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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Amnesty International, a non-governmental organization 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.

[22 August 2017]

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

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THE CRISIS OF INDIGENOUS YOUTH DETAINED IN AUSTRALIA- JOINT WRITTEN STATEMENT BY AMNESTY INTERNATIONAL AND THE NATIONAL ABORIGINAL AND TORRES STRAIT ISLANDER LEGAL SERVICES (NATSILS)*

Background

Indigenous children in Australia¹ make up less than six per cent of young people aged 10 to 17 years, but make up 54 per cent of children detained, and are 25 times more likely to be in youth prison than non-Indigenous children.

The Aboriginal and Torres Strait Islander Legal Services (ATSILS) have played a major role in exposing and challenging abuses to ensure the safety and wellbeing of Indigenous children in prison. In 2011 the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) highlighted cases of abuse and maltreatment of Indigenous children during arrest and detention in a report to the Committee on the Rights of the Child, which included recommendations for law reform, community led solutions and a holistic national strategy in collaboration with Indigenous peoples and organizations.

In June 2015, Amnesty International released a National Report and a report on Western Australia, which both found that Australia was likely to be in breach of international conventions and made recommendations on law reform, supporting Indigenous led solutions and accountability.

In the past 12 months, in addition to the overrepresentation of Indigenous children in prison, abuse and torture have been exposed. In July 2016 shocking footage was aired by ABC Four Corners exposing the horrific situation in the Northern Territory Don Dale Youth Detention Centre where children were subjected to prolonged abuse including isolation, restraint chairs, spit hoods and tear gas.

The Australian Government responded by convening a Royal Commission into the Protection and Detention of Children in the Northern Territory, due to table recommendations on 30 September 2017.

In September 2016, an Amnesty International report about Queensland exposed abuse of children at the Cleveland Youth Detention Centre including issues of self-harm, the use of dogs to intimidate children, invasive search procedures and mechanical restraints, and made recommendations for reform, many of which are being addressed by the Queensland Government following an independent review. More abuse has come to light since including at Barwon in Victoria, Reiby in New South Wales, Bimberi in the ACT, and most recently the Banksia Hill Detention Centre in Western Australia.

In March 2017 the Special Rapporteur on the Rights of Indigenous peoples Ms Victoria Tauli-Corpus conducted a country visit to Australia, identifying the situation as a major human rights concern. In her End of Mission Statement she said:

It is completely inappropriate to detain these [Indigenous] children in punitive, rather than rehabilitative, conditions. They are essentially being punished for being poor and in most cases, prison will only aggravate the cycle of violence, poverty and crime. I found meeting young children, some only twelve years old, in detention the most disturbing element of my visit.

¹ A fully footnoted version is available at <https://www.amnesty.org/en/documents/asa12/6960/2017/en/>

Recommendations for change

The Australian Government has consistently said that criminal justice is a jurisdictional issue and have refused to intervene. However, the Australian Government cannot excuse itself of responsibility for implementing its human rights obligations and has the power to address these issues. It is responsible for ensuring all of Australia, including the jurisdictions, comply with international human rights law and to ensure that special measures are taken to redress systemic discrimination.

There have been inquiries into youth justice in every jurisdiction except South Australia. Measures to address these issues must not be developed in isolation. The jurisdictions must learn from each other, and the Australian government must lead and coordinate.

Amnesty International and the NATSILS are therefore calling on Australia to adopt the following recommendations:

1. **Raise the age of criminal responsibility to at least 12 and address laws that breach children's rights.** Currently the age of criminal responsibility across Australia is 10 years old. Children as young as 10 and 11 have been detained by police for alleged crimes as petty as breaching bail by missing school and arriving home moments after a bailed imposed curfew. The Committee on the Rights of the Child and the National Children's Rights Commissioner consider the age of criminal responsibility as unacceptably low. The low age of criminal responsibility impacts disproportionately on Indigenous children because of their over-representation in the criminal justice system.
2. **End detention of children who have not been sentenced.** The arrest and detention of children must be a measure of last resort, and pre-sentence detention is supposed to be the exception, not the rule. However evidence suggests this is not the case. On average, nearly 60 per cent of all Indigenous children detained in 2015/16 were unsentenced. The consequences of this are severe and damaging and include separation from family and community; lack of access to therapeutic programmes; a greater likelihood of receiving a remand period following a future court appearance and receiving a sentence of imprisonment than young people who are released on bail; and it increases the likelihood of repeated contact in the future.
3. **Ensure treatment and conditions in youth prisons provide children with the best chance to thrive.** Australia must ensure that every child deprived of their liberty is treated fairly and humanely. Currently across Australia children detained are at risk of abuse and torture, including solitary confinement, inappropriate use of restraints, and the use of dogs. This must end immediately; these institutions must provide children with the best possible chance of reaching their potential, and respond to their needs, which vary based on culture, gender, age and disability. Growing evidence demonstrates the current youth prison model is ill-conceived, often exacerbates trauma, inhibits positive growth and fails to address community safety. The current youth prison model should be replaced with a continuum of community-based programmes and, for the few youth who require secure confinement as a last resort, smaller homelike facilities that prioritize age-appropriate rehabilitation. The Government must fully resource independent inspectors and grant them unimpeded access to all forms of youth detention and immediately commence work to ensure that Australia's approach and inspection regimes are compliant with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
4. **Prioritize investment in early intervention, prevention and diversion to address the underlying causal factors of offending and ensure detention is a last resort.** The high overrepresentation of Indigenous children in prison must be addressed by strategies which confront the underlying causal factors which pushed them into the youth justice system. There is an urgent need for greater recognition of Indigenous culture as a positive support of children through Elders, law and justice groups, Indigenous communities and organizations. Indigenous designed and led prevention and diversion programmes for Indigenous children are the best chance for long-term, sustainable change.

5. **Improve data collection and use it to track progress, learn and get it right.** Data collection on youth justice in Australia is insufficient in all jurisdictions to inform a policy approach effectively. We need to be able to identify and consider better the needs of people with disabilities and children's experiences of child protection, family violence, homelessness and previous contact with the justice system. The Australian Government must establish or task a suitable national body to coordinate a national approach to data collection and policy development relating to Indigenous imprisonment and violence rates.
6. **Adequately fund Indigenous community-controlled legal services.** Legal services must be culturally appropriate to be effective. The Australian Productivity Commission released a report confirming that there is significant unmet legal need among Indigenous people, the consequence being "further cementing" of their overrepresentation in the justice system. The Australian Government has not adopted these recommendations. There must be adequate funds for Indigenous legal services, and five-year funding agreements with CPI increases for all Family Violence Prevention Legal Services (FVPLS) and the ATSILS.
7. **Set targets to end the overrepresentation of Indigenous children in prison.** The Australian Government plays a role in promoting national policy reforms which need coordinated action. The Australian Government currently works with jurisdictions through the Council of Australian Governments (COAG) to address Indigenous disadvantage, focussing on six 'Closing the Gap' targets, relating to Indigenous life expectancy, infant mortality, early childhood development, education and employment. Targets are a proven mechanism to achieve real progress and accountability for change, where they have national reporting obligations and measures of transparency. The omission of targets to address on the overrepresentation of Indigenous people in the justice system and the disproportionate experience of Indigenous people as victims of violence in the Closing the Gap framework remains glaring. The Australian Government should immediately commit to setting justice targets within the Closing the Gap framework, in consultation with Indigenous people and organizations.

*National Aboriginal and Torres Strait Islander Legal Services (NATSILS), NGO without consultative status, also shares the views expressed in this statement.