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GENERAL COMMENT No. 11 (2009)

Indigenous children and their rights under the Convention

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Introduction

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

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

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

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

Objectives and structure

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

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

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

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

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

Article 30 and general obligations of States

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

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

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

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

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

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

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

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

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

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

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

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

Non-discrimination

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

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

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

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

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

25. The Committee, through its extensive review of State party reports, notes that indigenous children are among those children who require positive measures in order to eliminate conditions that cause discrimination and to ensure their enjoyment of the rights of the Convention on equal level with other children. In particular, States parties are urged to consider the application of special measures in order to ensure that indigenous children have access to culturally appropriate services in the areas of health, nutrition, education, recreation and sports, social services, housing, sanitation and juvenile justice.⁹

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

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

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

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

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

¹⁰ *Ibid.*, para. 6.

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

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

Best interests of the child

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

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

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

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

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

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

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

The right to life, survival and development

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

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

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

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

¹⁵ Ibid.

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

Respect for the views of the child

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

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

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

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

Access to information

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

Birth registration, nationality and identity

41. States parties are obliged to ensure that all children are registered immediately after birth and that they acquire a nationality. Birth registration should be free and universally accessible. The Committee is concerned that indigenous children, to a greater extent than non-indigenous children, remain without birth registration and at a higher risk of being stateless.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁹ Ibid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Children in armed conflict and refugee children

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

²⁷ ILO Convention No. 169, article 27.

²⁸ ILO Convention No. 169, article 28.

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

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

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

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

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

Economic exploitation

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

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

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

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

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

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

Sexual exploitation and trafficking

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

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

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

Juvenile justice

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

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

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

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

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

³³ Ibid. para. 23.

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

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

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

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

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

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

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

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

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