OFFICE OF THE ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN'S COMMISSIONER

SUBMISSION ON THE DRAFT OF GENERAL COMMENT NO. 27 ON CHILDREN'S RIGHT TO ACCESS TO JUSTICE AND TO AN EFFECTIVE REMEDY

Commissioner Natalie Lewis,

Office of the Aboriginal and Torres Strait Islander Children's Commissioner

Queensland Family and Child Commission

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ACKNOWLEDGEMENT OF COUNTRY

The Office of the Aboriginal and Torres Strait Islander Children's Commissioner acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians across the lands, seas and skies where we walk, live and work.

We recognise Aboriginal and Torres Strait Islander people as two unique peoples, with their own rich and distinct cultures, strengths and knowledge. We celebrate the diversity of Aboriginal and Torres Strait Islander cultures across Queensland and pay our respects to Elders past, present and emerging.

We acknowledge the important role played by Aboriginal and Torres Strait Islander communities and recognise their right to self-determination, and the need for community-led approaches to support healing and strengthen resilience.

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1. LANGUAGE AND CONCEPTUAL FRAMING THROUGHOUT THE DRAFT GENERAL COMMENT NO.27

Suggested edits:

- Consider replacing deficit-based terms like “children in vulnerable situations” with rights-based language such as:
    - “children experiencing systemic discrimination or exclusion”
    - “children affected by structural inequality”
    - “children subjected to compound rights violations”
- Consider replacing references to children as “victims of violations” with:
    - “children seeking redress”
    - “children exercising their rights”
    - “children affected by rights violations”
- Consider strengthening the framing of the child as an active rights-holder and holding valuable insight into systems that impact on their lives, particularly the care and justice systems.
- Noting that ‘girls’ are referenced in some gender sections, but language around gender identity and expression is inconsistent. Consider:
    - expanding references to trans, non-binary, and gender diverse children.
    - adopting gender transformative and LGBTIQ positive language when discussing remedies, safeguarding and participation.
- The draft General Comment No.27 tends to individualize harm and remedy. Consider:
    - explicitly referencing that remedies must be timely, child-centered and capable of addressing not only individual harms but also systemic and collective violations.
    - adding language to affirm collective redress, including “reparations for historical or systemic violations affecting Indigenous children as a group.
    - highlighting truth telling and community led healing as integral to collective justice.

2. INTRODUCTION

Remove ‘natural disasters’ and replace with disasters.

Rationale: Natural hazards like cyclones, earthquakes, floods, and bushfires are environmental events. But disasters occur when those hazards interact with vulnerability causing significant harm to people, infrastructure, and ecosystems. Disasters are not ‘natural’, they result from the interaction between natural hazards (like floods or earthquakes) and human vulnerability, which is shaped by factors such as poverty, inequality, colonisation, poor planning, and weak governance. Framing disasters as “natural” obscures the social, political, and economic conditions that make certain communities, especially marginalised groups like children and First Nations peoples more at risk. Recognising disasters as human-made enables a focus on prevention, accountability, and systemic change to uphold rights, build resilience, and reduce harm.

3. Explicit connection to UNDRIP

The General Comment should more explicitly integrate the standards set out in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), recognising its foundational role in affirming the rights of Indigenous children to access justice in ways that respect their cultural identity, legal traditions, and collective rights. In particular, Articles 5, 18, 20, and 40 of UNDRIP affirm the rights of Indigenous peoples to maintain and strengthen their legal systems and institutions, to participate in decision-making processes affecting them, and to access just and fair dispute resolution mechanisms that are consistent with their customs and traditions. These rights must be meaningfully reflected in access to justice frameworks for Indigenous children, ensuring that justice processes do not merely adapt Western systems but actively support Indigenous-led justice responses, grounded in self-determination and cultural authority. A rights-based approach to access to justice must move beyond individual remedies and encompass collective redress, community-led truth-telling, and reparations that honour Indigenous law, governance, and memory.

4. ADDRESSING STRUCTURAL AND SYSTEMIC BARRIERS TO JUSTICE

Suggested new paragraph following paragraph 16 (terminology and scope):

"Structural and systemic barriers including colonial legacies, institutional racism, child protection overreach, and the absence of culturally safe services undermine children's access to justice."

Rationale: The General Comment should urge States to take a systems-informed approach that addresses the root causes of rights violations and the structural injustices children experience, particularly those from Indigenous, racialised, and other marginalised communities.

5. GEOGRAPHIC LOCATION AND REMOTENESS

The overrepresentation of Indigenous youth in detention reflects systemic failures and the enduring impacts of colonization. Access to justice must be understood through the lens of structural disadvantage. First Nations children living in remote, regional, or homeland communities often face systemic barriers that place justice services physically, culturally, and institutionally out of reach. First Nations children are disproportionately affected by underinvestment in community infrastructure, jurisdictional fragmentation, and the failure to design systems that reflect their lived realities.

When access to justice relies on engagement with centralised or formalised service systems, many of which have actively harmed or excluded Indigenous families, it reproduces patterns of inequality and denies the right to equal and effective remedy guaranteed under Article 40 of the UNCRC. This exclusion is compounded when justice systems fail to reflect the cultural, linguistic, and legal norms of First Nations communities, violating children's rights to culture, identity, and non-discrimination (Articles 2, 8, and 30 UNCRC; Articles 3, 5, and 40 UNDRIP). A rights-based approach must confront and dismantle these structural barriers by embedding justice mechanisms within community-led, culturally grounded, and place-based models that uphold children's dignity and collective rights.

6. CONNECTION TO FAMILY AND CULTURE

The overrepresentation of Aboriginal and Torres Strait Islander children in youth justice systems reflects a failure to provide culturally safe, community-based alternatives and access to early intervention and redress. When children are incarcerated often far from their families and Country, they are not only deprived of liberty but also severed from critical sources of identity, belonging, and healing. This separation constitutes a breach of their rights under Articles 9 and 30 of the UNCRC and Articles 7, 8, and 14 of UNDRIP. Access to justice for these children must include mechanisms to prevent removal in the first instance, ensure access to legal and cultural advocacy while detained, and provide pathways to return to family, community, and Country as a matter of urgency.

7. COMMUNITY-LED AND CULTURALLY SAFE MECHANISMS

Suggested revisions to paragraph. 41(b):

"States should recognize and resource Indigenous and community-led justice mechanisms that are culturally grounded and rights-aligned. These mechanisms must be resourced to provide trauma-informed, gender-sensitive, and child-safe pathways to redress, with accountability structures that reflect Indigenous law and governance."

8. AVAILABILITY

Suggested revisions to paragraph 23 in reference to customary processes:

"Children must have the right to freely opt out of customary systems that do not uphold their individual rights, and States must ensure these systems are aligned with international child rights standards."

Rationale: Upholding the right to opt out ensures that justice processes respect both the **individual and collective best interests of children,** particularly when customary norms conflict with rights to safety, dignity, and participation.

9. CHILDREN'S RIGHT TO TRUTH AND COLLECTIVE REDRESS

Proposed new subsection under section V.D:

"Children have the right to truth as a fundamental component of justice and effective remedy particularly in contexts of collective harm, historical injustice, institutional abuse, or conflict. Truth-telling must go beyond recognition; it must centre children's voices, leadership, and lived experience. Participatory truth-telling processes must be designed with and by children, ensuring they are supported to safely shape the process, choose how their stories are told, and contribute to a shared historical record that affirms their dignity.

These processes must be culturally safe, and grounded in the rights to participation, protection, and identity. States must provide resources, safeguards, and independent oversight to ensure that truth-telling mechanisms do not re-traumatise or silence children but instead foster healing, intergenerational justice, and systemic reform. Participatory truth-telling must recognise the diverse ways children express memory and truth, including through narrative, art, ceremony, and collective storytelling. The outcome must be more than documentation. It must create change and prevent the recurrence of harm."

10. PARTICIPATION AND REMUNERATION OF CHILDREN IN REMEDY PROCESSES

Suggested addition to paragraph 58:

"Where children participate in the design, implementation, or evaluation of remedial mechanisms, States must ensure that participation is culturally safe, supported, and appropriately compensated, in recognition of the time, expertise, and emotional labour involved."

11. REINFORCING THE ROLE OF INDEPENDENT OVERSIGHT AND ACCOUNTABILITY

Suggested addition to Section VI.D:

"States should ensure that independent monitoring bodies including National Human Rights Institutions, Children's Commissioners, Ombudspersons, and oversight bodies are mandated and adequately resourced to investigate systemic child rights violations, publish findings, and make binding recommendations. Child-led accountability mechanisms should also be encouraged and supported."

12. EMERGENCY AND CRISIS CONTEXTS: JUSTICE IN REAL-TIME

New subsection under section VI:

"Access to justice must be guaranteed during crises, including armed conflict, disasters, pandemics, and climate emergencies. In such contexts, emergency listening mechanisms and field-based remedy processes should be established to capture violations as they occur and ensure real-time child-centered accountability."

Suggested additional paragraph:

In cases of widespread abuse or institutional failure, formal mechanisms such as truth commissions, redress schemes, and public inquiries must ensure the participation, safety, and dignity of children. Where violations amount to crimes under international law such as war crimes or crimes against humanity, States must uphold children's right to truth, reparation, and guarantees of non-repetition, as recognised in international human rights and humanitarian law.

13. CHILDREN AND INTERSECTIONALITY: ADDRESSING COMPOUND DISCRIMINATION IN ACCESS TO JUSTICE

Suggested additional paragraph:

"For Indigenous children globally, compounded discrimination is both historical and ongoing, rooted in colonisation, systemic racism, forced child removals, and denial of cultural identity. Their experiences of injustice often reflect intergenerational trauma and structural exclusion from legal systems that do not reflect Indigenous laws, values, or governance. Access to justice must therefore be grounded in respect for Indigenous law and the right to self-determination, in accordance with Articles 5 and 18 of the UNDRIP and Article 30 of the UNCRC".

Suggested additional paragraph:

"Children experiencing compound discrimination must be recognised as rights-holders with unique insight into the systems that harm them. Peer-led, culturally safe participation in the design, delivery and monitoring of justice mechanisms must be prioritised, and States must ensure that these children are supported to contribute without risk of further harm, stigma, or retaliation. Recognition of lived experience as expertise is essential to equitable access to justice.

Suggested additional paragraph:

"Remedial mechanisms should collect disaggregated data and conduct child impact assessments that reflect the intersecting identities and lived experiences of children. This includes collecting data in partnership with communities, respecting Indigenous data sovereignty principles. Special safeguards and adjustments must be applied to ensure children are not further marginalised when seeking redress for example, Indigenous children in out-of-home care reporting systemic racism or trans children denied their gender identity by legal systems. Mechanisms must build trust and be co-designed with affected children and communities to be effective".