

**United Nations Permanent Forum on Indigenous Issues 9<sup>th</sup> Session  
April 19<sup>th</sup> to 29<sup>th</sup>, 2010, New York  
Agenda Item 7: Report of the International Expert Group Meeting (EGM) on  
Indigenous Children and Youth in Detention, Custody, Foster Care and Adoption**

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Canada, the American Indian Law Alliance, Flying Eagle Woman Fund, the  
Seventh Generation Fund and the International Organization of Indigenous  
Resource Development**

*Global Indigenous Youth Caucus  
the Native Youth Sexual Health Network*

Mr. Chairperson, Honourable Permanent Forum Members, distinguished delegates and Indigenous representatives, thank you for the opportunity to speak about the Expert Group Meeting on Indigenous Children and Youth in Detention, Custody, Foster Care and Adoption.

I thank Permanent Forum Member Tonya Gonella Frichner and Andrea Carmen, EGM Rapporteur for their reports. I would like to emphasize the importance of continuing to work in this area through holding a further EGM in 2010.

In addition to the important general conclusions highlighted by Andrea Carmen, I would like to highlight the following specific conclusion in relation to Indigenous women and girls, in paragraph 80 of the full written report of the EGM [E/C.19/2010/CRP.8]:

“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.”

During our side event held on the EGM last week, we heard from the Indigenous Youth Caucus who indicated their interest in participating in the follow-up work of the EGM.

We recommend that the Permanent Forum review and adopt the recommendations set out by the Experts at the EGM as set out by Andrea Carmen earlier and contained in this statement as Appendix A.

Further, we recommend that representatives from the Global Indigenous Youth Caucus of the Permanent Forum be welcomed to partner on any future initiative as their voices and perspectives will enhance the work completed.

Thank you.

## **Appendix “A”**

### **Key Conclusions and Recommendations from the EGM on Children and Youth in Detention, Custody, Foster Care and Adoption relating to the Future Work of the UN Permanent Forum on Indigenous Issues**

1. 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.
2. 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.
3. Experts agreed that existing human rights instruments form the international framework required addressing these issues using a “rights based approach”. What is lacking is implementation.
4. 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.
5. 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.
6. 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.
7. 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.

8. 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.

9. 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.

10. Experts recognized good practices, representing in some cases collaborative approaches undertaken by Indigenous Peoples and States. These include: the 1) The Truth and Reconciliation Commission in Canada; 2) the Saskatchewan Justice Commission; 3) Treaty 6 Declaration on Child and Family Wellness; 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 promotes primary or concurrent jurisdiction of Indigenous Nations over Indigenous children requiring alternative placement, (although failures in its 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; and 9) the Draft Charter on the Rights of the Maori Child in Aotearoa (New Zealand) among others. Experts recognized the examples presented at the EGM are far from exhaustive and expressed an interest in receiving reports on other successful models from all regions;

A number of specific recommendations were agreed to by consensus of the experts to present at this session. Those specifically addressing the future work of the UNPFII include:

1. 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.

2. 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.

3. Experts request that the UNPFII 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.

4. 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.

5. 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.

6. Experts urge the UNPFII to encourage all regional human rights systems to fully recognize the legal systems and traditional government structures of Indigenous Peoples in these regions.

7. 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.

8. 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.

9. 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*.

10. 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.

11. 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.