

## **CRC, CRC/C/133 (2003)**

### **VI. DAY OF GENERAL DISCUSSION**

608. On 19 September 2003, the Committee held a day of general discussion on the theme “The rights of indigenous children”. The theme was suggested by the Permanent Forum on Indigenous Issues at its first session held in May 2002 (E/2002/43 (Part I) E/CN.19/2002/3 (Part I)) and by the Child Rights International Research Institute based in New York, United States of America. The Committee decided to adopt this theme for two reasons: first, because article 30 of the Convention on the Rights of the Child is the only provision in an international human rights instrument to specifically recognize indigenous children as rights holders; and second, in reviewing reports of States parties, it has come to the attention of the Committee that indigenous children often face particular challenges to the enjoyment of their human rights.

609. Based on the discussions held on 19 September 2003 the Committee adopted a list of recommendations. These recommendations make no claim to being exhaustive, but rather pertain specifically to those issues discussed during the discussion day. As described in the outline (contained in CRC/C/124), the Committee chose to limit the discussion to the issues of: (a) non discrimination, racism and xenophobia, in particular with regard to accessing basic services and the system of law and public order; and (b) the cultural specificity of indigenous children and how it relates to their right to identity and to education.

610. More than 120 participants representing Governments, NGOs, national human rights institutions and specialized agencies, programmes and funds of the United Nations attended the discussion day. A list of participants is contained in annex II to the present report.

#### **Summary of discussions**

611. The day of discussion was opened by the Chairperson of the Committee on the Rights of the Child, Mr. J.E. Doek, who stated that the purpose of the discussion day was to increase visibility and awareness of the rights of indigenous children and to encourage States parties and organizations working for indigenous children to apply a more rights based approach. The Chairperson also conveyed a message of support for the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, who drew the attention of participants to the lack of data on the situation of indigenous children.

612. The plenary session was opened by the Acting High Commissioner for Human Rights, Mr. Bertrand Ramcharan. He recounted how the United Nations has dealt with the rights of indigenous people in the past, and noted that the discussion day was part of a continuing process of understanding the situation of indigenous communities and listening to their concerns.

613. Mr. Ramcharan remarked that article 27 of the International Covenant on Civil and Political Rights (ICCPR) is in fact the basis of article 30 of the Convention on the Rights of the Child, which states that “In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his

or her own culture, to profess and practise his or her own religion, or to use his or her own language”. However, in article 30 of the Convention on the Rights of the Child, the drafters added a specific reference to indigenous children which does not exist in article 27 of ICCPR.

614. While noting that article 27 of ICCPR does not imply a collective right to self determination, Mr. Ramcharan pointed out that the Human Rights Committee in its general comment No. 23 of 1994 considered that the enjoyment of culture “may consist in a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority”.

615. The Acting High Commissioner’s speech was followed by interventions from two indigenous youth representatives, Mr. Adam Kuleit Ole Mwarabu from Tanzania and Mr. Rafael Chela from Ecuador. One of the key issues raised by Mr. Mwarabu was the relationship between the right to education and the recognition of indigenous communities’ cultural specificity. He observed that in his community many parents were afraid to send their children to school because they would be assimilated and lose their culture. The root cause of this dilemma was that the indigenous parents and community leaders were not involved in the development of formal education, therefore the system did not respond to their needs. The need for indigenous participation in the design and implementation of programmes was also evident in the health sector and economic development programmes.

616. The same issue was also highlighted by Mr. Chela. Greater participation was an important means of ensuring that the needs and concerns of indigenous communities could be properly taken into account, in particular in the fields of education, health and social services. However, an additional impediment to the promotion and protection of the rights of indigenous children was the lack of data on the implementation of their rights under the Convention. Thus, Mr. Chela encouraged measures to collect data on indigenous children with a view to addressing discrimination in the enjoyment of their rights.

617. The opening session was closed by Mr. Wilton Littlechild, a member of the Permanent Forum on Indigenous Issues, who outlined the Permanent Forum’s recommendations to the Committee on the Rights of the Child and other United Nations bodies working with children. The Permanent Forum recognized the unique role of the Committee in monitoring the implementation of indigenous children’s rights by reviewing the reports of States parties under the Convention. Accordingly, the Permanent Forum recommended that in its dialogue with States parties with indigenous communities, the Committee pay particular attention to the situation of indigenous families, the right to food and water and protection of indigenous children involved in armed conflict.

618. Following the opening session, participants split up into two working groups to discuss and formulate recommendations on the two sub themes referred to above.

619. Discussions in the first working group addressed a wide variety of concerns, including overrepresentation of indigenous children in alternative care and juvenile justice systems; increased vulnerability of indigenous children to abuse, trafficking and exploitation; and the importance of cultural sensitivity when providing services, such as health, education and social

services, to indigenous children. The working group called for more efforts by States parties and United Nations bodies to collect data on indigenous children, and, where necessary, to develop more specific indicators. In this way, more targeted interventions could be designed in order to address discrimination against indigenous children in all fields. Although there was overall agreement that discrimination is persistent, there was also consensus that positive experiences and successes should be further highlighted.

620. In order to ensure equal access to basic services, the working group also suggested that States parties, NGOs and specialized agencies and programmes of the United Nations should work to improve the cultural sensitivity and appropriateness of existing services for children (social services, health, education, juvenile justice, alternative care). Indigenous communities should participate not only in the design of services and development programmes, but should also be included among the managers and staff providing such services.

621. The second working group, which focused on cultural specificity, began its discussions with the idea that being equal does not mean being identical. Therefore, participants stressed the need for indigenous children to maintain their own identity, including culture and language. This starts with their right to be called a name of their own group or community. More generally, it was said that indigenous children shall be guaranteed their right to enjoy their own culture in their daily life. Forced assimilation leads to lack of self esteem among indigenous children, which partly explains the high rate of suicide and drug and alcohol abuse among this population.

622. In that regard, education was considered to be a particularly important element for indigenous children's enjoyment of their rights. Participants underlined the need to change and/or adapt curricula in order to teach all children about indigenous culture. In addition, bilingual education is a very important element to be taken into consideration, as well as the hiring and training of an increased number of teachers from indigenous populations. In order to implement such measures, the working group recommended increasing financial and human resources for education, including early childhood education. It was felt that the strength of indigenous communities could be used to achieve major progress in these areas.

623. The recommendations of the two working groups were then presented to the closing plenary session. In summarizing the work of the discussion day, Ms. Ida Nicolaisen of the Permanent Forum noted that, although there had been considerable discussion of the challenges facing indigenous children, the existing strengths of indigenous communities had also been highlighted.

### **Recommendations**

624. At the end of the session, on 3 October 2003, the Committee on the Rights of the Child, using the suggestions which arose during the discussion day, adopted the following recommendations:

*The Committee on the Rights of the Child,*

*Recalling* that articles 30, 17 (d) and 29.1 (c) and (d) of the Convention on the Rights of the Child are the only provisions of an international human rights instrument that explicitly recognize indigenous children as rights holders,

*In light of* the recommendations of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people pertaining to children, contained in his annual and mission reports to the Commission on Human Rights,

*Following* the request of the Permanent Forum on Indigenous Issues to the Committee on the Rights of the Child to hold a day of general discussion on the rights of indigenous children in order to promote greater awareness of the rights of indigenous children (E/2002/43 (Part I) E/CN.19/2002/3 (Part I)), and in light of the Permanent Forum's recommendations on the rights of indigenous children, adopted during its first two sessions in 2002 and 2003,

*In view of* the International Decade of the World's Indigenous People 1994 2004,

*Taking into account* the International Labour Organization's Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries,

*Recognizing* the ongoing work of the open ended intersessional working group on the draft United Nations declaration on the rights of indigenous peoples and of the Working Group on Indigenous Populations regarding issues such as self determination, land rights and other collective rights,

*Noting* that, although indigenous children are disproportionately affected by specific challenges, such as institutionalization, urbanization, drug and alcohol abuse, trafficking, armed conflict, sexual exploitation and child labour, they are not sufficiently taken into consideration in the development and implementation of policies and programmes for children,

## **I. GENERAL**

1. *Strongly recalls* the obligations of States parties under articles 2 and 30 of the Convention on the Rights of the Child to promote and protect the human rights of all indigenous children;

2. *Reaffirms its commitment* to promote and protect the human rights of indigenous children by addressing more systematically the situation of indigenous children under all relevant provisions and principles of the Convention when periodically reviewing State party reports;

3. *Calls on* States parties, specialized agencies, funds and programmes of the United Nations, the World Bank and regional development banks, and civil society to adopt a broader rights based approach to indigenous children based on the Convention and other relevant international standards such as International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, and encourages the use of community based interventions in order to ensure the greatest possible sensitivity to the cultural

specificity of the affected community. Particular attention should also be paid to the variety of situations and conditions in which children live;

4. *Acknowledges* that, as stated in the Human Rights Committee's general comment No. 23 (1994) on the rights of minorities and in International Labour Organization Convention No. 169, the enjoyment of the rights under article 30 of the Convention on the Rights of the Child, in particular the right to enjoy one's culture, may consist in a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority;

## **II. INFORMATION, DATA AND STATISTICS**

5. *Requests* States parties, specialized agencies, funds and programmes of the United Nations, in particular the United Nations Children's Fund and the International Labour Organization, the World Bank and regional development banks, and civil society including indigenous groups, to provide the Committee with specific information on laws, policies and programmes for the implementation of indigenous children's rights when the Committee reviews the implementation of the Convention at country level;

6. *Recommends* that States parties strengthen mechanisms for the collection of data on children so as to identify existing gaps and barriers to the enjoyment of human rights by indigenous children, and with a view to developing legislation, policies and programmes to address such gaps and barriers;

7. *Encourages* greater research, including the development of common indicators, into the situation of indigenous children in rural and urban areas by United Nations human rights mechanisms, specialized agencies, programmes and funds, international organizations, civil society and academic institutions. In this regard, the Committee requests all interested parties to consider initiating a global study on the rights of indigenous children;

## **III. PARTICIPATION**

8. In the light of article 12, as well as articles 13 to 17, of the Convention, *recommends* that States parties work closely with indigenous peoples and organizations to seek consensus on development strategies, policies and projects aimed at implementing children's rights, set up adequate institutional mechanisms involving all relevant actors and provide sufficient funding to facilitate the participation of children in the design, implementation and evaluation of these programmes and policies;

## **IV. NON DISCRIMINATION**

9. *Calls on* States parties to implement fully article 2 of the Convention and take effective measures, including through legislation, to ensure that indigenous children enjoy all of their rights equally and without discrimination, including equal access to culturally appropriate services including health, education, social services, housing, potable water and sanitation;

10. *Recommends* that States parties, international organizations and civil society strengthen efforts to educate and train relevant professionals working with and for indigenous children on the Convention and the rights of indigenous peoples;

11. *Also recommends* that States parties, with the full participation of indigenous communities and children, develop public awareness campaigns, including through the mass media, to combat negative attitudes towards, and misperceptions about, indigenous peoples;

12. *Requests* States parties, when updating the Committee on measures and programmes undertaken to follow up on the Declaration and Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance of 2001, to provide specific and detailed information on the situation of indigenous children;

## **V. LAW AND PUBLIC ORDER, INCLUDING JUVENILE JUSTICE**

13. To the extent compatible with articles 37, 39 and 40 of the Convention and other relevant United Nations standards and rules, the Committee suggests that States parties respect the methods customarily practised by indigenous peoples for dealing with criminal offences committed by children when it is in the best interests of the child;

14. *Requests* the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to pay particular attention to juvenile justice issues in his report on indigenous people and the administration of justice to be submitted to the Commission on Human Rights at its sixtieth session in 2004;

## **VI. RIGHT TO IDENTITY**

15. *Calls on* States parties to ensure the full implementation of articles 7 and 8 of the Convention for all indigenous children, by, inter alia:

(a) Ensuring the existence of a free, effective and universally accessible birth registration system;

(b) Allowing indigenous parents to give their children a name of their own choosing, and respecting the right of the child to preserve his or her identity;

(c) Taking all necessary measures to prevent indigenous children from being or becoming stateless;

16. *Recommends* that States parties take all necessary measures to ensure that indigenous children enjoy their own culture and can use their own language. In this regard, States parties should pay particular attention to article 17 (d) of the Convention which calls on States parties to encourage the mass media to have particular regard to the linguistic needs of the child who is indigenous;

## **VII. FAMILY ENVIRONMENT**

17. *Recommends* that States parties take effective measures to safeguard the integrity of indigenous families and assist them in their child rearing responsibilities, in accordance with articles 3, 5, 18, 20, 25 and 27.3 of the Convention. For the purpose of designing such policies, the Committee recommends that States parties collect data on the family situation of indigenous children, including children in foster care and adoption processes. The Committee further recommends that maintaining the integrity of indigenous families and communities be a consideration in development programmes, social services, health and education programmes affecting indigenous children. The Committee reminds States parties that, where it is in the best interest of the child to be separated from his or her family environment, and no other placement is possible in the community at large, institutionalization should only be used as a last resort and be subject to a periodic review. In accordance with article 20.3 of the Convention, due regard shall be paid to ensuring continuity in the child's upbringing and to his or her religious, cultural, ethnic and linguistic background;

## **VIII. HEALTH**

18. *Recommends* that States parties take all necessary measures to implement the right to health of indigenous children, in view of the comparatively low indicators regarding child mortality, immunization and nutrition that affect this group of children. Special attention should also be paid to adolescents regarding drug abuse, alcohol consumption, mental health and sex education. The Committee also recommends that States parties develop and implement policies and programmes to ensure equal access for indigenous children to culturally appropriate health services;

## **IX. EDUCATION**

19. *Recommends* that States parties ensure access for indigenous children to appropriate and high quality education while taking complementary measures to eradicate child labour, including through the provision of informal education where appropriate. In this regard, the Committee recommends that States parties, with the active participation of indigenous communities and children:

(a) Review and revise school curricula and textbooks to develop respect among all children for indigenous cultural identity, history, language and values, in accordance with the Committee's general comment No. 1 (2001) on the aims of education;

(b) Implement indigenous children's right to be taught to read and write in their own indigenous language, or in the language most commonly used by the group to which they belong, as well as in the national language(s) of the country in which they live;

(c) Undertake measures to effectively address the comparatively higher dropout rates among indigenous youth, and ensure that indigenous children are adequately prepared for higher education, vocational training and their further economic, social and cultural aspirations;

(d) Take effective measures to increase the number of teachers from indigenous communities or who speak indigenous languages, provide them with appropriate training and ensure that they are not discriminated against in relation to other teachers;

(e) Allocate sufficient financial, material and human resources to implement these programmes and policies effectively;

## **X. INTERNATIONAL COOPERATION AND FOLLOW UP**

20. *Encourages* greater cooperation between human rights treaty bodies and United Nations mechanisms on indigenous issues;

21. *Requests* thematic and country specific mandate holders of the Commission on Human Rights to pay special attention to the situation of indigenous children in their respective fields;

22. *Recommends* that the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people dedicate one of his annual reports to the Commission on Human Rights to the rights of indigenous children. The preparation of such a report should include a survey of the implementation of the recommendations arising from the Committee's day of general discussion by all States parties to the Convention;

23. *Encourages* United Nations agencies and multilateral and bilateral donors to develop and support rights based programmes for and with indigenous children in all regions;

24. *Recognizing* the strengths of indigenous communities to address many of the aforementioned issues, calls on the Permanent Forum on Indigenous Issues and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to coordinate the elaboration of a set of best practices for the promotion and protection of the rights of indigenous children in consultation with relevant non governmental organizations, indigenous experts and indigenous children.