

# **Submission in relation to General Assembly Resolution A/RES/66/141 on the Rights of Aboriginal and Torres Strait Islander Children in Australia**

## **By the Indigenous Working Group of the NGO Group on the Rights of the Child**

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The Sub Group on Indigenous Children and Young People (ISG), officially formed on 24 October 2005, is the first international focal point with a primary aim of researching, and addressing, the pervasive and persistent rights violations experienced by Indigenous children, young people and their families worldwide. The ISG works towards the full and proper enjoyment of human rights by Indigenous children, young people and their families taking into account the specific role of their families and communities.<sup>i</sup> We welcome the opportunity to contribute to the Secretary General's Report for the General Assembly's consideration of the rights of the child, with specific focus on the rights of Indigenous children.<sup>ii</sup>

### **Human Rights of Indigenous Children**

Human rights violations experienced by Indigenous children are at crisis point. *"Indigenous children consistently number among the most marginalized groups in society and are frequently denied the enjoyment of their rights, including the highest attainable standard of health, education, protection and participation in decision-making processes that are relevant to their lives."*<sup>iii</sup> Indigenous children experience multiple forms of discrimination - as children, as members of an Indigenous group and frequently as impoverished people - deepening their invisibility and compounding the violations of their human rights across the spectrum of civil, political, economic, social and cultural and linguistic rights. While there has been growing awareness of, and progress towards, recognising and affirming the human rights of Indigenous peoples and the rights of children, human rights violations impacting Indigenous children have remained largely invisible and unaddressed.<sup>iv</sup>

### **Survival and Development**

The extent of poverty experienced by Indigenous peoples across the world remains immense. In New Zealand, just over half of the 200,000 children experiencing poverty are Maori or Pasifika, suffering hardship rates 2 to 3 times higher than other groups.<sup>v</sup> Indigenous poverty ranges from between 40 to more than 50% across Australia, whether for remote or urban areas.<sup>vi</sup> This experience is transferred to Indigenous children, who become locked into a cycle of impoverishment and exclusion. The devastating consequences for children are illustrated through high child mortality and health concerns, alarming levels of child removal from their homes, most commonly for neglect, gross over-representation in juvenile detention and high rates of homelessness, substance abuse and suicide. The Federal Court of Canada recently ordered a full hearing to determine if the Canadian Government is racially discriminating against Indigenous children by providing inequitable child welfare services contributing to record numbers of Indigenous children being removed from their families and placed in foster care.<sup>vii</sup>

Education is a right in itself and also an enabling right to assist people to develop the skills, capacity and confidence to secure other rights: Education *'creates the "voice" through which rights can be claimed and protected.'*<sup>viii</sup> It has particular application for Indigenous children, such that *"Indigenous peoples have the right to establish and control their own schools and to provide education in their own languages through culturally appropriate methods."*<sup>ix</sup> Education is also intrinsically connected to the right to culture, where children play a fundamental role as the bearers and transmitters of cultural values from generation to generation while education development aims to transmit and enrich common cultural and moral values in which individuals find their identity and self worth.<sup>x</sup> This has caused grave concerns where the content and object of education contributes to the unwanted assimilation of Indigenous peoples into mainstream society and to the eradication of their cultures, languages and way of life.<sup>xi</sup>

Despite its importance for shaping positive change for fulfilment of the human rights of Indigenous peoples, structural barriers to accessing the right to education remain. Appalling rates of exclusion are experienced in many areas: 83% of males and 97% of females illiterate among the H'Mong community in Vietnam<sup>xii</sup> and 75.6% of Dalit girls in Nepal illiterate, compared to the national average of 53.2 %. In the Mushahar Dalit community, there is barely 9% literacy for girls.<sup>xiii</sup> Gaps are experienced across all layers of the right to education underpinned by

structural discrimination. This takes the form of: exclusion due to cost of schooling; lack of transport or otherwise lack of availability of schools in Indigenous populated areas; lack of adequate supplies, funding and teachers; poor infrastructure and teaching quality; lack of access to good quality mother-tongue based bilingual education; culturally inappropriate curricula and teaching methods; and direct discrimination of Indigenous children in schools.<sup>xiv</sup> This leads to poor educational outcomes. As the UN Independent Expert on Minority Issues recently asserted: “Disproportionate educational outcomes along racial, ethnic or religious lines must be considered evidence of discrimination that implicates the state responsibility for the promotion and protection of these rights.”<sup>xv</sup> These same trends are seen in developed countries such as Canada where repeated reports have confirmed the under-funding of education and schools for Indigenous children.

### **Protection**

All children have the right to grow up free from all forms of physical or mental violence, injury or abuse, neglect, maltreatment or exploitation.<sup>xvi</sup> Indigenous children, however, are frequently over-represented among children who come into contact with child protection systems and amongst those who have experienced maltreatment and neglect. Despite the higher needs of indigenous children and families, child protection services in many countries are often inequitable and culturally inappropriate. The extent of violence against Indigenous girls and boys however is unknown, with little data available, as confirmed by the Report of the International Expert Group Meeting on Combating Violence against Indigenous Women and Girls recently in relation to violence against Indigenous women and girls.<sup>xvii</sup> As the Special Rapporteur on the Right to Education has reinforced, he “deplores the fact that violations of the rights of indigenous girls, especially racial violence, forced pregnancies, sexual assault and forced sterilization, are allowed to continue without the States concerned tackling the situation head-on.”<sup>xviii</sup>

Violence against the child, child abuse, neglect and exploitation are also often a symptom of the dislocation and despair in many Indigenous communities. This is a direct consequence of environmental degradation, displacement, prolonged discrimination, exploitation, forced assimilation and even genocide under colonialism. Long term consequences of this crisis are devastating, with for example, Indigenous children removed from their homes at 10 times the rate of non-Indigenous children in Australia and 6-8 times in Canada.<sup>xix</sup>

Weak protection under the law and access to effective legal remedies also are noted and at times denied in Indigenous communities around the world.<sup>xx</sup> Gross underfunding of culturally appropriate juvenile justice systems for Indigenous children, lack of prevention focused programmes, inadequate training of law enforcement officials and discrimination resulting in increased targeting and harassment by police and higher incarceration rates of indigenous youth are all cited issues of concerns that serve to deny Indigenous youth their right to justice under the law. Over-representation in the juvenile justice system has been deemed a national crisis in Australia<sup>xxi</sup> with Indigenous children 26 times more likely than non-Indigenous children to be in detention.<sup>xxii</sup>

More broadly, the violence perpetrated by the State and non-state groups against Indigenous peoples in remote areas to exploit natural resources has intensified effects on children that requires redress. Child trafficking and child labour are other critical areas which poverty and weakened state protection leave Indigenous children particularly exposed to.

### **Recommendations**

The rights articulated in the UN Convention on the Rights of the Child (CRC), The CRC General Comment 11, and the UN Declaration on the Rights of Indigenous Peoples (Declaration) provide a powerful framework to reflect on current policies, and to develop and implement, community driven and owned strategies to enable Indigenous children to realise their rights. Improving the

rights of Indigenous children is also one of the best ways to promote the rights of all members of Indigenous communities and thus ensure the perpetuation of their way of life.<sup>xxiii</sup>

Despite major advances in human rights and the support of numerous human rights mechanisms in recent years, there remains a broad, persistent gap in the focus of international human rights monitoring mechanisms concerning the rights and needs of Indigenous children.<sup>xxiv</sup> The few bodies that promote and monitor Indigenous human rights or children's rights sufficiently prioritise children and have inadequate resources to ensure the promotion and protection of the rights of Indigenous children. We note for example that the UN Committee on the Rights of the Child does not have identified Indigenous membership and experiences significant resource challenges in fulfilling its monitoring role. This gap is reiterated at the domestic level around the world, with very few mechanisms or bodies that raise the voice of, advocate for or represent Indigenous children and youth. Too often, Indigenous organisations also face strong resistance from States when they attempt to redress rights violations of Indigenous children.

Effective strategies to overcome poverty of Indigenous children and youth must respect self-determination of Indigenous peoples, support meaningful Indigenous community participation, be adequately resourced and informed by the best evidence. These strategies must ensure the protection and preservation of the identity of Indigenous children and provide children with a clear pathway out of poverty that respects their dignity, rights, culture and languages.

### **Recommendations**

1. States must ensure that domestic laws, policies and practices affecting Indigenous children are in full accord with their obligations under international human rights treaties and declarations paying particular attention to the United Nations Declaration on the Rights of Indigenous Peoples, the United Nations Convention on the Rights of the Child, and the United Nations Convention on the Elimination of all Forms of Racial Discrimination. They should be guided by General Comment No. 11 of the Committee on the Rights of the Child (2009), which relates to Indigenous children.
2. Working in full partnership with Indigenous peoples, all States are urged to prioritise establishment of independent, properly resourced and empowered national children's commissions, with an Indigenous Commissioner, in compliance with the Declaration [including articles 3, 4, 5, 19, 21, 22 and 23], to develop a culturally appropriate national agenda to ensure the full enjoyment of collective and individual human rights by Indigenous children.
3. All States are urged to take all legislative, administrative and financial measures to ensure that Indigenous peoples have access to Indigenous community controlled services, including health, early childhood, and children and family support services, in compliance with articles 3, 4, 8, 9, 14, 18, 21, 23 and 24 of the Declaration.
4. All States are encouraged to develop a plan for full incorporation of the Declaration into national law and policy, with particular attention to the fulfilment of the rights of Indigenous children in accordance with article 38 of the Declaration.
5. In particular, States are also encouraged to ensure that all legislative, administrative, financial and other processes recognise the special measures required to ensure that Indigenous children enjoy the rights contained in the Convention on the Rights of the Child on an equal basis with all children. In implementing their legal obligations under the CRC in relation to Indigenous children, all states parties should recognise the guidance provided by the Declaration.
6. In order to complement and strengthen existing domestic mechanisms to protect Indigenous children's rights, all States take urgent action to ratify the Third Optional Protocol to the UN Convention on the Rights of the Child, to provide a complaints mechanism for violations of the rights of children.
7. International human rights monitoring mechanisms are urged to incorporate Indigenous youth as a priority issue. In particular, we recommend that:
  - the Permanent Forum focus its 12<sup>th</sup> session on children and youth in state custody;

- The Special Rapporteur on the Rights of Indigenous Peoples conduct a study on global poverty and Indigenous children;
- The Committee on the Elimination of Racial Discrimination conduct a thematic discussion on discrimination against Indigenous children; and
- UNICEF focus the next State of the World's Children Report on Indigenous children.

<sup>i</sup> See <http://www.isg-ngogroup.org/about.html> and <http://www.childrightsnet.org/NGOGroup/>

<sup>ii</sup> Resolution A/RES/66/141 <http://www2.ohchr.org/english/bodies/crc/CRCIndigenousChildren.htm>

<sup>iii</sup> UNICEF (2003) Ensuring the Rights of Indigenous Children, Innocenti Digest No.11, UNICEF Innocenti Research Centre, October 2003, p.2.

<sup>iv</sup> Ibid. UN Committee on the Rights of the Child, General Comment 11 (2009) Indigenous Children and their Rights under the Convention, CRC/C/GC/11; Somavia J, The Lost Children in UNICEF, The Progress of Nations 2000, p.27, [http://www.unicef.org/publications/files/pub\\_pon2000\\_en.pdf](http://www.unicef.org/publications/files/pub_pon2000_en.pdf)

<sup>v</sup> Henare et al (2011) He Ara Hou: The Pathway Forward, Getting it Right for Aotearoa New Zealand's Maori and Pasifika Children, University of Auckland, p.iii.

<sup>vi</sup> B. Hunter (2006) *Assessing the evidence on Indigenous socioeconomic outcomes: A focus on the 2002 NATSISS*, p.100

<sup>vii</sup> See [www.fnwitness.ca](http://www.fnwitness.ca)

<sup>viii</sup> See the Right to Education Project: <http://www.right-to-education.org/node/233>

<sup>ix</sup> UN Declaration on the Rights of Indigenous Peoples, article 14.

<sup>x</sup> The UN Committee on Economic, Social and Cultural Rights, General Comment 21, Right of everyone to take part in cultural life, 21 December 2009, E/C.12/GC/21, p.7.

<sup>xi</sup> McDougall & Henriksen, Forward, in Teneja (ed.) (2009) State of the World's Minorities and Indigenous Peoples 2009, Education Special, Minority Rights Group International, pp.7-11, p.10.

<sup>xii</sup> ILO (2001-2), *Vietnam Desk review*, From Project to Promote ILO Policy on Indigenous and Tribal Peoples (Convention 169), International Labour Organisation, Geneva, in Ensuring the Rights of Indigenous Children, p.10.

<sup>xiii</sup> Report of the Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos, 8 February 2006, *Girls' right to education*, E/CN.4/2006/45 para 87, p.13; see Curtis, A world of discrimination: minorities, indigenous peoples and education in Teneja (ed.) (2009) State of the World's Minorities and Indigenous Peoples 2009, Education Special, Minority Rights Group International, pp.12-23, Table 2, p.20.

<sup>xiv</sup> McDougall & Henriksen, Forward, and Curtis, A world of discrimination: minorities, indigenous peoples and education in Teneja (ed.) (2009) State of the World's Minorities and Indigenous Peoples 2009, Education Special, Minority Rights Group International, pp.7-11, & pp.12-23 at pp.11 & 18-19.

<sup>xv</sup> McDougall & Henriksen, Forward, in Teneja (ed.) (2009) State of the World's Minorities and Indigenous Peoples 2009, Education Special, Minority Rights Group International, pp.7-11, p.8.

<sup>xvi</sup> *UN Convention on the Rights of the Child*, article 19.

<sup>xvii</sup> Report of the International Expert Group Meeting, Combating Violence against Indigenous Women and Girls: article 22 of the United Nations Declaration on the Rights of Indigenous Peoples, 28 February 2012, E/C.19/2012/6, p.5.

<sup>xviii</sup> Report of the Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos, 8 February 2006, *Girls' right to education*, E/CN.4/2006/45 para 87, p.13.

<sup>xix</sup> [Australian Institute of Health and Social Welfare \(2012\) Child Protection Australia, 2010-11, http://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_200805\\_e\\_30714.html](http://www.oag-bvg.gc.ca/internet/English/parl_oag_200805_e_30714.html).

<sup>xx</sup> Ensuring the Rights of Indigenous Children, p.12.

<sup>xxi</sup> House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing* (2011), p.2.4.

<sup>xxii</sup> Australian Institute of Criminology, *Australian Crime: Facts and figures* (2009), p.113.

<sup>xxiii</sup> UNICEF (2003) Ensuring the Rights of Indigenous Children, Innocenti Digest No.11, UNICEF Innocenti Research Centre, October 2003.

<sup>xxiv</sup> Recent efforts have been made by the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, the UN Committee on the Rights of the Child, which has developed a General Comment specifically on interpretation of the Convention on the Rights of the Child for Indigenous children and UNICEF. The mandate of the Special Rapporteur on the Situation of human rights and fundamental freedoms of Indigenous Peoples also includes children as a required priority focus.