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HUMAN RIGHTS COUNCIL  
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Agenda item 3

### **PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT**

**Joint written statement\* submitted by the Assembly of First Nations-National Indian  
Brotherhood (AFN), the International Indian Treaty Council (IITC), the  
International Organization of Indigenous Resource Development (IOIRD), the  
Indigenous World Association (IWA) and the Native Women's Association of Canada,  
non-governmental organizations in special consultative status**

The Secretary-General has received the following written statement which is  
circulated in accordance with Economic and Social Council resolution 1996/31.

[19 May 2008]

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\* This written statement is issued, unedited, in the language(s) received from the  
submitting non-governmental organization(s).

### **Forced Removal of Indigenous Children including those in State Custody<sup>1</sup>**

No other consideration takes higher precedence or is more central to the identity and survival of Indigenous Peoples than the physical, cultural and spiritual safety, health and well-being of our children.

We are taught that our foremost responsibility is to safeguard and protect them as the most vulnerable members of our communities. Indigenous Children who have been deprived of the safety, protection and security of their parents, family circles and communities are the most vulnerable to physical, emotional, cultural and spiritual harm. They can suffer severe, ongoing and sometimes lifelong trauma.

The forced removal of children from their communities or “group” is a recognized and well-defined violation of international human rights law, including Article 2 of the *Convention on the Prevention and Punishment of the Crime of Genocide* and various provisions in the *Convention on the Rights of the Child*. It also violates articles 7, 8, 10, 12 and other articles of the *UN Declaration on the Rights of Indigenous Peoples*.

We commend the UN Committee on the Rights of the Child for its recommendation at its 37<sup>th</sup> session (2004) that the Commission on Human Rights consider establishing at its 61st session in 2005 a Working Group to prepare draft UN Guidelines for the protection and alternative care of children without parental care by 2008. We look forward to hearing the progress that has been made to date, and we call upon the Council to include the unique expertise and contributions of Indigenous Peoples in all subsequent stages of this critically important process.

In this regard, we call the attention of this Council to the following very relevant concerns.

First, we once again underscore the severe human rights impacts on the many children around the world affected by armed conflicts as well as other forms of military activities in Indigenous Peoples’ lands and territories. These impacts include emotional, physical and spiritual trauma due to forced separations from parents and families, loss of care and due to parental incarceration, incapacitation, disappearances and death; forced relocations and migration, forced recruitment and disruption of essential cultural and ceremonial practices.

We also call the attention of this Council to other forms of forced removal from parental care being carried out against Indigenous children in both developed and developing countries, including in some of the world’s wealthiest countries. For example, we are very concerned with the widespread human rights violations against Indigenous children and youth as a result of legally sanctioned removals from their homes communities through state-sponsored foster care and youth incarceration programs and policies in the United States and Canada.

In Canada, government and religious authorities have admitted to the ongoing inter-generational trauma caused by the forced removal program of thousands of Indigenous children in past generations. Indigenous children were removed from their families at a

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<sup>1</sup> The Confederacy of Treaty Six First Nations shares the views expressed in this statement.

very young age, in many cases for a period of several years and placed in residential schools. Families that refused to cooperate were subject to fines and incarceration.

Although Canadian residential schools were closed in 1996, the systematic removal of Indigenous children from their families and communities continues today through the Canadian Governments' foster care program. **At the current time, the Canadian government estimates that one in every eighteen Indigenous children in Canada is in state-sponsored foster care custody**, more than at any time during the residential school era. Indigenous organizations in Canada estimate that more than 27,000 children are in state foster care custody. They also report high rates of deaths and injuries of Indigenous children in the governmental foster care custody, including many babies and children with physical and mental disabilities, and that these deaths have not been adequately investigated. Many cases of sexual and physical abuse and neglect have been reported.

Indigenous organizations also report that Canadian government programs and policies actually encourage the removal of Indigenous children rather than providing funding and support services to keep children with their families, as they do to a greater degree for non-Indigenous families.

This results in a "two tier" child welfare system in Canada, one which supports non-Indigenous families to stay intact, while the other encourages Indigenous children to be removed from their homes. Studies have shown that many of the "high risk" factors identified by the government as causes for Indigenous children to be considered for removal from their homes are directly related to poverty, including "lack of basic needs" and poor housing. High proportions of the Indigenous families considered to be "at risk" also have adult members who are survivors of the residential school child-removals, perpetuating the inter-generational trauma and cultural alienation of new generations of children.

Many Indigenous leaders in Canada, as well as many who work directly with Indigenous children, youth and families, believe that the high rates of suicide and incarceration of Indigenous youth in that country are directly related to these factors. A 1995 report by the *Royal Commission on Aboriginal Peoples* reported that the suicide among Native youth is five to six times higher than the Canadian average.

The rate of Indigenous children and youth currently incarcerated or under punitive detention is also highly disproportionate in Canada. In some facilities it is reported that more than 80% of the youth and children in custody are Indigenous.

In fact, in the United States and Canada, as well as other states including New Zealand and Australia, many decades of disproportionate detainment and incarceration of Indigenous youth has resulted in inter-generational trauma, extreme rates of alcohol and drug abuse, cultural disruption, suicide and violence. In the United States, Indigenous youth are less than 2% of the population yet they are 15 to 20% of the population of incarcerated youth. In some parts of the country, for example in Alaska, the comparative rate of incarceration for Indigenous youth is much higher.

In the United States and Canada, the detainment and incarceration of Indigenous youth has also resulted in an "Indian Industry" creating economic gain for county and state detention and correctional facilities. In the US, a daily per diem rate is given to detention centers and

correctional facilities, serving as an incentive to continue the existing disparities of arrest, detention and incarceration of Indigenous youth.

Detained and incarcerated Indigenous youth are removed from their families, cultures and tribal communities, living in virtual isolation, often hundreds or even thousands of miles from home, parents, grandparents and spiritual resources. They are often subjected to forced hair cutting and removal of cultural and spiritual items. Many Juvenile Detention Centers and correctional facilities consistently deny Indigenous youth equal access to their spiritual practices that could maintain their cultural ties and identity with their communities.

The related human rights impacts on Indigenous children whose parents are incarcerated at disproportional rates in countries such as Canada, New Zealand and Australia have never been fully examined. In the US, for example, many children of incarcerated Indigenous parents immediately are removed to state managed foster care systems, and are often victims of abuse and neglect in that system as well. Many of these children, who grow up hundreds and often thousands of miles away from their incarcerated mothers and fathers never leave state custody. They eventually enter the juvenile and then the adult criminal justice system, perpetuating the cycle of incarceration.

The International Indian Treaty Council has joined with many other organizations in adopting the *Children of Incarcerated Parents Bill of Rights* as set forth by the San Francisco Partnership for Incarcerated Parents.<sup>2</sup> It asserts the rights of children to be well cared for in their parent's absence and to speak with, see and touch their incarcerated parent, among other provisions.

We strongly urge the Human Rights Council to endorse this Bill of Rights and incorporate its relevant provisions in the development of the UN Guidelines for the protection and alternative care of children without parental care.

We call upon the UN Human Rights Council to make the issue of Indigenous children under state detention and custody in North America and other regions a high priority for follow up study, research and action in the development of these new Guidelines, and to invite the participation of Indigenous Peoples in their development and implementation.

We also urge the UN Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples to undertake a full investigation of the situation of Indigenous children and youth in state custody, foster care and under detention in the US, Canada, Australia, New Zealand and other States. This could include the situation of children whose parents have been deported under current immigration laws in the US and elsewhere, and those who are being held in detention centers operated by the United States Department of Homeland Security's Immigration and Customs Enforcement.

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<sup>2</sup> 2003, Newby, Gretchen, Friends Outside, Bernstein, Nell, *Children of Incarcerated Parents: A Bill of Rights*, San Francisco Partnership for Incarcerated Parents, The Zellerbach Family Foundation.

This is a matter of urgent necessity to protect the human rights, well being and in many cases the lives of the most vulnerable among us, who are the future of our Nations and Peoples.

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