

# INDIGENOUS CHILDREN: RIGHTS AND REALITY

## EXECUTIVE SUMMARY



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

For the full report, please visit: [www.isg-ngogroup.org](http://www.isg-ngogroup.org)

Judith Rae, University of Toronto  
UN Sub-Group on Indigenous Children and Young People (ISG)  
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## 1. Executive Summary

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.

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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.