennett, 2002). As Terry Cross has argued, “Researchers must partner with communities in determining research questions, design, methodology, data collection, protocol, and ownership of data,” (Cross, 2006). Indigenous peoples need much more control over the research occurring within their communities, so as to ensure that these projects are respectful and return benefits to the their people and particularly to children and youth.

Surely if states have the responsibility to report on their implementation of the *UN Convention on the Rights of the Child*, then they have a correlative responsibility to collect accurate, disaggregated, ethical data to the best of their abilities so that they can report

fully on the *Convention's* progress and implementation with respect to Indigenous children.

### ***b. Biased and Incomplete Reporting***

Gaps in existing research are a genuine problem, but they cannot and should not be used by states as excuses either to delay efforts to implement and improve Indigenous children's rights or to fail to report on their status in monitoring procedures (see in part UNICEF, 2005).

For example, where independent NGOs monitor Indigenous children's rights, they have been able to document and report on numerous abuses – despite the absence of comprehensive national data and their limited economic capacity to research and address the situation, and in contrast to the silence and bias on these topics in many states' reports to UN committees.

The Asian Indigenous & Tribal Peoples Network (AITPN), an Indigenous peoples' NGO, is one example. In 2001, Vietnam submitted a periodic report to the UN Committee on the Elimination of Racial Discrimination that denied the very existence of any racism in the country. The AITPN submitted an independent report to the Committee in its wake. Unsurprisingly, given the premise of Vietnam's report, AITPN found that, "Vietnam's periodic report contained insufficient data on health, education, welfare and other social and economic conditions of life of the different ethnic minority or indigenous groups," (AITPN, 2001). Yet even without access to comprehensive statistics, AITPN was able to pull together enough quantitative and qualitative data to reliably catalogue a litany of abuses against Indigenous and minority peoples' rights, including children's rights.

AITPN also submitted an alternative report in 2003, in response to Bangladesh's periodic state report on the UNCRC. They found that the Bangladeshi government report "provides little information about the status of the children belonging to most vulnerable sections of the society – 'indigenous tribal peoples' (herein after referred to as 'indigenous peoples')," (AITPN, 2003). As before, AITPN's effort demonstrates that reporting is possible, even without full data, but the government's submission was biased or silent on key issues.

In fact, the Bangladeshi government's submission specifically used the lack of complete data as an excuse for non-reporting, particularly on Indigenous peoples, writing: "In view of the absence of systematic national-level data collection mechanisms in many areas (especially the 'Special Protection' areas), however, it has not been possible to include all the requested information," (AITPN, 2003, citing the Bangladeshi government's submission).

This kind of blanket excuse for biased and incomplete reporting on Indigenous children is unacceptable. To begin with, states hold responsibility for the lack of “systematic national-level data collection” in the first place, and their failure to perform this task is an all too convenient excuse for non-reporting later on. Second, independent reports such as those by AITPN and many other NGOs show clearly that reasonable reporting is possible – if an honest effort is made – even without complete statistics. The main obstacle to monitoring and improved implementation is not the lack of data; as AITPN put it, Bangladesh was “economical with the truth” in their reporting on Indigenous children’s rights (AITPN, 2003).

Clearly the role of independent NGOs in the monitoring process is critical. The *UN Convention on the Rights of the Child* is in fact the only core UN human rights treaty to specifically welcome “other competent bodies” besides states to participate in the official reporting process (Article 45(a) of the UNCRC; see also CRC/C/90, Annex VIII). NGOs can make written submissions, and may be invited by the Committee to participate in the pre-sessional working group in Geneva in person (CRC/C/90, Annex VIII).

However, the cost of travel to Geneva is prohibitive for many NGOs, particularly Indigenous peoples’ organisations, and no funding is available (NGO Group for the Convention on the Rights of the Child, 1998; Blackstock, 2006). This prevents many groups from being able to participate fully in the monitoring process.

Other barriers to greater independent monitoring include: a lack of expertise and experience in making official UN submissions among NGOs, particularly Indigenous peoples’ organisations; a lack of resources to prepare such reports among NGOs, particularly Indigenous peoples’ organisations; and a lack of focus on Indigenous children among non-Indigenous NGOs both national and international (see, re. NGO reporting capacity generally, NGO Group, 2006). Some governments may also try to prevent Indigenous peoples’ organisations and other human rights organisations from travelling to Geneva to make such presentations, if they perceive Indigenous organisations as a threat to their political authority or reputation.

More flexibility in NGO reporting procedures, such as video conferencing capability, as well as support programs to assist organisations to develop their reporting capability, would increase the participation of Indigenous peoples’ organisations and other NGOs. The encouragement of greater independent monitoring would make the reporting process more effective and more meaningful, and would improve state accountability.

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## 7. Roles and Responsibilities

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### a. Governments

The *UN Convention on the Rights of the Child* is legally binding on state parties. States who have ratified the treaty – 192 countries, more than any other core human rights treaty – must take seriously their obligation to implement it to the fullest extent of their capability (for ratification lists see <[www.ohchr.org](http://www.ohchr.org)>). States that have not ratified the *Convention* should be encouraged to do so.

Full implementation must apply to all children, including Indigenous children. To implement the UNCRC unequally, arbitrarily, or minimally goes against its spirit, purpose and intent, and constitutes discrimination against children, prohibited in Article 2 of the treaty itself. State governments have the responsibility to ensure that Indigenous children's rights, as outlined in the UNCRC, other international human rights treaties, and national human rights legislation, are fully protected and promoted not just on paper but in reality, on the ground.

Weak excuses for state failure to realize Indigenous children's rights cannot be tolerated. A lack of resources is usually an insufficient excuse: states have the responsibility to implement rights to the *maximum extent possible* given realistic resource constraints (Article 4). An alleged "lack of resources" cannot explain why Indigenous children are systematically more disadvantaged than others even in poor countries such as Guatemala, India or Botswana. And it cannot explain why Indigenous children even in the wealthiest countries like the United States and Australia do not have their basic needs met.

Evasion of legal responsibility is also unacceptable. For instance in some countries, jurisdictional tug-of-wars between different levels of government are routinely used to avoid responsibility for Indigenous children. In one example, the federal Canadian government refused to recognize any Indigenous peoples in Newfoundland for decades after that province entered confederation in 1949, claiming the province had the duty to provide basic services though that is contrary to the usual Canadian arrangement (Wetzel, 2005). Parties to the UNCRC take on the responsibility to make sure rights are realized, and must work in cooperation with local levels of government – including Indigenous authorities – to do so.

The responsibility of state governments to work in honest and respectful partnership with Indigenous peoples' organisations in their implementation of Indigenous children's rights is the linchpin of all their obligations. The strength, self-determination and well-being of Indigenous communities are absolutely crucial to the realization of Indigenous children's rights. States need to work with Indigenous peoples' organisations towards

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these broader community goals, as well as work in partnership to achieve specific results for children.

Parties to the UNCRC also take on a legal obligation to monitor their progressive implementation of children's rights and to report to the Committee periodically, in accordance with the guidelines provided in the treaty itself and as provided by the Committee.

State monitoring and reporting must be complete, honest and unbiased. Monitoring efforts must give full attention to Indigenous children, including the collection of data that is reliable, disaggregated, and conducted in partnership with Indigenous communities. Likewise, state reports to the Committee should fully address issues pertaining to Indigenous children and young people, whether quantitative data is available or not.

### ***b. Non-Indigenous Organisations***

International, national and local non-governmental organisations (NGOs), as well as official international organisations like UNICEF and others, have an important role to play in monitoring and reporting on the UNCRC, and in its implementation as well.

Independent monitoring is crucial to the success of the UNCRC and children's rights generally. Non-governmental actors have valuable contributions to make in this regard, particularly in providing accurate, unbiased information to the Committee that includes alternative viewpoints or additional issues not fully considered in a state government's report. Non-Indigenous NGOs should give full attention to Indigenous children in both economically developing and developed countries; unfortunately, government neglect and abuse towards Indigenous children is acute across the board.

Unfortunately, non-Indigenous NGOs have too often either ignored the situation of Indigenous children in countries where they worked or even been active in the colonization and oppression of Indigenous peoples. This is particularly true of some proselytizing faith based NGOs which sought, and in some cases still seek, the conversion of Indigenous peoples, sometimes in a *de facto* exchange for the provision of basic services. Another barrier at present is that UNICEF's service mandate covers only developing countries, even though human development indicators for Indigenous children in industrialized countries are comparable with those in much poorer regions (Blackstock, 2006; Blackstock et. al., 2004).

NGOs need to take account of these uncomfortable facts, and move towards greater partnership with Indigenous peoples and their organisations. Better inclusion of Indigenous peoples within existing structures is one starting point. For instance, the UN

Committee on the Rights of the Child has no Indigenous members at present, and most of the international child rights NGO community is currently populated, by and large, by Western, non-Indigenous personnel.

Vigilance by non-Indigenous NGOs towards Indigenous children's issues is especially important given the fact that very few Indigenous peoples' organisations have been able, thus far, to take part in the UNCRC's monitoring and reporting process, due to financial and other constraints. Non-Indigenous organisations should attend to Indigenous children and young people in their research and monitoring efforts, and particularly in any "alternative reports" submitted to the Committee as part of periodic state reporting procedures. These efforts should be conducted in partnership with Indigenous peoples and their organizations.

Organisations involved in service delivery, advocacy and other activities that could directly improve the actual implementation of the *Convention* should take care to ensure that their activities take Indigenous children and young people, and particularly their rights and unique needs, into full account. Again, these kinds of efforts require partnerships with Indigenous communities, organisations and representatives.

As it stands, Indigenous children are often "invisible" not only to governments but also to most non-Indigenous NGOs, and this contributes to ongoing discrimination and disadvantage. Non-Indigenous organisations need to recognize these obstacles and past negative practices, and work towards new kinds of relationships with Indigenous communities based on respect and equality. More thoughtful attention must be paid to all research, monitoring, reporting and implementation initiatives that affect (or should affect) Indigenous children and young people.

### ***c. Indigenous Peoples' Organisations and Community Leaders***

Indigenous children's rights are intimately connected to the rights enjoyed by their Indigenous communities overall. Fulfilling the promise of Indigenous children's rights necessarily involves a greater degree of control and autonomy over children's lives moving from the state level to the Indigenous community level. It requires that Indigenous Elders, representative leaders and organisations, and other types of Indigenous organisations are fully included at all stages of planning and decision-making.

"[T]he most effective initiatives [for Indigenous children] help to develop community autonomy and empowerment, promote local indigenous languages and customs, respect traditional social structures and recognise the important role of indigenous leaders in defending and promoting the rights of their communities' children."

UNICEF, 2003

Elders occupy a very special position within many Indigenous traditions. Noelí Pocaterri Uliani, a Wayruu activist and community leader from Venezuela, made these comments on the role of Elders for her people:

“In our vision of the world, it is not possible to speak of a family without restoring the role of our elders as the spiritual guide, as the standard for our conduct.” (NACNYC, 1994)

One author who examined the development of modern institutions of customary law among the Nisga’a of western Canada and the Sámi of Scandinavia noted that Elders are “transmitters and keepers of valuable knowledge derived from tradition.” For this reason, he found, Elders and their knowledge are indispensable for communities trying to cope with new challenges, who are figuring out ways to keep their culture alive while at the same time thrive within a globalized world. (Svensson, 2002)

Indigenous Elders have an important role to play in positive Indigenous child and youth development. For example, Elder/youth camping programs are being used by Canadian Inuit communities to build positive youth identity, pass on traditional knowledge, and improve mental, physical and spiritual well-being. (Buscemi, 2005)

Elders can also help empower and prepare youth to take a leadership role in efforts to realize their own human rights. In the Filippino Cordillera, Elders and youth came together on “Cordillera Day 2004” for a productive and symbolic meeting. The Elders shared information and knowledge with the youth, and the youth committed to carrying their people’s struggle for self-determination and human rights forward. (Raquel, 2005)

Indigenous peoples’ representative organisations and leaders also have vital roles to play in the realization of Indigenous children’s rights. State governments need to work in partnership with them, building relationships of trust and respect; this crucial requirement lies at the heart of self-determination, and is essential for the realization of Indigenous children’s rights.

The principle of self-determination, outlined in the “Introduction”, means that Indigenous peoples need greater control over all aspects of their lives. The need for self-determination in education, health care, child protection, official identity markers, and all other areas is crucial for the achievement of serious improvements in respect for Indigenous children’s human rights. Self-determination requires new kinds of relationships – relationships built on respect, responsibility and reconciliation – between Indigenous peoples’ representative organisations and leaders with state governments, NGOs, and other actors.

Other Indigenous peoples’ organisations – besides Elders and community representatives – also have vital roles to play. These groups may have expertise in a

particular area, bring more Indigenous voices to the table, and advance key issues. Many of these groups are addressing urgent, unmet needs. In particular, there is a critical need for meaningfully resourced Indigenous peoples' organizations to focus on human rights advocacy for Indigenous children and youth, especially in an environment where both states and non-Indigenous NGOs have contributed in various ways to the subjugation of Indigenous children and the failure to realize their rights. There is currently a dearth of this type of infrastructure, as evidenced by the fact that the formation, in 2005, of the UN Sub Group on Indigenous Children and Young People within the NGO Group for the UNCRC, signalled the development of the *first ever* international focal point on Indigenous child rights – and it runs on a volunteer basis with very limited resources.

While states have the ultimate responsibility for ensuring that the human rights of Indigenous children and youth are implemented and respected, this can only be done through equal partnership with Indigenous peoples' organisations, including Elders, representative leaders and organisations, and a variety of other Indigenous organisations. Such partnerships need to be built in the spirit of friendship and good faith if children's rights are truly to become a priority and a reality.

#### ***d. Child and Youth Participation***

Children and youth have the right to participate in decisions made about them, in efforts to realize their own rights and opportunities, and in expressing their point of view. These rights, to be enjoyed in ways that are commensurate with the child's maturity and abilities, are outlined in Articles 12-17 of the *UN Convention on the Rights of the Child* and form part of the overall spirit of that treaty.

Youth have already taken the lead in many cases, demonstrating their compassion, concern, and capacity. Yet they need far more support from governments, and an immediate cessation of all repression of their activities. States must also avoid tokenism in youth representation, by involving Indigenous peoples' organisations in the selection, support and participation of Indigenous young people.

At the local level, Indigenous youth are coming together to work for their most urgent needs in education, health and well-being, protection and identity. In the Canadian Arctic, Inuit youth are working within their communities to create innovative educational and counselling programs to help youth develop their cultural identity and combat the scourges of depression and suicide (Buscemi, 2005). In Bangladesh, Indigenous youth from the Hill Students Council lobbied the Prime Minister's office to improve the quality of their education, such as by introducing bilingual education, removing discriminatory remarks in school textbooks, and including lessons on regional and Indigenous history (AITPN, 2003).

Indigenous youth have also begun organising nationally and internationally. There are national Indigenous youth meetings, such as the annual *Encuentro Nacional de Jóvenes Indígenas* [National Meeting of Indigenous Youth] in Venezuela, and national youth organisations, such as the Indigenous Peoples' Youth Forum in Nepal (UNICEF, 2005; Tamang, 2005). In 2005, 181 youth from all over the world met in Vancouver, Canada, for the Second International Indigenous Youth Conference (see box below for Declaration excerpt; Indigenous Affairs, 2005).

Even young children can participate in important ways, usually with the support of adults. In Indigenous communities in Venezuela, 65 children's committees have started up in less than three years, with the support of women's groups. The committees work with adult support, but children take a leadership role. Some have achieved major successes: keeping more children in school by working informally one-on-one, reducing mortality rates in a disease outbreak through public theatre education, building a soccer field in one community, and getting access to clean water at a local school. (Blanchet-Cohen & Fernandez, 2003)

**Declaration of the Second International Indigenous Youth Conference**  
Vancouver – August 2005 (excerpts)

"We...join our voices with all Indigenous youth in movements to ensure that we are heard in all struggles to stop the destructive impacts of globalization on our lands, cultures and peoples."

"We affirm the inherent right of Indigenous Peoples to self-determination and embrace our responsibility as caretakers of Mother Earth. It is with these rights and responsibilities guiding us that we commit to work in solidarity for the betterment of our peoples and the protection of our land and cultures."

"We reaffirm our intrinsic responsibility to future generations in consolidating and sustaining the continuity of our collective and unique values, spirituality and principles..."

Source: *Indigenous Affairs*, iss.3/4, 2005

Incredibly, some youth have been able to turn their most painful experiences – such as education in boarding schools removed from family and community, living in poverty and alienation in urban slums, and surviving through the horrors of armed conflict – into opportunities to build a stronger identity and improve their own and their community's well-being.

In Chiang Mai, Thailand, Indigenous youth at boarding schools are far from life in their villages. But despite cultural and physical isolation, they have used this opportunity to build "pan-Hill Tribe networks", broadening Indigenous solidarity in the region. These youth are "learning and creating new livelihood options and developing their own

organizations and networks to solve the problems they face," writes an interviewer. "This creates a social and political space for better living in the city," (Buadaeng, 2005).

In the poor barrios on the outskirts of Bariloche, Argentina, many Mapuche migrants find their Indigenous identity gets lost in city life, amid poverty and isolation from traditional community institutions. But some youth are creating new expressions of Mapuche culture and identity that are meaningful for them in this new context. Mixing traditional Mapuche music and symbols with those of punk and heavy metal has reinvigorated a sense of continuity with Mapuche identity and history for these young people, and has provided opportunities to come together to work towards concrete goals such as supporting the local school or health centre. (MapUrbe Communication Team, 2005)

In Guatemala, a stronger pan-Mayan identity has emerged from the fire of war, partly due to the displacement of large portions of the population from individual villages to remote mountains, cities, and refugee camps. Remarkably, a number of today's community leaders in some of the worst affected areas were themselves children who witnessed and survived the conflict directly. (CEH, 1999)

There can be no doubt that Indigenous children and youth are already active participants in efforts to implement their own rights. However, they need to be included and supported by adults, and particularly governments, more systematically, more fundamentally and more frequently.

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## 8. Conclusion

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The rights outlined in the *UN Convention on the Rights of the Child* and other human rights documents need to become a reality for all children. Children are at once the most precious and the most vulnerable members of society. They deserve better.

Ratification of the *Convention* by states is intended to signal they will observe all the rights it contains, within their respective capacity to do so. But too often the rights of Indigenous children are still not upheld by states even when state capacity exists. There is an international pattern of increased tolerance to the disproportionate and unnecessary risks faced by Indigenous children, risks that place the very existence of Indigenous societies at risk.

As it stands, Indigenous children and young people are being consistently left behind. Their rights are violated, unimplemented, and applied in ways that are blind to their cultural identity or that even try to obliterate that identity and their communities' existence.

The rights and principles outlined in Articles 2 and 30 of the *Convention* – non-discrimination and respect for cultural diversity – need to be taken seriously. The routine violation of these fundamental rights against Indigenous children has led to widespread violations of all their other rights, in education, health, protection, identity, participation, and more.

In 1995, governments proclaimed memorably in the Beijing Declaration that “women’s rights are human rights,” (UN Fourth World Conference on Women, 1995). In the same vein, the messages that Indigenous rights are human rights, and children’s rights are human rights, need to be made clear.

In some Indigenous cultures, the concept of a ‘right’ is intrinsically linked to reality in actual fact – it does not describe a distant goal. Entitlements and duties must exist in practice (Blackstock, 2006). Arguably, the *UNCRC* is also meant to describe unalterable standards; we cannot allow it to become a mere dream, we need to hold fast to the promises it makes.

Looking forward, state governments need to work in partnership with Indigenous children and youth, Indigenous peoples’ organisations and leaders, non-governmental organisations and international bodies to build a new foundation, based on respect for human rights.

Indigenous peoples, despite so much suffering, have not given up hope for their children and their communities. Rigoberta Menchú Tum, Guatemalan Mayan activist

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and global Indigenous rights advocate, spoke these words of hope for Indigenous children at a conference for Nobel Peace Prize Laureates:

“Well, I don't want to tell you what you can give, but you have to give all that you can give. Conviction is not enough. It is not enough to be conscious of the problems of the world; how we involve ourselves in their solution is the most important thing. So, let us once again believe in the children, in the youth. Let us once again believe in indigenous peoples. Let us once again believe in the people who can promote dialogue in search for peace.”  
(Menchú Tum, 1998)

The UNCRC proclaims the world's convictions on child rights, but it is not enough. A bright future is only possible for Indigenous children and youth if we “involve ourselves in the solution.” Rights must become reality.

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