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**Permanent Forum on Indigenous Issues**

**Ninth session**

New York, 19 - 30 April 2010

**International Expert Group Meeting (EGM) on Indigenous Children and  
Youth in Detention, Custody, Foster-Care and Adoption**

**4 -5 March, 2010**

**Tsleil Waututh Community Centre  
North Vancouver, British Columbia, Canada**

**Chair: Grand Chief Edward John**

**Rapporteur: Andrea Carmen**

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

*-- Preamble, United Nations Declaration on the Rights of Indigenous Peoples*

# **I. Organization of Work**

## **A. Attendance**

1. Participants at the EGM were:

EGM Steering Committee Members:

- Grand Chief Edward John, First Nations Summit, Canada, North America
- Ms. Tonya Gonnella-Frichner, North American Representative-UN Permanent Forum on Indigenous Issues
- Ms. Celeste McKay, Native Women's Association of Canada
- Ms. Sonia Smallacombe, Secretariat to the UN Permanent Forum on Indigenous Issues
- Ms. Andrea Carmen, International Indian Treaty Council

Experts of Indigenous Peoples:

- Ms. Agnes Lempaa, Kenya, Africa
- Mr. Jose Carlos Morales, Costa Rica, Latin America
- Mr. Nadir Bekirov, Ukraine, E. Europe, Russ. Fed, Central Asia and Transcaucasia
- Dr. Cindy Blackstock, Canada, North America
- Ms. Natalie Hunter, Australia, Pacific
- Ms. Hinewirangi Kohu Morgan, New Zealand, Pacific
- Ms. Natalie Landreth, United States, North America

Distinguished Panelists:

- Mr. Leonard Foster, United States, Navajo Nation Prison Project and Spiritual Advisor for Incarcerated Indigenous Youth and Adults
- Mr. Francisco Cali, Guatemala, member, UN Committee for the Elimination of Racial Discrimination
- Chief Wilton Littlechild, Canada, Commissioner, Residential Schools Truth and Reconciliation Commission of Canada

Other Organizations:

- Ms. Loyda Romay, Representative, Organization of American States

Regrets:

- Mr. Jiten Yumnam, Asia Region invited expert (India) who submitted a paper but was unable to secure a visa to attend.

Representatives and members, including a number of Chiefs and Elders, of the Tsleil Waututh Nation, other Indigenous Nations from British Columbia and other regions of Canada, as well as representatives of the Canadian federal and British Columbia provincial governments.

## **B. Documentation for the meeting**

2. The participants had before them a draft programme of work and documents prepared by participating experts. The documentation is available on the website of the secretariat of the Forum at [http://www.un.org/esa/socdev/unpfii/en/EGM\\_ICYD.html](http://www.un.org/esa/socdev/unpfii/en/EGM_ICYD.html)

## **C. Opening of the Meeting**

3. The meeting was opened with an opening prayer by Mr. Ernie George, Elder from the Tsleil-Waututh Nation, a welcome drum song by the host community and a blessing chant by Ms. Hinewirangi Kohu, Maori Nation.

4. **Grand Chief Edward John, Hereditary Frog Clan Chief**, welcomed the experts and other participants. He also expressed thanks to SPFII for organizing this EGM to ensure that the rights of our children are kept “front and center”, not just in our own territories and within States, but on the international level. In this way, adequate attention can be focused on this critical issue and States can be pressured to work with Indigenous Peoples to do the right thing for our future generations! He also noted that 50% of children in government care in British Columbia (foster care and detention) are Aboriginal, and in the Northern part of the province it is close to 75%. Why? Poverty and poor housing conditions are major causes, and those rights also need to be addressed in this discussion. He expressed that the questions for us include: How can we reduce those numbers? How can we keep our children in our own communities? And how can we be sure that children who are already in custody stay connected to their communities and cultures?

## **D. Election of Officers**

5. Grand Chief Ed John, First Nations Summit, was nominated as the Chair of the International Expert Group Meeting and Andrea Carmen, International Indian Treaty Council was nominated as Rapporteur, to be assisted by Celeste McKay, Native Women’s Association of Canada. Both nominations were approved by consensus of all participants.

## **II. Introduction to the Purpose and Background of the EGM**

6. An introduction to the purpose and background of the EGM was presented by **UNPFII member from North America Tonya Gonella Fritchner**. She recalled that, in 2008 at the 7<sup>th</sup> Session of the UNPFII, Mr. Mach-Ki El-Issa, the son of slain activist Ingrid Washinawatok El-Issa, made an intervention on behalf of an institution founded in his mother’s memory, the Flying Eagle Woman Fund for Peace, Justice and Sovereignty (with others). Mach-Ki presented Indigenous Peoples’ profound concern for the escalating rates of Indigenous Children and Youth in detention, custody and foster care in North America. North American delegates responded by requesting that the UNPFII organize an Expert Group Meeting addressing this issue as soon as possible. Two years later, March 4, 2010, the first day of the International Expert Group Meeting on Indigenous Children and Youth in Detention, Custody, Foster Care and Adoption marks the 11<sup>th</sup> anniversary of Ingrid’s death; and what can be a better tribute to her memory?

7. Tonya noted that the report of the UNPFII 2<sup>nd</sup> session addressed the theme, “Indigenous Children and Youth”. It included a strong recommendation to ECOSOC to urge that

governments ensure protection of children and youth while in detention and provide them with rehabilitation. She stated that UNPFII can also work more broadly to encourage governments, UN and inter-governmental agencies and NGOs to collect and distribute disaggregated data on Indigenous children and youth in state detention. The SPFII can also submit this EGM report to the Inter-Agency Support Group with the recommendation that the member agencies give it very close scrutiny and consider the implementation of its recommendations.

## **F. The Human Rights Framework for the EGM**

8. **Grand Chief Ed John, First Nations Summit, and Andrea Carmen, International Indian Treaty Council, representing the EGM Steering Committee** presented elements for the international human rights normative framework for the issues to be addressed at the EGM. They noted key international norms and standards that are of particular importance in this regard. These include a number of provisions of the UN *Declaration on the Rights of Indigenous Peoples*, the *Universal Declaration on Human Rights*, the *Convention on the Rights of the Child* and its General Comment 11 (2009), the *Convention on the Elimination of all forms of Racial Discrimination* and *ILO Convention No. 169*. These standards establish a human rights framework for this discussion, affirming a range of relevant rights.

9. They presented the following summary of the International Human Rights Framework for the EGM:

- 1) Rights of Indigenous Children and Youth to be Indigenous, to continue to be part of their own Nations, communities, families and cultures, and to be cared for and nurtured physically, mentally, culturally and spiritually.
- 2) The Inherent and Inalienable Rights of Indigenous Peoples to:
  - Self-determination and autonomy/self-government; right to decide about what will happen to their children
  - Free Prior & Informed Consent regarding laws, programs, policies and practices for custody, care and protection of their children
  - Participate fully and effectively in all levels and areas of decision-making regarding the care and custody of their children
  - Maintain, preserve, use and transmit their cultures, values, practices and languages to future generations
  - Maintain the integrity and well-being of their families, communities & Nations
- 3) Obligations of States to uphold and respect their international human rights commitments including those rights affirmed in international human rights instruments as well as those affirmed in Nation-to-Nation Treaties concluded with Indigenous Nations.

10. Ed and Andrea also affirmed the importance for Indigenous Peoples of using, implementing and adopting the UN *Declaration on the Rights of Indigenous Peoples* in their own communities, tribes and Nations, tribal laws and ordinances, and as the minimum standard for all of their negotiations with states and agencies, including on issues impacting the care, well-being and custody of Indigenous children.

11. **Francisco Cali, member of the UN Committee on Racial Discrimination** further elaborated on the Human Rights framework for the EGM, in particular the provisions of the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) and the work of the CERD, which was the first treaty-monitoring body created by the UN.

12. He presented the work of the CERD and the Convention's provisions which are relevant to the themes of the EGM, including Free, Prior and Informed Consent and the effects of institutionalized discrimination and racism. Francisco stated that in the past, the struggles around racism were always linked with struggles against colonialism. In recent years, struggles around racism have been more closely linked with Indigenous Peoples' rights. States and their institutions are becoming very sophisticated and subtle in the way that they discriminate against Indigenous Peoples. The CERD is very important as it creates legally binding obligations on the State parties. It also does not distinguish between intentionally discriminatory acts and those that have discriminatory effects. This could include high proportions of Indigenous youth in prisons or in foster care, or being removed from their communities to be adopted. It does not matter that the State in question says it has not intended to be racist in its policies. If the results are racist and discriminatory, these are violations of the ICERD.

13. He stated that the struggle against racism and discrimination has advanced but racism has also advanced. Indigenous Peoples need to use all the international human rights instruments that exist to defend their rights including regarding cases of discrimination in the removal, custody and care of Indigenous children.

14. Regarding his own country, Francisco presented that 65% of the population in Guatemala are Indigenous (the second highest percent in the Americas after Bolivia). There are 22 Mayan Indian language groups. During the civil war (1960 – 1996), 433 Mayan Indigenous villages disappeared completely, under the “scorched earth policy”. The UN estimated that over 200,000 were killed, and over 95% of those were Indigenous. This was identified as “genocidal levels” by the UN. Many thousands of widows, orphans and refugees were created, and this continues to have a very profound impact. In 2007, 1 of every 100 Guatemalan babies was reportedly adopted to the US. Guatemala has the highest number of out-of-country adoptions in the continent. Other examples include Panama, Bolivia (although less so now than in the past) and Peru.

### **III. Summaries of Presentations by other Invited Experts**

The following are summaries of the presentations made by the other invited Experts addressing the specific themes relevant to the EGM:

#### **A. Leonard Foster**

15. Indigenous youth are disproportionately represented in juvenile detention systems across the US, and these numbers are especially high in some states with larger populations of Indigenous Peoples. Our ancestors were free but colonization in all its forms has made many of us feel ashamed of who we are. This affects many of our youth today. They are angry, act out, and misuse drugs and alcohol. In the US, some states like Montana, South Dakota and Alaska have

as many as 30% - 40% Native Americans in their prison system and perhaps more, since accurate data is not available, especially for youth in prison. We have seen that Native American youth and young adults tend to receive longer sentences for the same offenses and many are held in facilities far away from their families and communities. This breaks their spirits by breaking their cultural ties to their families and Nations. The experience of confining in isolation or “warehousing” of the young Native Americans is a human rights violation and is inhumane. The incarceration of Native young people affects families, clans, and entire communities because of the close knit ties in the Indian world.

16. Freedom of worship for the many incarcerated Native Americans is a matter of human rights and cultural survival. These spiritual and religious practices allow young Native Americans the opportunity to seek spiritual healing and wellness, and to stay connected to their cultural identity.

17. This basic human right, freedom of worship, is accorded to other prisoners but is often denied to incarcerated Native Americans, both youth and adults. Prison officials in the US discriminate against Indigenous people in custody including youth because they lack understanding of the role of our spiritual practices such as sweat lodges and ceremonial items such as hand drums, lava rocks, mountain tobacco, sage, cedar, gourds, sweet grass, eagle feathers, traditional and ceremonial foods etc. These are necessary for cleansing and purification, enhance wellness, rehabilitation and physical mental, social, cultural and spiritual healing. Access to these ceremonies and sacred items have proven to keep recidivism rates to a minimum as the young Native American is transformed to someone who has attained his dignity, sobriety, and pride. Such practices and items are often mislabeled as security threats by prison officials.

18. Recommendations include: (1) convene a Congressional hearing and investigation in the US into these human rights concerns and problems; (2) implement a Commission Study to examine the problems and to identify the demographics and complete statistics that are accurate; (3) hire Native American spiritual leaders and counselors to work in the US prison system including facilities housing youth; (4) develop traditional counseling programs and sweat lodge programs that are consistently done at least once a week; (5) provide the opportunity for Indian communities and Indian Nations/Tribes, families, ex-offenders, incarcerated youth and spiritual leaders to have direct input into policies and programs that govern the incarceration of Native American youth in the prison system, including development of culturally-relevant pre-release programs and culturally relevant mental health, spiritual health and behavioral health services; (6) call for the US compliance and enforcement of the UN *Declaration on the Rights of Indigenous Peoples* including provisions which pertain to the rights of incarcerated youth; (7) request the UNPFII to present these human rights concerns to all appropriate UN bodies and; (8) and extend an invitation to Mr. S. James Anaya, United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples to visit the United States Prison System to assess the situation from a human rights perspective.

## **B. Agnes Lempaa**

19. Indigenous Peoples in Africa are the poorest, and they are disadvantaged in that they live in remote and isolated areas which lack infrastructure, education and services. Most of the time they are not involved in decision making organs of the state, hence occupy a non-dominant position as compared to the rest of the population. Most Indigenous communities in Kenya are

pastoral or hunter-gatherers, however their traditional land rights are not recognized. Their legal structures, land usage and regulations are not permitted by the state, and their demands for communal land tenures are usually ignored. Their sense of marginalization is aggravated by historical injustices which have continued to affect their social and economic life after losing their land to the British, when they signed an agreement in 1904 and 1911 under which their land was given to the settlers.

20. The Maasai migration from place to place in search of pasture gets them into conflict with the law when they trespass private land. Many times it is the boys and young men who are responsible for the herding, and find themselves in conflict with the law for trespassing or allowing the animals to graze on land that is called privately owned. They are usually denied non-custodial options by the criminal justice system as they are said to be likely candidates for absconding. They are then taken into custody far from their homes and families.

21. Many of the youth are not allowed to obtain identity cards as proof of citizenship. They cannot continue in school or get any jobs. Many are therefore accused of being idlers and are arrested by police. In Kenya the rate of unemployment is very high and frustrating to the youth, especially from less privileged backgrounds. Many turn to petty crime for survival, and also become in conflict with the law for activities such as petty theft and begging. Some children, particularly young girls, fall victim to human trafficking and sexual exploitation. Some youth are paid by political candidates to cause turmoil at election time, and afterwards they are abandoned by these politicians. However some become accustomed to criminal behavior and continue to disrupt their communities.

22. Kenya has a fairly sound legislative framework. Children do not receive criminal records which eases their reintegration into society. The *Children's Act of 2001* provides that children have the right not to be arrested or detained, except as last resort and when this occurs, to be treated with dignity. Once detained, children have the right to State funded legal counsel. However, this has not always occurred. Children in custody are also supposed to be housed at juvenile homes, not prisons. However, there are only a dozen juvenile homes, not enough to carry out this provision.

23. Most schools are located far from Indigenous communities. Attending these schools alienates the youth from their communities and denies them opportunities to learn functional skills for survival in their own communities, while it does not offer the expected employment opportunities either.

24. The Nubians are another example. They are from the Nubba Mountains in Central Sudan, but they now live as “stateless” people without the protection of domestic or international laws. They are often landless, suffer from severe poverty and are uneducated. Nubian youth are often unemployed, which leads to higher crime rates. Nubian youth are harassed and unnecessarily detained by the police because they are not considered to be citizens by the Kenyan government.

25. In such cases, Indigenous youth are left with few options. Solutions could include providing good quality education in Indigenous communities in marginalized areas, including for nomadic peoples, and ensuring this opportunity for boys and also for girls who cannot easily attend

schools because they are located far away and there is no efficient transport. Recommendations include providing teaching in native languages; to recruit female teachers as role models for girls who do not often finish school; and to train social and case workers to work with Indigenous cases in the justice system, so that their needs can be understood and addressed.

### **C. Natalie Hunter**

26. In order to assist Indigenous families to remedy the over-representation of Aboriginal children in the foster care system, positive parenting programs, intensive family support and early intervention services that are culturally appropriate and carried out by Indigenous providers must be available when a child is at risk. This involves engaging the Indigenous community through effective communication and self-determination by developing effective community-based programs that are culturally-relevant and in their language, so that Aboriginal children can remain in their homes. This is called AUTONOMY.

27. The Indigenous Child Placement Principle is the main vehicle used to protect an Indigenous child's identity by keeping the child connected to his or her family, community and culture and ensuring he or she is safe, happy and healthy whilst in foster care. Strong family reunifications plans must also be in place. But these principles have not been applied consistently. Tribal governments, Indigenous Peoples' organizations, local/tribal authorities and families need to work together with States to ensure that proper care and treatment (economically, socially, physically, culturally, spiritually and emotionally) is afforded to Indigenous children through incorporation of culture, community and spiritual well-being, as well as emotional support through counseling and healing services. Greater efforts are needed to recruit kinship and Aboriginal care givers if foster care is required, as well as to train and hire Aboriginal counselors and service providers at all levels.

28. Regarding governmental policies, the Australian State and Commonwealth Governments were highly discriminatory in their removal of the Racial Discrimination Act (RDA) in the Northern Territory, so they can undertake the following actions with the Northern Territory Emergency Response (NTER's). This discriminates against a certain race because the only people residing in the remote areas in the Northern Territory are Indigenous Peoples. The NTER's overtly interventionist measures which undermine Indigenous self-determination, include:

1. The five-year leases of Aboriginal communities which were justified by removing the RDA to enable the Commonwealth Government to provide housing on Aboriginal Land without consultation or consent by relevant Aboriginal Peoples (Traditional Owners). These leases were acquired without any compensation to Traditional Owners.
2. The compulsory income management scheme and the termination of the Community Development Employment Projects (CDEP)
3. Alcohol and pornography bans and
4. Limiting consideration of Indigenous customary law.

29. The differential treatment of the Indigenous Peoples in the Northern Territory involves impairment of the enjoyment of various human rights, including rights to collective self-determination, individual autonomy in regard to family and other matters, privacy, due process, land tenure and property, and cultural integrity. All these rights are recognized in the



*International Covenant on Civil and Political Rights (ICCPR) the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the UN Declaration on the Rights of Indigenous Peoples* - instruments to which Australia is a signatory.

30. The Racial Discrimination Act in the Northern Territory must be reinstated as a matter of urgency, so Indigenous Peoples residing in the Northern Territory of Australia will be treated equally. The Australian Government should properly reform the intervention so that it protects human rights and engages Aboriginal Communities in developing effective community-based solutions.

31. Last year the Rudd Government said it would not comply with a request by the UN Human Rights Committee to provide full reparations to the Stolen Generation. The Australian Government needs to address the 54 Recommendations of “The Bringing Them Home Report” of 1997 (BTH Report). The most important and significant recommendation from the BTH Report is for Compensation/Reparation, which goes hand in hand with the Prime Ministers Rudd's Apology (2008). How can Indigenous Peoples in Australia move forward with the current removal policies of Indigenous Children if the destruction of past policies is not addressed by the Australian Government? The Stolen Generation policy affected nearly every Aboriginal family across Australia, and they want compensation/reparation as a matter of urgency.

#### **D. Jose Carlos Morales**

32. In Latin America and the Caribbean, there are more than 50 million Indigenous peoples belonging to over 600 distinct Peoples. According to UNICEF and the ILO, Latin America has 17 million children between the ages of 5 and 17 that are faced with situations of child labour, extreme poverty and post-war impacts.

33. Systems of adoption run by State agencies and organizations need to build their capacity and understanding in order to address the unique challenges and circumstances of dealing with Indigenous children. The ability of Indigenous Peoples to use and transmit our languages and cultures depends on our children remaining in our communities. All steps should be taken to ensure that Indigenous communities and families have dignified processes to be involved in all decisions regarding the placement of Indigenous children in foster or adoptive care. Processes, programs and protocols, based on Indigenous Peoples’ understandings, are needed to specifically ensure the protection of Indigenous children and youth at risk.

34. The conflicting worldviews of Indigenous Peoples living in harmony with Mother Earth and the corporate influence of resource extraction is exacerbating the levels of extreme poverty and inequality in Latin America. Our elders and parents always made sure we knew how to live on the land, but today many youth immigrate to the cities seeking a better life with jobs and educational opportunities that do not exist in their villages. Sometimes they become international migrant workers in other countries. Substance abuse, suicide, crime and gang violence is on the rise for youth who have gone to the cities.

35. There is also growing phenomenon of Indigenous migrant families crossing state boundaries with their children. They become part of the labour force without any rights, services or

protections from abuses from landowners and/or companies. For example, 18,000 Ngobe Indigenous workers cross the border from Panama to Costa Rica every year to work in coffee plantations from October to January, bringing their entire families. Many work with their parents in very harsh conditions. Panama and Costa Rica make agreements to not impede the Ngobe's immigration as plantation workers, but they do not put any requirements to provide health care or educational services or address other needs of the children.

36. In Costa Rica we are a small Indigenous population relative to some other states, but it is just as important to have a protocol with the state and agencies that Indigenous children need to be treated differently. In Costa Rica there is a national agency for Children and Youth, including foster care and adoption matters, EL PATRONATO NACIONAL DE LA INFANCIA –PANI. PANI has existed since the 1930's and has now begun working with Indigenous Peoples to develop an intercultural response for Indigenous children.

37. For example, PANI is working to establish committees in each Indigenous community which will decide placement options for the child. In Costa Rica there are clan systems which also must be considered, and only the Indigenous communities know these things. PANI has established 14 offices to work with Indigenous communities to build their capacities and involvement. When an indigenous child is at risk of being abused or abandoned, first they find the family of the child to work with them on how to address the need. There is a law now in place that if there is child abuse, the abuser is taken from the home, not the victim. The second option is to identify a safe household within the same community. The third option is for the child to be removed completely by the state, a very sad and extreme outcome which all concerned work to avoid. There is also a law that if siblings are orphaned or need to be removed from their home, foster care or adoption of all siblings must be ensured so they can stay together. There is also a new Indigenous prosecutor's office to address cases of Indigenous youth who have been accused of crimes or are already in the criminal justice system.

38. Out of the 21 states in Latin America, 17 recognize Indigenous rights to land and self government in their constitutions. Thirteen states have ratified ILO *Convention No. 169*, and all now support the UN *Declaration on the Rights of Indigenous Peoples*. Indigenous Peoples including youth are beginning to understand they have rights that are recognized but they do not know how to implement them. It is urgent, given this legal foundation, that we develop a strategy for the survival of Indigenous Peoples. Our children must be part of this strategy.

#### **E. Natalie Landreth**

39. The primary mechanism for tribal and indigenous involvement in the placement of their children is the ICWA. Passed in 1978 in an attempt to remedy the large number of American Indian and Alaska Native children who were being summarily removed from their homes, the ICWA had four general aims: (1) to affirm that tribes have exclusive jurisdiction over member children residing on reservations; (2) to affirm that tribes and states have concurrent jurisdiction over member children residing off-reservation (and provide that state cases should be transferred upon request of the tribes, unless good cause is shown); (3) to affirm that tribes have a right to intervene in state court proceedings of their own member children; and (4) to provide an order of

placement preference for Indigenous children, starting with relatives and the tribe. The legislative report underlying the law contained some staggering statistics, the most alarming of which is that Indigenous children were six times more likely to be removed from their homes than non-Indigenous children. Moreover, it was revealed that state social workers often removed children for cultural reasons; for example, they would declare a child abandoned if it had been left with an aunt or other relative even though this is customary in many Indigenous societies where relatives help raise children.

40. More than 30 years after its enactment, has the ICWA achieved its goal? In 2004, the Government Accountability Office (“GAO”) was ordered by Congress to research and provide a report on this very question and the response was not encouraging: “25 years after it was enacted, we know very little about the effect of this law on moving American Indian Children in foster care to permanent homes in a timely and culturally appropriate manner.”<sup>[1]</sup> At the core of this problem is the fact that the ICWA identified no federal agency responsible for overseeing the implementation of the law. Nor is there any reporting requirement in the law. As a result, there is no comprehensive data available on how many Indigenous children are in state custody at all, much less how and where they are placed. Only four states out of 50 even track whether the children in its system are Indigenous. Given the general lack of information and training on the mandates of the ICWA, it is therefore not surprising that the GAO Study found that Indigenous children continued to be significantly overrepresented in the state foster care system in 2004, 25 years after the adoption of ICWA. In Alaska for example, which along with New Mexico and Oklahoma has the highest percentage of Indigenous children, more than 60 percent of the children in foster care were Indigenous. (Latest estimates suggest Indigenous children comprise less than 10 percent of the population in Alaska.) The situation in South Dakota was even worse: 61 percent of all children in foster care were Indigenous.

41. However, despite the lack of information gathering and some questionable court decisions that may weaken the structure of the ICWA, it provides a good framework and model for other countries to follow because its core principle is that Indigenous communities have a right to be involved (and even adjudicate themselves) the placement of their own children. If it is to be replicated, it is recommended that other countries include in their laws a mechanism for oversight and regular reporting so as to determine whether or not the law is having its intended effect.

#### **F. Cindy Blackstock**

42. Estimates suggest that currently in Canada there are three times as many Indigenous children in state custody via foster care than during the residential school era. There are differences in the rate of child welfare placement among Indigenous children as well. At any given time approximately 3% of Métis children are in child welfare care as compared to 10% of First Nations children and less than .5% of non-Aboriginal children.

43. The removal of Indigenous children in Canada is not primarily tied to cases of abuse but to “neglect” driven by poverty, poor housing and caregiver substance misuse. For example, national

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[1] The complete report is available at [www.gao.gov/new.items/d05290.pdf](http://www.gao.gov/new.items/d05290.pdf).

data suggests that 78% of all child maltreatment reports involve children living in homes earning under \$40,000 per annum and another study found that 95% of child removals in Nova Scotia are from families earning less than \$25,000 per annum. These studies suggest that poverty is the most important predictor of child welfare involvement. It is very difficult for families to change their income levels or housing conditions on their own. Yet the child welfare system has not developed meaningful, and systemic, responses to help families address the factors that place their children at risk in the first place. The current evidence suggests that if child welfare, and allied services, more effectively addressed these risks, then the over-representation of Indigenous children in child welfare care could be significantly reduced. However, despite the over-representation of First Nations children in care, repeated studies have found that the Canadian government allocates fewer financial resources to Indigenous children on living on reserves. Estimates are that the shortfall is at least 22%, with the most acute shortfall being in services to keep First Nations children safely in their families and communities.

44. Canada was one of only four countries in the world to vote against the UN *Declaration on the Rights of Indigenous Peoples*, citing domestic human rights protections for Indigenous Peoples afforded under the Canadian Human Rights Act (CHRA) as one reason for its opposition. Canada's commitment to the CHRA and its commitment to uphold the non-discrimination provisions in international and domestic law have recently been tested and the results are disappointing. The First Nations Child and Family Caring Society of Canada and the Assembly of First Nations filed a complaint against Canada in 2007 alleging racial discrimination against First Nations children arising from Canada's longstanding practice of providing inequitable child welfare services to First Nations children. The problem remains unaddressed despite wide-spread evidence that the inequities contribute to record numbers of First Nations children in state care and very low graduation rates. There are multiple affordable solutions which Canada has failed to properly implement regardless of whether it was running a surplus budget in the billions of dollars or spending billions to stimulate the economy.

45. This case is currently before the Canadian Human Rights Tribunal which has the ability to make enforceable orders. Canada is trying to derail the tribunal using legal loopholes which would effectively immunize it from future human rights claims pertaining to government underfunding of services for Indigenous Peoples. The Canadian Government has also actively opposed measures to ensure the case is heard publicly. First Nations want this case publicly heard, and decided, on its merits. To date, over 3600 people and organizations have formally registered their commitment to follow the tribunal and make up their own minds about whether or not the Canadian Government is treating First Nations children fairly. Additional information about the tribunal and how to register your support is available at [www.fnwitness.ca](http://www.fnwitness.ca).

## **G. Chief Wilton Littlechild**

46. In addressing two important objectives of this EGM, several good practices should be considered which have incorporated by reference the *Convention on the Rights of the Child*: 1) the Saskatchewan Justice Commission; 2) Treaty No. 6 Declaration on Child and Family

Wellness; 3) Kasohkewew Child Wellness Society; 4) the Ermineskin Cree Nation Constitution; and 5) Residential Schools Truth and Reconciliation Commission of Canada.

47. The Truth and Reconciliation Commission is an independent body that was established in 2008 in Canada as a result of a class action lawsuit by former Residential School students which produced the Indian Residential School Settlement Agreement. Over 150,000 First Nation, Métis and Inuit Children were taken from their families and placed in over 130 residential schools across Canada. The Residential School policy in Canada was in place from the 1870's through 1996. Its stated intent was to "kill the Indian in the Child". Creating an accurate historical record about what happened to Indigenous children and communities, based on their own testimonies along with former employees and others who were involved, is necessary before any "reconciliation" can take place.

48. It is important for this Expert Seminar to note that of the 22 different Truth and Reconciliation Commissions which were established around the world, this is the only one that specifically focuses on children. It is also the only one that is court mandated.

49. There are about 80,000 survivors alive today, but we are losing an average of 4 a day mainly due to age. It is very important that we give them an opportunity to tell what happened to them as a result of this policy for the public record. Survivors are sharing experiences of physical, sexual, cultural, social and psychological abuse. We need to also recognize that there was spiritual abuse.

50. The last residential school closed in 1996 but the inter-generational effects continue to be seen today in Indigenous communities. There is a documented statistical link between the high numbers of Indigenous children in foster care and other forms of State custody and the legacy of the residential schools. This "generational trauma" is one of the most destructive legacies of the residential school policies.

51. On June 11<sup>th</sup>, 2008 The Prime Minister of Canada formally apologized to former students, their families and communities. However, it is also necessary for Canada to reverse its policies towards for Indigenous Peoples for this to be genuine. For reconciliation, which is a very important part of the mandate to take place, the State has to deal with ongoing Treaty violations. In this regard we are encouraged by the Throne Speech presented by the Governor General (March 3<sup>rd</sup>), which referenced residential schools and indicated that Canada will take steps to endorse the UN *Declaration on the Rights of Indigenous Peoples*. This is a very positive step as this puts the Prime Minister's apology into action.

#### **H. Ms. Loyda Romay, Organization of American States (OAS)**

52. In the development of the American Draft Declaration on the Rights of Indigenous Peoples the rights of Indigenous children and families have been highlighted several provisions. Specific relevant paragraphs currently under negotiation by States and Indigenous Peoples, include proposals by the Indigenous caucus and alternative language proposed by some states regarding

Article XVI, “The Indigenous Family”, and paragraph 2. Other relevant provisions in the current Draft text pertaining to the rights of Indigenous children, include Article XXVII, “Labor Rights”, paragraph 2, and Article XXX “Right to peace, security and protection in the event of armed conflicts”, paragraph 4, b) and g).

53. Feedback was requested from the Experts as to their preferred text regarding Article XVI, and took note that the experts recommended the adoption of the proposed text as submitted by the Indigenous Peoples’ Caucus to the OAS Negotiation sessions.

54. In addition, a “Program of action to strengthen the participation of indigenous peoples in the Inter-American system” is under development by the Department of International Law of the OAS. The program of action has organized workshops to promote and strengthen the participation of Indigenous Peoples, for example: i. “Logical framework for preparing projects”; ii. Awareness and information workshop on indigenous children and youth, with an emphasis on education; iii. Workshop on indigenous peoples in the inter-American system; iv. Good Governance; v. Training on political participation for indigenous women through training workshops on building citizenship; vi. Indigenous youth business leadership for organizing projects in their own interest, with an emphasis on leadership, self-esteem, management capability skills, negotiation, and conflict resolution. Some of these workshops had already been completed while others are pending financial support.

55. Experts attending the EGM were asked to consider how Indigenous Peoples can become more involved and their participation strengthened in the Inter-American system.

### **I. Hinewirangi Kohu**

56. For ‘Healing an Indigenous Nation using Maori models of Practice, Traditional and Intertribal Knowledge’ the first question we had to ask ourselves is ‘What is it we need?’ First we needed to stop romanticizing our own Indigenous cultures and understand that our ancestors left us a rich and beautiful tradition. That is the secret of the deep knowledge we need to heal our people.

57. Maori are over-represented in all the negative statistics across every sector of our society, including physical and mental health problems, school dropouts, drugs and alcohol abuse, suicides, family and sexual violence, youth and adult incarceration rates, all of them! We have all those statistics if you want them.

58. But I don’t want to talk about those; I want to talk from my heart. What I know is that depending on the government to solve the problems they created in the first place does not make sense. The reality and evidence is in front of us: they are the colonizers. We have to decolonize ourselves, use the strength of our own communities and the cultural knowledge that our ancestors left us as their legacy. If we sit around waiting for the government to give us the money or recognize us to do this work we will never get anything done, and nothing will ever change for us. We have to do it from within ourselves.

59. While I understand that the struggle for our freedom needs to take place locally, regionally and internationally, I do my work writing and creating Maori cultural programmes as part of the solution, starting on the community level, to heal our people, men, women and children from the ground up. What I know about being a Maori woman comes from my Grandmother and what I know about our culture comes from my Grandfather, who was the chief of our people. Their spirits and words are with me and they are the reason I could survive what happened to me, so that now I can help others. I raised 17 children in the Maori way.

60. In my community there are those who work in government forging ahead to help. There are workers at the front of the mental health systems, in the hospitals, prisons, in other workplaces and in all sectors. There are the traditionalists, those who care for the cultural gathering places, schools and universities, and those who work with our language. We also have Maori community artists, carvers, writers, poets, trainers, historians, organizers, archivists, librarians, story tellers, singers and chanters. All are part of a very important community to help me do the work I do to take care of our people, to go into the prisons and help our young people to reconnect to what is rightfully theirs, their own identity.

61. Putting Indigenous words and language to Pakeha (non-Indigenous) programs and concepts does not make them ours. Only by understanding and using our own ways, our own languages, our deep and ancient traditional teachings can we heal our children, families, communities and Nations. We take that to our young people in the prisons to begin their journey back to who they are as Maori.

62. I want to share what I went through in the boarding schools, so you will know that I understand what you have also been through. I experienced rapes and sexual abuse continuously from the age of 6 to 15. I attempted suicide 3 times, and spent many years addicted to drugs, alcohol and food to try to block it all out. I didn't want to be alive, I know that now. I went to many programs that did not work for me because they were not from within our peoples. I finally learned what I needed for my own spiritual healing as a strong Maori woman, and that's the program I designed for our youth in prison and our young people who have witnessed family violence and abuse.

63. Our healing and will to live comes from within us, from deep within our culture. There is no excuse not to move forward, to get better and become whole again. There is no excuse not to move forward! We are still here to help each other, and we are strong, we are beautiful. We need to accept ourselves and what we have been through so we can begin the journey, find the healing process and let all the negative things go.

64. Let's strive to help each other, let's share across the sacred oceans, the air space, travelling to share as we are today. I believe that even if I won freedom for our Maori people we are not free until the whole of the indigenous world is free.

**J. Nadir Bekirov**

65. Despite the very wide variety of the cultural, ethnic, religious, social and way of life background of the Indigenous Peoples in this large region which includes between the Caucasus' mountaineers, reindeer herders of the Russian North, Crimean Tatars in Ukraine and Siberian Hunter Peoples, no one has adequate data about their children under the State custody or control. The State does not distinguish between non-Indigenous and Indigenous children and are reluctant to give out statistics, yet the State claims to be concerned about policies relating to Indigenous children and youth. This approach is tantamount to assimilation – it distorts the Indigenous identity.

66. The lack of the verified data about Indigenous Children and Youth in Detention, Custody, Foster Care and Adoption is not only a question of the theoretical discussion or scholarly interest. This is one of the effective methods of manipulation and annihilation of the Indigenous identity. This does not only involve the current situation but endangers the survival of the Indigenous Peoples overall. It would be helpful if the Permanent Forum could request data from Member States, possibly by sending a questionnaire with the aim of collecting information about Indigenous Peoples in general, which may include collection of data regarding children and youth. The questionnaire could also include questions about legislation, State practices and policies regarding children and youth – and require that this information form part of the State's periodic report.

67. We have now two principal International Instruments directly applicable to the situation: the *Convention on the Rights of the Child* and the *United Nations Declaration on the Rights of Indigenous Peoples*. These are the two most often referred to in the context of Indigenous Children and Youth.

68. However I would also propose consideration of the *Convention on the Prevention and Punishment of the Crime of Genocide* (Adopted by Resolution 260 (III) A of the U.N. General Assembly on 9 December 1948. Entry into force: 12 January 1951) because of its definition contained in Article II: “**In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as: (e) Forcibly transferring children of the group to another group.**” Forcibly transferring children of the group to another group can reflect State policy towards Indigenous Children and Youth.

69. In Russia, Ukraine, Central Asian and Trans-Caucasian States, unlike in Canada, many Indigenous Peoples are not officially recognised by the State as having their own Self-Government Systems as Tribal Governments. They are only so called “National Republic subjects” of the Russian Federation. Indigenous Peoples are small minorities so their interests are not reflected in government actions, policies or legislation. It is therefore very important that Indigenous Teachers, Women and youth activists be trained and knowledgeable about international laws and mechanisms. It is also essential that self-government structures (tribal governments) have the right to decision-making which is currently not recognized by the State, including decision-making over Indigenous children.



#### **IV. Adoption of the Conclusions and Recommendations**

70. On 5 March 2010, the International Expert Group Meeting adopted, by consensus, the conclusions and recommendations contained in Section VI, below.

#### **V. Closure of the Workshop**

71. The Experts agreed by consensus to the following Conclusions and Recommendations for presentation to the 9<sup>th</sup> Session of the UNPFII. They address the primary inter-related issues, themes and concerns presented during the EGM. These include: general observations; the necessity of a human rights and culturally-based approach; historic removal practices, including the residential and boarding school systems; root causes including systemic discrimination and inequalities, impacts of colonization and political oppression; Self-Determination, Self-government, Free Prior and Informed Consent and participation in decision-making; migration and immigration; need for disaggregated data; examples of good practices; and follow-up and next steps.

#### **VI. Conclusions**

72. Experts agreed that Indigenous Children and Youth are the basis for our survival as Peoples. Their care, well being and integral development are our fundamental and sacred responsibilities, in keeping with our traditional cultural principles and systems. This requires the focused attention and commitment of Indigenous Peoples, communities, governments and leaders, as well as States and international bodies concerned with the rights, survival, dignity and well-being of Indigenous Peoples.

73. Experts recognized and welcomed the commitment of the UNPFII in advancing the rights, survival, dignity and well-being of Indigenous Children as a priority focus of its work, which began at its 1<sup>st</sup> session and has continued through to the organization of this EGM.

74. Experts agreed that existing human rights instruments form the international framework required to address these issues using a “rights based approach”. What is lacking is implementation. Many States fail to fully implement existing human rights norms and standards for the protection of the rights of Indigenous Peoples and their children.

75. Experts expressed concern that in Africa and Latin America, pastoral and migrant communities are at a disadvantage to defend the rights of Indigenous youth and children. Further, government policies fail to protect them, and in fact in many cases they make Indigenous children and youth more vulnerable. Lack of access to legal protection, lack of awareness about rights and laws, separation of youth from families due to traditional economic activities such as pastoralism, lack of social services, lack of educational opportunities and extreme poverty all contribute to the vulnerability of Indigenous children and youth in many countries.

76. Experts also expressed concern about the *Racial Discrimination Act* (1975) in Australia which was suspended in the Northern Territory in 2007, to allow the Australian government to implement the “Northern Territory Emergency Response”. This action made it legal to force

communities to sign over control of Aboriginal land in 5 year leases. It also prohibited alcohol consumption and distribution in Aboriginal communities, quarantined a proportion of welfare benefits to all recipients in the designated communities and all benefits for those who allegedly neglect their children, and authorized a take-over of Aboriginal service-providers.

77. Experts recognized the impacts of more than 500 years of colonization including the Doctrine of Discovery, Treaty violations, racism and land and resource appropriations in creating the conditions in many states which have produced the current situations impacting the removal of Indigenous youth and children from their homes, families and communities.

78. Experts recognized the legacy and ongoing impacts of past removal policies and systems, such as the residential school system in Canada and the Stolen Generations in Australia, which were intended to produce assimilation and cultural destruction and resulted in all forms of abuse (physical, sexual, social, psychological, cultural and spiritual). These experiences continue to have serious and detrimental inter-generational impacts on the health and strength of Indigenous families and communities in the countries where they were practiced. They contribute to a range of conditions which result in the continued removal of Indigenous children from impacted families and communities. Experts also took note of reports that in some regions, such as the Commonwealth of Independent States (CIS) in the region known as the “former Soviet Union”, boarding school programs are still being carried out and are a major factor in the ongoing cultural assimilation of the Indigenous Peoples in those regions.

79. Experts agreed that discrimination, economic inequalities and racially discriminatory policies and practices, continue to play a major role in the disproportionate placement of Indigenous Children and Youth in detention, custody, foster care and adoption in many countries. Examples include: Defining suitable households for care-giving primarily based on economic factors, both in justifications for removal of children and in determining placements for children in foster or adoptive homes; significant disparities in funding levels and services provided to Indigenous communities; border security laws that fail to acknowledge the specific needs and rights of Indigenous children and youth; and blaming the over-representation of Indigenous youth and children in custody and care on Indigenous Peoples themselves, rather than on State system and policies.

80. Solutions to the systemic barriers leading to the over-representation of Indigenous youth and children in detention, custody, foster care and adoption must also consider the particular impacts on, and effects of discrimination experienced by Indigenous women. These include lack of support provided to single-parented, low income families, the majority of which are headed by Indigenous women. This contributes to the over-representation of Indigenous children in the child welfare system as well as to the criminalization of Indigenous girls who are sexually exploited at a young age. Further, adequate provision for the care of children while Indigenous mothers are in custody needs to be ensured. The development and application of a culturally-relevant gender-based analysis is also required to understand and overcome the particular impacts on Indigenous women and girls.

81. Experts recognized that the cycle of institutionalization for Indigenous Peoples often begins with foster care, continues on to youth detention programs and then to custody in the adult criminal justice system. This cycle is often repeated for the children of incarcerated adults.

82. Experts noted the disproportionately high numbers of Indigenous youth in criminal system detention in many states, compared to the rest of the population. Further, they tend to receive longer sentences. For Indigenous youth already in detention, there is an urgent need for rehabilitation programmes and policies, developed in conjunction with Indigenous families, youth, communities and Indigenous leaders that are culturally-relevant and reflect Indigenous spiritual and cultural practices. The freedom to exercise Indigenous spirituality and religion on an equal basis to other religious and spiritual traditions is essential in preparing Indigenous youth, their families and communities for their return home. This is a basic human right that is too often violated or denied for incarcerated Indigenous youth.

83. Experts recognized that prison and juvenile detention systems often discriminate against Indigenous Peoples because they lack understanding of spiritual practices such as purification through the sweat lodges, as well as the need for ceremonial items such as hand drums, lava rocks, mountain tobacco, sage, cedar, eagle feathers and sweet grass. Such practices are often inappropriately labeled “security risks” and therefore are prohibited by prison officials. The Experts therefore recognized the urgent need to educate and build awareness among prison officials and other relevant State agencies about the importance of Indigenous religious and spiritual traditions.

84. Experts recognized the urgent need to educate and build awareness in prison systems, relevant State agencies and officials about Indigenous spiritual practices. They often they discriminate against Indigenous Peoples because they lack understanding of spiritual practices such as purification through the sweat lodges, as well as the need for ceremonial items such as hand drums, lava rocks, mountain tobacco, sage, cedar, eagle feathers and sweet grass. Such practices are often inappropriately labeled “security risks” and therefore are prohibited by prison officials.

85. Indigenous children and youth, especially those in remote areas, often lack access to health, education and other basic services required for their optimal development. Holistic, culturally appropriate approaches, developed with full community participation, are required to address the needs of “at risk” families and children. These must be developed, administered and carried out by Indigenous Peoples themselves. Gender perspectives must also be integrated.

86. Experts recognized and affirmed that most crimes committed by Indigenous youth are socio-economic in nature. They acknowledged statistics confirming that poverty, or a low family income, is the single most important indicator in many states, including Canada, for removal of children from their home.

87. Indigenous young people are often criminalized by what are actually violations by States of their human rights obligations. These include racial discrimination, enforced poverty, economic marginalization, failure to protect children from all forms of abuse including sexual exploitation,

and denial of access to traditional lands, resources, economic and subsistence activities. Many times the activities of Indigenous youth which are necessary for their basic survival are criminalized by States.

88. Experts emphasized that Indigenous Peoples must have full participation in decision-making regarding programs for rehabilitation of Indigenous youth in prisons and juvenile justice custody. Cultural practices must be the basis for those programs, so that young people in custody can regain pride and self-esteem as an essential element of their rehabilitation. Indigenous Peoples, and youth representatives in particular, are often excluded from decision-making and political processes and therefore do not have a voice in determining, developing or implementing programs which could address their needs.

89. Members of Indigenous communities are often excluded from decision-making and political processes and therefore do not have any legal standing or voice in developing policies affecting Indigenous children and youth. This is especially problematic in States where Indigenous Peoples are not officially recognized as Indigenous Peoples.

90. Experts affirmed the essential need to ensure full engagement and effective participation by Indigenous communities in designing preventative care, support services for “at risk” families, children and youth as well as alternative placement options if required. Indigenous leaders need to be active in seeking administrative and legal remedies for discriminatory practices, and to be recognized as having legal standing to negotiate with State governments to ensure that culturally-relevant programs, including those for incarcerated youth, are available and provided on a consistent basis. In regions where Indigenous Peoples’ traditional self-governmental structures are not recognized by States, for example in some Eastern Europe and African countries, such recognition is a necessary step to ensure this engagement and participation.

91. Experts recognized the need to include the voices and concerns of Indigenous youth and children in the assessment and development of relevant programs as well as individual placements in foster care and youth detention, in keeping with Article 12 of the *Convention on the Rights of the Child*.

92. In places like Kenya where many Indigenous youth lack educational and economic opportunities, during political elections they are often given economic incentives by politicians to cause political unrest and intimidation in their communities. Once the politicians are elected, they once again ignore the situation of these youth. However, some youth become accustomed to criminal activity in this way, and they continue to cause disruption in their communities.

93. Indigenous children and youth held in refugee, immigration and detention centers by the United States and other countries must be afforded special care and humane treatment, with culturally relevant counseling, and child protection and legal services in their own languages and by Indigenous people whenever possible.

94. Experts agreed that the lack of consistent disaggregated data on numbers of Indigenous children in various forms of state custody and detention (juvenile justice, adoption, foster care

and immigration custody) presents ongoing challenges. Reliable data collection and assessment on such matters remains sporadic and selective, and in some States is non-existent.

95. Experts recognized that there are good practices, representing in some cases collaborative approaches undertaken by Indigenous Peoples and States in various regions, which merit further exploration for their wider applicability. These include: the 1) The Truth and Reconciliation Commission of Canada regarding residential schools; 2) the Saskatchewan Justice Commission; 3) Treaty 6 Declaration on Child and Family Wellness; 4) Kasohkowew Child Wellness Society; 5) the Ermineskin Cree Nations Constitution; 6) the work of the Federal Agency PANI in Costa Rica in collaboration with Indigenous communities to ensure community control of decision-making regarding alternative placements for Indigenous children; 7) the Indian Child Welfare Act (ICWA) in the US, which Indigenous Peoples worked to bring about as federal law, and which promotes primary or concurrent jurisdiction of Indigenous Nations over Indigenous children requiring alternative placement, (although failures in its consistent implementation were also noted); 8) programs carried out by Indigenous Peoples, with or without state support, to bring spiritual and cultural practices for rehabilitation of incarcerated Indigenous youth as well for family restoration and healing in the US, Aotearoa and other regions; 9) the Draft Charter on the Rights of the Maori Child in Aotearoa (New Zealand). Experts recognized these examples presented at the EGM are far from exhaustive and expressed an interest in receiving reports on other successful models from all regions; and 10) Jordan's Principle in Canada which is a child-first principle for resolving jurisdictional disputes between different levels of government affecting services to Indigenous children and youth.

## **VII. Recommendations**

96. Experts reiterate their call upon States to include the Rights of Indigenous Children and Youth as a subject area in all their reports to UN human rights bodies. In particular, experts urge the UNPFII to monitor the implementation of the *Convention on the Rights of the Child* (CRC) General Comment 11, "Indigenous children and their rights under the Convention" (2009), through State Parties' reports to UN Treaty Monitoring Bodies and the Universal Periodic Review process.

97. Experts strongly urge the UNPFII to call upon States to comply with CRC General Comment 11, in the interpretation of their obligations under the CRC.

98. Experts request that the SPFII present this EGM report to the Inter-Agency Support Group, and urge the group to pay close attention to the conclusions and recommendations which directly pertain to the work of their respective agencies. Further, the Inter-Agency Support Group members be encouraged to implement the recommendations in CRC General Comment 11 within their respective mandates.

99. Experts recommend that the UNPFII develop an inventory of UN instruments in addition to the CRC to determine whether there is an opportunity to participate in the development of other General Comments similar to, and building upon, CRC General Comment 11 that can have a

positive impact on the rights of Indigenous youth and children and on the role of Indigenous Peoples in protecting these rights.

100. Experts strongly encourage States to fully implement all Human Rights instruments that defend the Rights of the Child. Experts further call upon the UNPFII to encourage the United States to ratify the CRC, as one of only 2 States which still have not done so, and to encourage all States to address the Rights of the Child and Indigenous Children in all forms of State Custody when they are reviewed by the Human Rights Council's Universal Periodic Review process.

101. Experts call for the establishment of programs by UN bodies and agencies and by Indigenous Peoples to provide capacity-building to Indigenous communities and families about their legal rights and, in particular, their human rights for the protection of their children, and to ensure they are able to effectively access programs and resources for legal defense and remedies.

102. Experts urge the OAS Working Group on the American Declaration on the Rights of Indigenous Peoples, in its work on Article XVI, "Indigenous Family", to adopt paragraph 2 as proposed by the Indigenous Caucus at the OAS Working Group. In the view of the experts, this language underscores, supports and upholds the rights and laws of Indigenous Peoples, their families and their legal and court systems to exert jurisdiction and control over the placement and care of Indigenous Children and Youth. The text currently under negotiation, as proposed by the Indigenous Peoples' Caucus at the OAS Working Group, is as follows:

2. In determining the best interests of the child in matters related to the adoption of indigenous children, severance of family ties, and other similar circumstances, the courts and other relevant institutions shall take into account, primarily, the [applicable] indigenous law of the peoples concerned and shall consider their points of view, rights, and interests, including the positions of individuals, the family, and the community. The indigenous institutions, and indigenous courts where they exist, shall [may] have jurisdiction in determining the custody and other related matters concerning indigenous children.

Experts also expressed a strong preference for the unbracketed language in this paragraph and called for its adoption without the inclusion of the text currently included in brackets.

103. Experts urge the UNPFII to encourage all regional human rights systems, including the European Human Rights System, to fully recognize the legal systems and traditional government structures of Indigenous Peoples in these regions.

104. Experts call upon States to fully accept responsibility for the impacts of past state sponsored child removal programs and practices i.e. "stolen generations", residential schools, generations of incarceration and institutionalization of Indigenous children and youth and to provide repatriation and compensation when called for by the Indigenous Peoples impacted by these programs and practices. They further call upon States to assume this responsibility by supporting

Indigenous-designed and run programs for family training and support, counseling support services that are sensitive to the legacy impacts of these removal programs on parenting skills and family and community structures. Further they call upon States to adopt and implement standards on all levels which can address and reverse continuing impacts as a first step towards reconciliation.

105. Experts urge the Australian Government to reinstate the *Racial Discrimination Act* in the Northern Territory, as it was suspended without any consultation with Indigenous Peoples and the suspension does not address any specific recommendations contained in recent reports of child abuse such as the *Little Children are Sacred Report*.

106. Experts call upon States parties to fully implement paragraph 25 of CRC General Comment 11 (2009) affirming that Indigenous children “require positive measures in order to eliminate conditions that cause discrimination” 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”.

107. Experts, in particular, call upon States to implement special measures for Indigenous children and youth for the decriminalization of some activities resorted to by children in poor communities, i.e. begging, petty theft and child prostitution, as well as programs to assist these children in accessing education, support and training to ensure other sources of income are available for their survival. It is imperative to support community, culturally-based restorative justice programs to reintegrate these children and youth into their communities.

108. Where Indigenous children and youth are over-represented in foster care, adoption programs and juvenile justice systems, experts call upon States, in conjunction with Indigenous Peoples and organizations, to immediately review the programs, policies and laws concerned, as well as causative and contributing factors. Experts also call for the implementation of effective solutions, including, as needed, alternative programs, policies and laws developed in partnership between States and Indigenous Peoples.

109. Experts urge the UNPFIII to request a report to its 10<sup>th</sup> session (2011) on the Canadian Human Rights Tribunal on First Nation Child Welfare (case number T1230/7008) filed by First Nations Child and Family Caring Society of Canada and the Assembly of First Nations alleging racial discrimination against First Nations children arising from Canada’s longstanding practice of providing inequitable child welfare services to First Nations children.

110. Experts call upon States to ensure that extended Indigenous families and communities are directly involved in any decisions to remove children from their primary households as well as in deciding alternative placement options. In addition, experts agreed that the following principles must also apply to any considerations to remove children from their primary households: a) culturally-relevant services and programs must be designed, managed, implemented and monitored by the Indigenous Peoples and communities in question b) the child must be removed only as a last resort based on the child’s safety and best interests with the agreement of the child’s extended family and community; c) culturally-relevant support services and programs

must be available to families in order to assist them with caring for the child in their primary households before removal is considered; d) intensive culturally based services must be provided to families who have their children removed in order to optimize opportunities to address the risk and enable children to return home e) siblings must be kept together and extended family relations maintained for children that must be removed from their primary households; f) special care, services and attention must be provided for Indigenous children and youth with special needs and disabilities who are in foster care, custody or detention.

111. Where supported by Indigenous Peoples, experts call upon States to adopt national legislation addressing the removal and placement of Indigenous children which ensures the full and effective participation of Indigenous Peoples, and fully recognizes the jurisdiction of Indigenous Peoples in this regard through their own designated representatives, institutions and decision-making process. Ongoing monitoring, in conjunction with the Indigenous Peoples, should be carried out to ensure that implementation of such legislation is consistent, transparent and effective.

112. Experts encourage Indigenous Peoples to develop and restore their own healing and restoration models based on traditional concepts, practices, stories, songs, ceremonies, languages, world views, family and clan relationships, and to assess their effectiveness based on their own criteria and indicators for success. We call upon the UNPFII to compile and share these models with the agreement of the Indigenous Peoples. While we also call upon States to recognize and support these traditional Indigenous models, we also strongly affirm that in no way does their validity and effectiveness depend on such recognition and support.

113. Experts call upon the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) in their current study on the Rights of Indigenous Peoples to participation in decision making, to include an assessment regarding Indigenous Peoples' decision-making practices, obstacles and challenges regarding Children and Youth in various forms of State or alternative custody. This study should include a review of the issues and concerns raised in this report. Experts also take note of the invitation of the EMRIP members for Indigenous Peoples and organizations to have input into this study, including in the area of right to decision-making regarding Indigenous children and youth.

114. Experts recommend that States provide and ensure adequate living conditions in detention centers where youth and children are held in keeping with internationally accepted standards, and that regular monitoring of conditions by State and international agencies, Indigenous Peoples and NGOs be permitted. Access to social services, legal advocacy, culturally-relevant pre-release and restorative justice programs, and visitation by family members must be provided in all cases.

115. Experts call upon the UNPFII to urge States to promote special considerations for Indigenous children and youth in custody in keeping with the recommendations presented in this report, and to submit reports on good practices as well as measures taken to address bad/inadequate practices and situations. Further, experts request that States include updates on their implementation of existing international human rights standards in this regard, including the relevant provisions of the UN *Declaration on the Rights of Indigenous Peoples*, inter-alia, the



relevant preambular paragraphs as outlined in the “International Framework” submission to this EGM, as well as articles 3, 4, 8, 9, 13, 14, 18, 19, 20, 21, 22, 36, 37 and 40.

116. Experts reiterate the call upon States to collect and publicly distribute reliable disaggregated data on Indigenous children and youth in all forms of State custody. This data is urgently needed by Indigenous Peoples and States to design, assess, and monitor the impacts of relevant programs, policies and laws. Experts also request that States conduct federal-level hearings to determine how many Indigenous youth are incarcerated, including a breakdown by tribe/Nation/community, age and gender; what crimes they are accused of and how many years they have been incarcerated; and how many have been passed directly from juvenile to adult prison systems. Finally, in this regard, experts request that States collect reliable data on the numbers and status of human rights protection measures for children in states such as Guatemala where babies born to mothers in prison can remain incarcerated for several years. This information should be shared with Indigenous Peoples, relevant international bodies including the UNPFII and UNICEF, as well as the general public.

117. Recognizing the urgent importance of collecting relevant data from States, experts call upon the UNPFII to distribute a short questionnaire to all UN State members requesting the following information: a) Does your national constitution and/or other national legislation mention the rights of Indigenous Peoples?; If so, what are those provision(s)?; b) Are there State/Federal/national programs in your country promoting the rights of Indigenous Peoples?; c) Are there institutions financed by the State for the protection of Indigenous cultural identity, livelihood, education, etc?; d) What measures are being taken to preserve the Indigenous cultural identity of Indigenous Children and Youth in detention, custody, foster care and adoption? ; and e) What redress measures are available to Indigenous Peoples where States are failing to ensure the full enjoyment of their rights?

118. Experts request that the UNPFII call upon the Committee on the Rights of the Child, in keeping with article 45(c) of the CRC to request that the UN Secretary General conduct a Study on the situation of the rights of Indigenous children, including the issues addressed in this EGM report, and addressing the need to collect and distribute relevant disaggregated data.

119. Experts urge the UNPFII to conduct a follow-up seminar to monitor the implementation of the recommendations of the EGM and document additional good practices, solutions and lessons learned in 2011 or 2012 prior to the 11<sup>th</sup> session of the UNPFII.

**Annex**  
Programme of Work

**International expert group meeting on  
Indigenous children and youth in detention, custody, adoption and foster care**

**4-5 March, 2010, Vancouver**

**Programme of Work**

Prepared by First Nations Summit and the Secretariat of the  
United Nations Permanent Forum on Indigenous Issues

## **Draft Programme of Work**

**Thursday, 4 March**

**8:30am – 9:00am**      *Opening of Meeting*

**Item 1**                      **Opening of Meeting**

**9:00am – 10.30am**

*Opening Presentations*    *Tonya Gonella-Frichner, Member UN Permanent Forum on Indigenous Issues*  
*Grand Chief Ed John/Andrea Carmen (IITC)*

*Jose Francisco Cali, Distinguished Panelist and member of CERD*

*Sonia Smallacombe (SPFII – Brief Introduction on the Experts)*

**Item 2**                      **Election of Chairperson and Rapporteur**

*Presentation by the Chairperson*

**11.00 am – 1pm**

**Item 3 Detention and Custody**

- What strategies have been successfully utilized by tribal governments and indigenous peoples' organizations to challenge disproportionate rates of detention and incarceration of indigenous youth?
- To what extent can tribal government, indigenous peoples' organizations or authorities influence the treatment and rehabilitation of indigenous youth in State/National justice systems?
- What are the common concerns regarding the incarceration of indigenous youth? How can tribal governments and indigenous peoples' organizations from different regions work together to address these common concerns regarding the detention and incarceration of indigenous youth?
- What State initiatives, if any, have proven to be promising with regard to indigenous children, youth and communities? What lessons can be learned from experiences with such programs, and how can indigenous peoples best ensure that promising programs are further developed and expanded?
- What role can the UN Permanent Forum on Indigenous Issues and the UN system more broadly play in addressing disproportionate rates of detention and incarceration of indigenous youth and harsh treatment of those in detention?
- Very little systematic data on detention and incarceration rates of indigenous youth exist for most countries and regions. How can this gap be filled? What are the gender differences? What gaps exist regarding indigenous youth with disabilities and how can these gaps be lessened? What mechanisms can be used to share information on this issue among indigenous peoples' organizations and advocates concerned with this issue?
- What are the unique needs of young indigenous women who are incarcerated and how can these be met?

*Presentations*                      *Lenny Foster, Distinguished Panelist*

*Agnes Lempaa (Africa)*

*Discussion on the item*

**1 pm – 2.30 pm**                      **Lunch**

**2.30 pm – 4:00 pm**

**Item 4 Foster Care**

- How can indigenous peoples' communities, tribal government or authorities assist indigenous children and youths that are more likely to enter the foster care system?
- What strategies (including policy development etc.) have been successfully utilized by tribal governments and indigenous peoples' organizations to deal with the disproportionate numbers of indigenous youth in the foster care system?
- To what extent can tribal governments or authorities influence the overall treatment and care (economically, socially, physically, spiritually and emotionally) of indigenous youth in state-sponsored foster care programs?
- How can tribal governments, indigenous peoples' organizations or authorities work together with States to ensure that proper care and treatment (economically, socially, physically, spiritually and emotionally) is afforded to indigenous children and youth that are placed in both indigenous and non-indigenous families?
- What are the common concerns regarding indigenous children and youth that are placed in the foster care system? How can tribal governments and indigenous peoples' organizations from different regions work together to address these common concerns?
- How can tribal governments, indigenous peoples' organizations and authorities work with States to assist indigenous youths that age out of the foster care system?
- What State initiatives/programs, if any, have proven to be promising to assist indigenous youths both in the foster care system and also those that age out of the system? What lessons can be learned from experiences with such programs, and how can indigenous peoples best ensure that promising programs are further developed and expanded?
- What role can the UN Permanent Forum in Indigenous Issues and the UN system more broadly play in addressing the vastly disproportionate numbers of indigenous children and youths in the foster care system?

*Presentations*                      *Natalie Hunter (Pacific)*

*Jose Carlos Morales (South America)*

*Discussion on the item*

**4:30 pm – 6:00 pm**

**Item 5 Adoption**

- How can indigenous peoples' organizations work together with indigenous communities that have maintained and still practice customary adoption system? How can all parties ensure that the indigenous children and youth going through these systems are not abandoned in the system but are placed with families that will allow them to develop skills and maintain their culture and traditions in their own homes?
- How can indigenous peoples' organizations and communities assist indigenous peoples or families that are considering entering their child(ren) into the formal adoption system? What service can be provided to these indigenous peoples or families within their own communities to assist them in making a well informed decision? How can indigenous peoples' organizations work together with States in the development of such services or programs?
- How can indigenous peoples' organizations and tribal governments and authorities influence States that are not party to international legal standards and instruments relating to children, like the Convention on the Rights of a Child to become party and implement these international standards locally?
- To what extent can indigenous people's organizations and tribal governments and authorities work together with States to ensure that indigenous children and youth that enter the formal adoption system are placed with legally operating entities that are not in contravention of any local or international laws relating to the adoption of children both locally and internally?
- How can indigenous peoples' organizations and tribal governments and authorities work together to assist States in tackling the issue of stolen babies and children? How can indigenous organizations create awareness of the issue in their own communities? How can indigenous peoples' organizations influence States to create awareness and implement laws and policies that will stop these illegal activities?
- How can indigenous people's organizations work together to assist the State in addressing the human rights concern of sexual trafficking of indigenous children?
- What roles can the UN Permanent Forum on Indigenous Issues and the UN system more broadly play in addressing the issue of indigenous children being stolen and also indigenous parents deceived into entering their child(ren) into international programs that are in contravention of local and international law?

*Presentations*                      *Natalie Landreth (North America)*

*Discussion on the item*

**Friday, 5 March**

**9:00am – 9:30am**                      *Chairperson and Rapporteur*

**9:30am – 10am**

*Presenter*                                      *Chief Wilton Littlechild, Distinguished Panelist*

*Organization of American States (OAS)*

**10.30 pm – 1 pm**

**Item 6 Causes, Prevention and Healing the Sacred Hoop of our families and children**

- What factors have influenced and continue to influence the transfer of Indigenous children from their families/communities to states? These can include external policies and events (i.e. residential/boarding schools, removal policies i.e. “lost generation” etc. and their present day effects (generational legacy issues); government policies and programs weighted towards removal of Indigenous children from their communities; wars and disasters; immigration policies; poverty and other factors. They can also include assessing factors within Indigenous communities that contribute to the erosion of parental, community and tribal custody and how these factors could be addressed and reversed.
- What contributions can Indigenous Cultural understandings and practices (including traditional healing and counseling, ceremonies, language preservation, etc.) offer in addressing this issue, including preventing the removal of children, returning children to community/tribal custody, and providing culturally relevant services to maintain identity and spiritual/cultural health for Indigenous children and youth while they are in state custody.

*Presentations*

*Hinewirangi Morgan (Pacific)*

*Nadir Bekirov(E. Europe, Russ. Federation & Central Asia)*

*Cindy Blackstock (North America)*

*Discussion on the item*

**1 pm – 2.30 pm          Lunch**

**2:30 pm – 3:30 pm**

**(continued)**

**Item 6 Causes, Prevention and Healing the Sacred Hoop of our families and children**

*Continued discussion on the item*

**3:30 pm - 5 pm**

**Item 7          Adoption of conclusions and recommendations**

**5pm-5:15pm    Closing**

