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Transformative ways to embed child rights into practice

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I would like to start by acknowledging the Kaurna people, the traditional owners of this land we are in and pay my respects to their elders, to their ancestors and the generations to come. I also would like to congratulate SNAICC for the work you do and thank you for inviting me to speak with you today. The theme of this conference “Growing Up With Strong Identity, Culture and Connection” is so appropriate especially in these times where we are faced with the multiple global crises of cultural alienation, climate change and narrow nationalism which further exacerbates racism and discrimination.

The legal and normative frameworks upon which indigenous children’s rights are based are the UNDRIP and the Convention on the Rights of the Child. All the 46 articles of UNDRIP should be enjoyed by indigenous children and youth. These include, among others, the right of indigenous children to be free from any form of violence and discrimination (Article 22), their right to their culture and identity, their right to maintain, control and protect their cultural heritage, traditional knowledge and cultural expressions (Article 24), their right to self-determination (Article 3) and the right to redress (Article 28). What is important to remember is that the UNDRIP is the interpretation of how the International Conventions on Human Rights are applied to the specific contexts and circumstances of indigenous peoples. Thus, those who say that the UNDRIP is not legally binding and therefore, States are not obliged to comply with it, have it wrong. As long as they ratified the Conventions, they are obliged to see how these are applied to indigenous peoples and the UNDRIP is the guide for them to do this. So the Convention on the Rights of Child should be interpreted in the ways that this applies to indigenous peoples.

If one seeks to know more profoundly how indigenous peoples are, she or he should take a look at the state of health and well-being of indigenous children and youth. The future of indigenous peoples depend a lot in how the children have been raised and taken cared of both by their immediate families, clans and community and the society at large in the past and now. We should analyze the laws, policies and programs that States have adopted and are implementing to promote children’s well-being. It is also important to look at the indigenous customary laws and knowledge and practices related to child rearing and development. In performing my mandate as the UN Special Rapporteur on the Rights of

Indigenous Peoples, I always make it a point to know more about the situation of indigenous children and youth when I do my country visits. So my country reports usually have a section dealing with indigenous children.

I was asked by SNAICC to talk about children's rights and Indigenous peoples' rights can be embedded in your everyday work as organisations working towards better outcomes for Aboriginal and Torres Strait Islander children. I was also asked to draw from examples from around the world to showcase promising and innovative practices on rights implementation and to focus on what are some of the key rights Aboriginal and Torres Strait Islander children are entitled to, and how these rights have been and can be effectively implemented at grassroots levels?

I believe you already have lots of work and ideas on how to embed children's rights in your work. What needs to be more understood is how these rights are being articulated and implemented in culturally-sensitive ways. So I am here really to listen to the work you all have been doing and to know if my recommendations in my report are being implemented by the government. Many of what I will share are already known by you. So I will use this opportunity to remind you of my findings and recommendations related to indigenous children and youth and to engage in more discussions on how to get these recommendations implemented.

Let me now summarize some of my findings and recommendations related to children which are contained in the report on Australia which I presented before the Human Rights Council in September 2017. As some of you may know I did an official country visit to Australia in March 2017. Then I will share some good practices which I have seen done by indigenous peoples and states in other countries in relation to the care and protection of the rights of children.

When I visited Australia, I the opportunity to visit the SNAICC office in Melbourne, the Cleveland Youth Detention Centre, the Children's Koori Court in Melbourne and Redfern's 'Clean Slate Without Prejudice Program' . I looked more deeply into the situation of children and some of my observations and conclusions are the following;

Aboriginal community involvement in early childhood, primary and secondary education has declined over the past decade, particularly in the formulation of programs and delivery and centralised decision-making without appropriate cultural awareness has led to poor policies and practices in Aboriginal education.

I recommended that it is essential to increase parents' and community engagement with schools, for example by Aboriginal Parents Groups in schools or community controlled school boards. A trauma-informed approach to education should identify the barriers to attendance and assist parents and families to improve student attendance, rather than applying financial penalties that further disadvantages children who already live in poverty, likely to be exposed to overcrowded and poor housing, family violence, chronic illnesses and food insecurity. Unless such measures are taken, Aboriginal children, especially in remote areas, are setup to fail.

More than half of the children in detention are Aboriginal and Torres Strait Islander. In some detention facilities, such as in the Northern Territory and in the Cleveland Youth Detention Centre in Queensland. Aboriginal and Torres Strait Islander children constitute a shocking 90 per cent of the detainees, which *prima facie* raises concerns over racial discrimination in the administration of justice.

Aboriginal and Torres Strait Islander children are 24 times more likely to be detained than non-Indigenous. I found the routine detention of young indigenous children the most distressing aspect of her visit. In Cleveland Youth Detention Centre I met several children as young as twelve years old. Many of the children had already been detained several times at the same facility and more or less gone straight from out-of-home care into detention. The majority of the detained children are on remand. I spoke to some of the children and asked them why they were detained and one said he was caught stealing an apple. Another one said he was arrested for sleeping in a thrash bin.

The application of criminal responsibility at the age of ten years across the country is deeply troubling and well below international standards. This situation is aggravated by the failure to apply diversion measures and community programmes and the placement of children in maximum security facilities, such as Cleveland Detention Centre, which would be more appropriately used to house individuals accused of committing terrorist offences. All personnel in detention facilities should receive trainings on culturally sensitive child care. I found it disconcerting that among the staff working as prison guards in Cleveland Youth Detention Centre are former soldiers who have been deployed to Iraq. The facility is strictly regulated and run based on punitive measures for misdemeanours as flimsy as overstaying in the pool in the facility.

I was informed by several sources, including judges, that in the majority of instances the initial offences committed by children were minor and non-violent. It is wholly inappropriate to detain these children in punitive, rather than rehabilitative, conditions. Aboriginal and Torres Strait Islander children are essentially being punished for being poor and in most cases, prison will only perpetuate the cycle of violence, inter-generational trauma, poverty and crime. I was alarmed that several of the young children I spoke with did not see any future prospects for themselves.

As already recommended several times over the past two decades by the Committee on the Rights of the Child, I urge Australia to increase the age of criminal responsibility. Children should be detained only as a last resort, which certainly is not the case today for Aboriginal and Torres Strait Islander children. Detention of Aboriginal and Torres Strait Islander children has become so prevalent in certain communities that some parents see it as an 'achievement' that none of their children has been taken into custody so far. Much more should be done to ensure that the detention of children remains the exception, rather than the norm.

If Aboriginal and Torres Strait Islander children are detained, they should be treated with respect and dignity. As demonstrated by the ongoing investigation of the Royal Commission into youth detention in the Northern Territory, there have been serious abuses including violent strip-searches, teargassing, hooding and prolonged isolation committed against Aboriginal children in custody.

The focus urgently needs to move away from detention and punishment towards rehabilitation. Locking up people costs vast amounts of money to tax payers. For instance, I was informed that detaining a child costs between 170,000 and 200,000 AUD per year. Such funds should be allocated towards prevention and reintegration. In this regard, I learnt about

local diversion initiatives, often referred to as justice reinvestment programs, designed to address the causes of crime in specific communities.

I visited Redfern's 'Clean Slate Without Prejudice Program' which is run by an Aboriginal organisation in collaboration with the police and has contributed to a significant drop in the inner-Sydney suburb's crime rate over the last few years. Diversion programmes would significantly reduce incarceration rates if replicated across the country in consultation with local communities.

Another justice initiative that I visited and was impressed with is the Children's Koori Court in Melbourne. The Children's Koori Court involves the participation of elders and respected persons from the Koori community in the court procedure and aims to reduce imprisonment and recidivism. Such culturally sensitive processes could significantly reduce recidivism rates if extended to other jurisdictions.

I strongly criticized the Government's claim that matters relating to incarceration remain the sole prerogative of States is untenable in the severe and deteriorating impact the national detention crisis has on the Aboriginal and Torres Strait Islander peoples. I underlined that it is the Federal Government's responsibility to ensure compliance with international human rights obligations. The inclusion of targets on justice issues in the Closing the Gap strategy and the development and implementation of a national plan of action are needed to address the incarceration crisis.

I looked at the issue of removal of children and I saw that indigenous children are removed from their families at increasingly high rates. The prolonged impacts of intergenerational trauma from the Stolen Generations, disempowerment and entrenched poverty continue to inform Aboriginal and Torres Strait Islanders' experiences of child protection interventions. I was told how the grief and helplessness felt by both parents and children due their separation is linked to high rates of mental illness and substance abuse.

In 1996, the year of the 'Bringing Them Home' Report, Aboriginal and Torres Strait Islander children constituted 20% of children in out-of-home care. In 2016, this figure increased to 35% with Aboriginal and Torres Strait Islander children nearly ten times more likely than non-indigenous children to be in out-of-home care. The Aboriginal and Torres Strait Islander Child Placement Principle was first implemented in 1983 with the purpose of enhancing and preserving Aboriginal children's sense of identity through the prevention of out-of-home care, reunification of children with their families, ensuring culturally connected placements, and enabling the participation of Aboriginal and Torres Strait Islander families and communities in child protection decision making.

Despite the existence of this Principle, the incidence of indigenous children in out of home care is rapidly increasing and has reached critical levels. In the Northern Territory, a mere 34.7% of Aboriginal children were placed in care in accordance with this Principle and thus are at significant risk of losing their culture and family links. With the national average indicating that only 66 per cent of Aboriginal and Torres Strait Islander children with child protection measures being placed within their family, kin and community in 2016, the Australia Government has failed to comply with this Principle.

Greater engagement with the Aboriginal and Torres Strait Islander family and community in decision making processes around child protection is crucial. Community-led early intervention programs which invest in families would prevent children from being in contact with the child protection system in the first place.

Given that the number of Aboriginal and Torres Strait Islander children in out-of-home care is predicted to triple by 2035, measures must urgently be put in place. To monitor the situation, an Aboriginal Children's Commissioner in each State and Territory and a national coordinating entity could play a valuable role. Development, in consultation with peak indigenous organisations, should be considered of a national strategy to eliminate the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care. In this light, I strongly support the call for the establishment of a National Commissioner for Aboriginal and Torres Strait Islander Children and Young People.

2017 marked the 20th anniversary of the 'Bringing Them Home, the Stolen Children' report which concluded that the forced removal of Aboriginal and Torres Strait Islander children was genocidal and constituted a crime against humanity for which reparation is due under international law. The forced removals ruptured cultural ties, broke down family and social structures and resulted in inter-generational trauma which continues to disadvantage indigenous communities. There are links between past and present child removal practices as indigenous peoples who were themselves placed in institutions never experienced growing up in a family environment, placing them at disadvantage in developing their own parenting skills. I was informed about instances where three generations of children were removed from their families and placed in institutions.

I welcomed the ongoing Stolen Generations Reparations schemes in New South Wales, South Australia and the reparations already paid in Tasmania, and I reiterate the recommendation of the Bringing them Home Report, also supported by the Human Rights Committee, that a comprehensive national mechanism be established to ensure that adequate reparation, including compensation, is provided to the victims of the Stolen Generations policies.

Before I end I want to share with you some good practices which I have seen amongst my own people and in several countries which I visited. Most of these are the work of indigenous peoples, themselves. In my own territory, our people, the Kankanaey Igorot of the Cordillera Region in the Philippines, we have very good customary laws and norms on children. It is prohibited to hit children and if there are orphans, the community is obliged to take care of them. They are adopted by relatives who should regard them as their own. At a very early age children are brought to all our rituals and ceremonies and they are taught to do our traditional dances and songs. We speak our language, Kankanaey, in our homes so the threat of losing our language is not so high.

I also saw similar norms and practices among the Maya of Mexico and Guatemala, the Kichwa of Ecuador and the Arhuaco, Kogi, Wiwa and Kankuamo in Colombia, among many others. The demand for bilingual and intercultural education is high up in the demands of indigenous peoples in all parts of the world and in several countries there are laws on this. In I visited Ecuador and Mexico and there are laws on the need to promote bilingual and

multicultural education. Indigenous schools and universities are in place, especially in territories which are autonomous, whether recognized by the government or not. In Sierra Nevada de Santa Marta in Colombia, for example, the Arhuaco, Wiwa, Kogi and Kankuamo have set up their indigenous schools and all their children go to these schools. My friend, Leonor Zalabata, who is one of their leaders have two children who just got their degrees in Theoretical Physics and Ethnobiology in the capital. I asked them what they will do afterwards and both of them said they will go back to live and work in their own territory. I was very impressed with how proud they are of their identity and culture and their determination to persist in connecting with their own people.

As the theme of this conference is on Growing up with Strong Identity, Culture and Connection, I just would like to affirm that indeed, if children grow up with a strong identity and are connected with their culture and own communities, they will be able to strongly assert their rights including their right to self-determination. This year is the International Year of Indigenous Languages and one of the reasons this was declared is because of the great concern over the extinction of many languages. Out of the 7,000 languages in the world, 5,000 of these are indigenous languages. In Australia alone, I read that more than 100 languages are spoken by indigenous peoples. I hope the objectives of this year will be achieved.

I read about the efforts of the Australian government to achieve these objectives and I hope that at the end of the year, we will see several Aboriginal and Torres Strait Island languages revitalized and used at home, in the schools and the communities. It is without any doubt that if indigenous children speak their own languages, their identities and connection of culture and community are stronger. Our languages embed our own indigenous values and norms, our own cosmologies philosophies, our traditional knowledge and the ways we understand and relate with Mother Earth. This cultural and linguistic diversity found amongst indigenous peoples is directly related to the fact that 80% of the world's biodiversity are found in our territories. Losing our languages also means losing the knowledge on the biodiversity of flora, fauna and ecosystems found in our territories. There is a recommendation that the UN General Assembly to declare an International Decade on Indigenous Languages.

Before I end, I just want to share with you what I found out in the course of doing my mandate as a Rapporteur. I had opportunities to visit various countries and in many countries in Latin America I met with indigenous peoples who are now living in autonomous municipalities, some of which are recognized by the governments and others which are self-declared. One of the examples I have seen is the municipality of Cheran in the State of Michoacan in Mexico. The Purepecha people have been besieged by drug cartels for a long time and these cartels are also engaged in logging the forests. The indigenous women got fed up with this situation because their children are recruited to become drug mules and many of them end incarcerated or killed. They mobilized and stopped the trucks carrying the logs and with the men, they went to kick out the municipal officials, bureaucrats and the police who were in collusion with the drug cartels. This uprising happened in 2011 and since then they elect their own officials and do not allow the political parties to enter their territory. They underwent legal battles as cases were filed declaring that these were illegal acts. However, they won the cases in the Supreme Court because the Mexican Constitution recognizes the right of indigenous peoples to govern themselves. Now the Mexican government recognizes Cheran as a self-governing indigenous community. They have their own community guards

who ensure peace and security. Their indicators of well-being, security and sustainability are better than other municipalities which are not self-governing.

The assertion of the right to self-determination is the foundation of our rights as indigenous peoples. If we are able to show that by asserting our right to self-govern brings about better results in terms of well-being of our people, sustainability of our ecosystems and cultural relevance of education, justice and social service systems, the governments should support these efforts. I am sure that here in Australia this is also an aspiration among the Aboriginal and Torres Strait Island peoples. My last reports for the Human Rights Council and the UN General Assembly focus on Indigenous Justice Systems and Indigenous Governance. I know that many positive examples, such as self-governing communities, exist in many indigenous territories and we should make these more visible as best as we can.

I spoke earlier on the issues I highlighted in my Australia report. Let me share with you some of the recommendations I made in my country report which I hope you will push the government to implement. These come from my discussions with those of you whom I spoke with in my visit.

- Ensure that culturally appropriate medical care, including mental health services, are available in all detention facilities.
- Increase the age of criminal responsibility from ten years to at least twelve years, in accordance with international standards. Detention of children should be a measure of last resort.
- Withdraw the reservation to the Convention on the Rights of the Child
- Ensure that no children are held together with adults.
- Provide all personnel in detention facilities with training on culturally sensitive child care.
- Conduct a comprehensive assessment of existing diversion and justice reinvestment programmes and replicate, in consultation with local communities, such measures in targeted areas across the country.
- Extend culturally sensitive judicial processes, using the Koori courts in Victoria as a model, to other jurisdictions throughout the country.
- Community-led early intervention programs should invest in families, rather than punish them, in order to prevent children from being in contact with the child protection system.
- Develop, in consultation with peak indigenous organisations, a national strategy to eliminate the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care and to monitor compliance with the Aboriginal and Torres Strait Islander Child Placement Principle.
- Ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

From what I have seen so far, especially in the work you are doing to promote the rights and best interest of the Aboriginal and Torres Strait Island children, I have high hopes that the future of your children can become better. I am aware of the weaknesses of the government programs such as Closing the Gap, among others, and your efforts to reform these will be vital in bringing about the changes you deserve. The examples I have seen in Victoria are indeed inspiring and I hope these will be replicated all over the country. Again, I reiterate that I strongly support your demand for a National Commissioner on Aboriginal and Torres Strait Island. Having such a person will be vital in replicating good practices done

within Australia and outside and ensuring that the state of your children will be addressed effectively at community, state and national levels. I also hope you will be able to have your indigenous voices in the Parliament. Thank you again SNAICC for inviting me and I wish you all the best in strengthening yourselves and your communities.

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