Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the rights of Indigenous Peoples

Ref.: AL AUS 4/2025
(Please use this reference in your reply)

6 May 2025

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Special Rapporteur on the rights of Indigenous Peoples, pursuant to Human Rights Council resolutions 52/7 and 51/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a nation-wide youth justice system that reportedly is in crisis. This includes an ongoing pattern of disproportionate incarceration of Aboriginal and Torres Strait Islander children, and consequent harm to those children in terms of their immediate safety and their educational and life prospects. In addition, several states and the Northern Territory are announcing new 'tougher' criminal legislation, which seem to give little regard to international human rights standards. Despite multiple inquiries and action plans and policies, the rate of youth incarceration appears to be rising.

A Bill currently under review within the Queensland Parliament is especially pressing and at issue in this communication. If passed it would result in additional adult penalties being applied to children for a wide range of offences, including some offences that do not involve violence. This bill would lead to mandatory minimum non-parole periods and increasing the penalties of life imprisonment. The Bill would impact children in contact with the Australian criminal legal system, which would additionally have a differential impact on Aboriginal and Torres Strait Islander children.

In line with this trend, the South Australian and Victorian governments have announced plans to make bail and sentencing laws for children more punitive[1], which will increase the numbers of children facing jail time. Additional concerns regarding laws and specific practices in other jurisdictions are also mentioned.

If established, the allegations in this letter would constitute violations of Australia's international obligations to children, including to protect them from torture and other cruel, inhuman or degrading treatment or punishment, to treat them humanely and with dignity, and to put their best interests as a primary consideration in all decisions affecting them.

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[1] Government of South Australia, New Young Offender Plan to tackle youth crime (Media Release, 6 March 2025) <https://www.premier.sa.gov.au/media-releases/news-items/new-young-offender-plan-to-tackle-youth-crime>; Government of South Australia. (2025). Young Offender Plan 2025. Bail Amendment Act 2025 (Vic); Premier of Victoria, Toughest Bail Laws in Australia Pass Parliament(Media Release, 21 March 2025) <https://www.premier.vic.gov.au/toughest-bail-laws-australia-pass-parliament>; Premier of Victoria, Tough Bail Laws to Keep Victorians Safe(Media Release, 12March2025) <https://www.premier.vic.gov.au/tough-bail-laws-keep-victorians-safe>

According to the information received:

There is a well-documented and long-standing crisis of mass incarceration of Aboriginal and Torres Strait Islander children in Australian prisons and other facilities, who are deprived of their liberty at grossly disproportionate rates to non-indigenous children.[2] The Commonwealth of Australia has recognized that racism has played a role in the over-representation of Aboriginal and Torres Strait Islander people in the justice system.[3] It has been analysed that offending behaviors of First Nations children should be understood within a continuum of risk, including exposure to intergenerational and current trauma within the historical context of genocide, and the ongoing issues of generational poverty, social disadvantage and discrimination.[4]

Although Aboriginal and Torres Strait Islander children make up 6.5 per cent of children aged 10-17 years of age in Australia, almost two-thirds (65 per cent) of children in detention on an average day in 2023-24 were indigenous.[5] Indigenous children aged 10-17 years of age were almost 27 times more likely than their non-Indigenous counterparts to be in detention, while Indigenous children aged 10-13 years of age were almost 46 times more likely to be detained than their non-indigenous counterparts.[6] The Northern Territory has the largest gap between indigenous and non-indigenous children, at 32 times.

In Queensland, more than 70 per cent of children and more than 80 per cent of children aged 10-13 years, in Queensland prisons are Aboriginal or Torres Strait Islander.[7] In 2023-24 there were at least 210 indigenous children on an average day in detention (the highest in Australia). After new tougher youth bail laws passed in New South Wales, there has been an alarming increase of children in custody, and the number of aboriginal children in custody increased by 22 per cent over the past year.[8]

The age of criminal responsibility in Australian states and territories (with the exception of the Australian Capital Territory) at 10 years old are amongst the youngest in the industrialized world, and has been widely criticized for not conforming with international recommended standards.[9]

Several Australian states and territories are detaining children in adult facilities (see further below). In Western Australia children continue to be detained in an

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2 Australian Productivity Commission. (2025). Report on Government Services 2025, Part F, Section 17 (Youth justice services); Australian Institute of Health and Welfare, 'First Nations young people' in Youth detention population in Australia 2024 (December 2024) <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2024/contents/first-nations-young-people/key-findings>

3 Australian Government. (2025). Commonwealth Closing the Gap 2024 Annual Report and 2025 Implementation Plan, 62. Human Rights Law Centre (April 2025) communication to the Special Rapporteur on torture.

4 Change the Record and Human Rights Law Centre (2024), *Ending Youth Incarceration: Submission to the Senate Legal and Constitutional Affairs Committee of Australia's youth justice and incarceration system.*

5 Australian Productivity Commission report, table 17A.28.

6 Ibid.

7 Australian Productivity Commission. (2025). Report on Government Services 2025, Part F, Section 17 (Youth justice services), table 17A.9

8 Brennan, D., National Indigenous Times,'Minns defends increase in Aboriginal child prisoners in NSW' (26 February 2025) <https://nit.com.au/26-02-2025/16504/minns-defends-increase-in-aboriginal-child-prisoners-in-nsw>.

9 Committee on the Rights of the Child General Comment no. 24 (2019).

adult men's maximum-security prison ('Unit 18') despite the recent deaths of two children who self-harmed.[10]

Rates of self-harm and attempted suicide by Aboriginal and Torres Strait Islander children in detention have reached extreme levels, with 162 recorded incidents in 2023-24.[11] Rates of First Nations custodial deaths continue to be alarmingly high, and these include the devastating deaths of children.

At the Commonwealth level, the National Children's Commissioner issued a report on transforming youth justice system which was tabled before the Commonwealth Parliament in August 2024.[12] The Commonwealth Government has extended a parliamentary inquiry into the youth justice and incarceration system, which has not yet completed its work.

Queensland

On 13 December 2024, the adult penalties framework commenced in Queensland and covered 13 offences under the *Making Queensland Safer Act 2024* (Qld). That law also made numerous problematic changes to the youth justice system, namely prohibiting courts from considering both the principle of detention as a last resort and the principle of preferability of non-custodial orders when sentencing children, contrary to the Convention on the Rights of the Child and other human rights standards.

On 1 April 2025, the Queensland Government introduced the Bill titled *Making Queensland Safer (Adult Crime, Adult Time) Amendment Bill 2025* into Parliament to expand this punitive adult penalties framework. The Bill seeks to apply adult-length penalties to an additional 20 offences, which cover a wide spectrum of behavior. The Queensland Government explains that the Bill is intended to respond to an 8.3 per cent increase in violent offending, yet it also acknowledges that the rate of youth offending has decreased.[13] This Bill is presently under discussion.

The Bill will amend the Youth Justice Act to remove the current restrictions on minimum or mandatory sentences for children for the following offences under the Criminal Code Act 1899 (the Criminal Code):

- murder (section 302, 305);
- manslaughter (section 303, 310);
- unlawful striking causing death (section 314A);

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10 Office of the Inspector of Custodial Services. (2024). Review of youth custody: follow-up to 2023 inspection (part two), iii; Hennessy, A., Human Rights Watch, 'Western Australia's Indefensible Record on Children's Rights'(11 February 2025) <https://www.hrw.org/news/2025/02/12/western-australias-indefensible-record-childrens-rights>.

11 Australian Productivity Commission report, table 17A.19.

12 Australian Human Rights Commission. (2024). *"Help way earlier!" How Australia can transform child justice to improve safety and wellbeing.*

13 https://www.legislation.qld.gov.au/view/pdf/bill.first.hrc/bill-2024-043

- acts intended to cause grievous bodily harm and other malicious acts (section 317);

- grievous bodily harm (section 320);

- wounding (section 323);

- dangerous operation of a vehicle (section 328A);

- serious assault (section 340);

- unlawful use or possession of motor vehicles, aircraft or vessels (section 408A);

- robbery (section 409, 411);

- burglary (section 419);

- entering or being in premises and committing indictable offences (section 421);

- unlawful entry of vehicle for committing indictable offence (section 427).

According to the Government these amendments will mean that children who are found guilty of these serious offences will be subject to the same minimum, mandatory and maximum sentences which currently apply to adult offenders in the Criminal Code.

In the Queensland Government's Statement of Compatibility of the proposed amendments with the Human Rights Act of Queensland, Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity, acknowledged that part of the Bill are not compatible with international human rights law, and that the framework 'will result in more children [-] being sentenced to, and spending more time in, detention' and 'will lead to sentences for children that are more punitive than necessary'.[14] It was further noted that the framework 'may result in children being held in watchhouses for extended periods of time' and 'could lead to increased numbers of children in watchhouses for extended periods of time'.[15] The Government further acknowledged that 'it is widely accepted that watchhouses are not appropriate or humane places to detain children', 'particularly for any lengthy period of time'.[16] The compatibility statement also acknowledged that 'Increasing the prospects of detention and increasing the length of detention limit the rights of a child to protection in their best interest [-] and the right to liberty [-]' as protected in the Human Rights Act of Queensland.

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14 https://www.legislation.qld.gov.au/view/pdf/bill.first.hrc/bill-2024-043
15 Ibid
16 Ibid.

Northern Territory

Also of concern are backward steps taken in the Northern Territory, such that new laws have reduced the minimum age of criminal responsibility from 12 years of age to 10 years of age.

The Government has also re-introduced spit hoods, against advice.[17] Spit hoods have been included in the Special Rapporteur on torture's list of prohibited equipment, restraints and weapons that are considered inherently in violation of the prohibition of torture and/or other cruel, inhuman or degrading treatment or punishment (A/78/324). This is because they are considered to carry unacceptable risks, as they increase anxiety, agitation, acute distress and disorientation that can trigger adverse reactions such as panic or aggression (para. 49 and annex 1). The Australian Federal Police has stated that they are ineffective against transmissible diseases and post unjustifiable risks.[18] It is the Special Rapporteur's position that their purpose can be achieved by other means, including providing protective equipment to officers themselves, as well as proper handling of detainees and de-escalation tactics.

Other human rights concerns in the Northern Territory include the distance between places of detention and access to families, leading to serious concern about the ability of child detainees to enjoy communication and family visits and to maintain family relations.

Tasmania

In Tasmania long-known problems in the youth justice system, including decades of alleged abuse, dating back more than 60 years, have been recently acknowledged. In 2023 the Government of Tasmania accepted all recommendations of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings. A new youth plan has also been announced and an interim plan for those still being detained at the Ashley Youth Detention Centre.[19] To date, 129 former detainees of the Ashley Youth Detention Centre received an apology and a $75 million AUD settlement. The Government announced in September 2021 the closure of the Ashley Youth Detention Centre to be replaced by a new fit-for-purpose youth justice facility. According to government information, this facility has yet to be opened, with a new target for opening in July 2026.[20]

Victoria

Victoria has recently passed legislation with a high likelihood of being seriously detrimental to children, most notably the removal of remand / detention as a last resort option for children. [21] This has involved reversing the onus on bail tests.

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17 Australian Associated Press, The Guardian, 'Spit hoods to be used on Northern Territory children again as ban ends, police chief confirms' (14 October 2024)

18 Australian Federal Police, Statement on banning spit hoods, 14 April 2023.

19 Tasmanian Government Keeping Kids Safe in Detention Action Plan 2024-26

20 https://www.decyp.tas.gov.au/safe-children/youth-justice-services/youth-justice-reform-in-tasmania/

21 Bail Amendment Act 2025 (Vic); Premier of Victoria, Toughest Bail Laws in Australia Pass Parliament(Media Release, 21 March 2025) <https://www.premier.vic.gov.au/toughest-bail-laws-australia-pass-parliament>; Premier

The Government of Victoria has since announced that more punitive changes will be progressed this year and will 'result in a further increase in the number of adult and youth offenders on remand.'[22]

Without prejudging the accuracy of the information received, we are writing to express our most heightened alarm at the above-referred allegations, including several Bills recently adopted or presently under consideration in different states and territories which, if confirmed, would strongly suggest the existence of a nation-wide youth justice system in crisis. We are of the view that many laws including the *Queensland Making Queensland Safer (Adult Crime, Adult Time) Amendment Bill (2025)* are incompatible with basic child rights and may give rise to discriminatory treatment and punishment and adversely affect the lives of indigenous children.

By resorting to a narrowly focused 'tougher penalties' approach, the State's failures over decades appear to be being passed onto children in several Australian states and the Northern Territory. We would encourage instead a child-centric approach that reflects international law and best standards, coupled with integrating more comprehensive ways to tackle youth anti-social and criminal behavior. The first goal should always be to keep children out of prison. As reflected in the Special Rapporteur on torture's report on prison management, this is best achieved via educational, economic, familial, social, psychological and other interventions (A/HRC/55/52).

We remind your Excellency's Commonwealth Government – as well as all state and territory governments – that depriving children of their liberty shall only be used as a measure of last resort and for the shortest appropriate period of time, as recognized in article 37(b) of the Convention on the Rights of the Child, to which Australia is a party since December 1990. These principles are fundamental to the overarching obligation of putting the best interests of the child first in all actions concerning children, as established in article 3(1).

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age (article 37(c)); protected from all forms of violence, abuse or mistreatment (article 19), and no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment (article 37(a) CRC, and articles 1 and 16 of the Convention against torture and other cruel, inhuman or degrading treatment or punishment). Children within the criminal justice system shall be treated in a manner consistent with the promotion of the child's sense of dignity and self-worth (article 40). All such rights are to be enjoyed without discrimination (article 2).

Article 37(c) also requires, in particular, that every child shall be separated from adults unless it is considered in the child's best interest not to do so. Article 10(2)(b) of the International Covenant on Civil and Political Rights, ratified by Australia in August 1980, is more robust provision, providing that 'Accused juvenile persons shall be separated from adults'. While noting Australia's reservations to the relevant articles in both the CAT and ICCPR, it is important to recall that the concept contained therein was not to put children into regular adult prisons but rather to permit states to maintain

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of Victoria, Tough Bail Laws to Keep Victorians Safe(Media Release, 12March2025) <https://www.premier.vic.gov.au/tough-bail-laws-keep-victorians-safe>

[22] Premier of Victoria, State Gears Up For Tougher Bail –Starting Now (Media Release, 18 March 2025)

juvenile places of detention – such as those for children aged 15 to 21 years of age, that is to protect incarcerated children in the early stages of adulthood. It was also understood to permit placing infant children with their mothers. However, placing children in ordinary adult facilities would rarely be acceptable given the heightened risks of violating their other human rights, especially concerns for their safety and security. It is hard to envisage a situation where a child being placed in an ordinary prison would be compatible with their rights to be treated with humanity and dignity in detention, per article 10 of the International Covenant on Civil and Political Rights, or would not otherwise fall foul of the prohibition on degrading treatment in the Convention against torture and other cruel, inhuman or degrading treatment or punishment.

We strongly urge Australia to remove its reservation to the CRC and ICCPR in respect of article 37(2) (c) and 10(2)(b) respectively, regarding its only partial acceptance of the obligation to separate children from adults in prison.

Article 37(c) further confirms a child's right to maintain contact with his or her family through correspondence and visits.

The Bill being proposed in Queensland, and others being considered in various states and the Northern Territory, are worrying trends for all children who come into conflict with the law. Additionally, they would expose Aboriginal and Torres Strait Islander children to increased rates of incarceration, and the inherent suffering that this entails – including heightened risks of self-harm, violence and suicide. We are extremely concerned not only because of the immediate harm of incarceration on children, but that the system is creating a future under-class of Australians. We remind your Excellency's Government of your obligations pursuant to the Convention on the Elimination of Racial Discrimination.

We remain available to provide technical assistance and advice to all the authorities concerned, as appropriate; and to meet with the Government to discuss these matters further.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please provide information about why it is considered necessary in Australia, as an exception to most other countries with similar socio-economic conditions, to maintain an age of criminal responsibility at 10 years of age in most states and territories, which is considerably lower than the international recommended standard.

3. Please explain the measures undertaken to ensure that deprivation of liberty for children is a measure of last resort and how the principle of the best interests of the child are being respected in all detention decision-making (including regarding watchhouses, remand and sentencing). Please explain the compatibility of these measures with the obligations of your Excellency's Government under international human rights law.

4. Please provide justification for why children are being detained in adult prisons or why adult penalties are being applied to children. Please explain the compatibility of these measures with the obligations of your Excellency's Government under international human rights law.

5. Please explain the measures undertaken to ensure family contact through correspondence and visits for children deprived of their liberty in Australia, including decisions on placement in detention facilities. Please explain the compatibility of these measures with the obligations of your Excellency's Government under international human rights law.

6. Please provide information about measures being taken to ensure that spit hoods, considered by the Special Rapporteur on torture as prohibited under international law for their incompatibility with the prohibition on torture and other cruel, inhuman or degrading treatment or punishment, are removed as a form of restraint. Please provide information about what alternatives have been developed to replace them.

7. Please provide information about measures being taken to ensure that any laws or policies adopted in the criminal legal system that affect children are compatible with obligations of Australia under the Convention on the Elimination of All Forms of Racial Discrimination, and that these laws and policies ensure that Aboriginal and Torres Strait Islander children are not disproportionately or differentially treated and/or punished.

8. Please provide an update on Australia's implementation of the Optional Protocol to the Convention against Torture, most notably the funding and establishment of independent preventive mechanisms at Commonwealth, state and territory levels, and how those bodies are ensuring the rights of children in detention.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Alice Jill Edwards
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Albert K. Barume
Special Rapporteur on the rights of Indigenous Peoples

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to recall your Excellency's Government's obligations under international human rights laws, norms and standards, as follows:

Children and youth – general standards

Articles 2, 3, 6, 19, 37 and 40 of the Convention on the Rights of the Child.

Articles 7, 9, 10, 14, 23, 24 and 26 of the International Covenant on Civil and Political Rights.

Articles 1, 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Articles 2, 3, 4 and 5 of the Convention on the Elimination of Racial Discrimination.

The Committee on the Rights of the Child general comment No. 24 (2019) on children's rights in the child justice system contain principles relating to the detention of children.

The Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules') and the Rules for the Protection of Juveniles Deprived of their Liberty ('Havana Rules') provide standards of care in detention that are specific to children and young persons.

The UN Standard Minimum Rules on the Treatment of Prisoners ('Nelson Mandela Rules'), the UN Standard Minimum Rules for Non-Custodial Measures ('Tokyo Rules') and the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders ('Bangkok Rules') provide general standards for the humane and dignified treatment of prisoners.

Articles 2, 7, and 24 of the UN Declaration on the Rights of Indigenous Peoples.

Children and youth in detention

We refer you to paragraphs 78-86 of the Special Rapporteur on torture's report A/HRC/55/52, on children and youth.

According to the Special Rapporteur on torture's report on Current Issues and Good Practices in Prison Management (A/HRC/55/52), deprivation of liberty should be a measure of last resort, and should it be necessary, proportionate and unavoidable. Children should be housed in residential rather than prison-style facilities that are child-friendly and appropriate to their age and stage of development. Incarcerated adolescents commonly experience poor health across a range of physical and mental health domains

and show consistently poorer health profiles in comparison studies to non-detained adolescents.

Children should be placed in facilities close to their family's place of residence to maintain contact with their family, unless it is not in the child's best interest and have frequent contact with the wider community. They have a right to education and should receive vocational training when appropriate.

Disciplinary measures such as corporal punishment, placement in dark cells, solitary confinement or any other punishment that compromises the physical or mental health or well-being of the child should be strictly forbidden. The use of restraints can only be used when a child poses an immediate threat of injury to themself or others and only after other means of control have been exhausted. The Special Rapporteur has included the use of spit hoods and other restraints in her list of inherently cruel instruments (A/78/324).

Special consideration needs to be given to children approaching the end of childhood. It is particularly traumatic for children approaching the age of 18 years to not know if or when they may be moved into an adult prison. At least six months in advance of reaching the age of majority, and in close consultation with the child as well as their family, guardian or other representative, appropriate authorities should conduct a needs and risk assessment that takes into account all relevant factors, including the rights and needs of the other children in the youth facility, the suitability of prison to any underlying conditions, and whether the child continues to be in education or other vocational training to avoid disruption. Depending on the profile of children deprived of their liberty, some States run youth facilities that extend beyond 18 years of age. This recognizes that the needs and vulnerabilities of children do not change when they reach the age of eighteen. It also helps minimize disruption to supportive relationships that young people have formed with youth justice services.

It is important to note that youth detention facilities can be as appalling and detrimental to children as adult prisons. Youth prisons have reported overuse of lockdowns with incidents of self-harm and suicide. While residential facilities are preferred, these facilities must represent more than just a change in name. There must be an accompanying change in staff mindset and training oriented towards juveniles' rehabilitation and release.

Recommendations

- States to develop national action plans on treatment of children in criminal justice systems including prisons, with clear benchmarks on how to sustainably reduce the number of children detained.

- States to update national laws and policies to be in compliance with international standards related to children in conflict with the law, incorporating the Committee on the Rights of the Child's general comment No. 24.

Indigenous children

We refer you to paragraphs 87-96 of the Special Rapporteur on torture's report A/HRC/55/52, a section on indigenous peoples in the criminal justice system.

Criminal legal systems, including prisons, regularly mirror and intensify discrimination and marginalization indigenous people may experience in the community. Without special measures in place, risks of cruel, inhuman or degrading treatment of indigenous people can be heightened in prisons where the power imbalance between indigenous prisoners and authorities increases.

Of great concern is that indigenous prisoners are more likely to be subject to solitary confinement, higher security classifications and harsher disciplinary measures than non-indigenous prisoners. Some countries have recorded higher incidences of deaths in custody and higher rates of suicide.

The obligation of non-discrimination includes a positive obligation on States to consider and promote the special needs and vulnerabilities of indigenous prisoners. Discrimination against indigenous prisoners can occur when they are treated the same as non-indigenous prisoners such that their special cultural, religious, and linguistic needs are not addressed.

While indigenous communities are diverse, a general characteristic of indigenous justice systems is their use of restorative justice based on consensus, mediation and maintaining community ties rather than custodial sentences as punishment. The Sub-Committee on the Prevention of Torture recognised that conventional places of detention can subject indigenous people to double punishment, the deprivation of liberty plus the deprivation of their cultural identity and way of life, which may lead to cruel, inhuman or degrading treatment. A guiding principle in imposing penalties on indigenous people is to prefer non-custodial penalties, in conformity with their customs or customary law, where these are compatible with the legal system in force.

The differentiated approach to indigenous peoples deprived of liberty taken by the Inter-American Court of Human Rights in its 2022 advisory opinion (OC-29/22, paragraphs 277-336) is worth studying in other jurisdictions. The Court emphasized that deprivation of liberty should be the exception and where it is necessary, cultural identity should be preserved by placing indigenous persons in prisons closest to their communities, protecting their right to practice traditional, religious, or spiritual activities, ensuring access to culturally appropriate food, and providing access to medical care which includes the use of traditional medicines. It further provided that States should ensure indigenous people can communicate, receive, and understand information in their own language and that prison programs meet their cultural needs. Indigenous prisoners should be able to be accommodated in a manner that best reflect their community approach, such as in 'modules' or collective rooms, and where possible to prepare their own food and be able to follow their own customs. Consultation on a regular basis with indigenous authorities and communities - including those imprisoned - is fundamental.

The age, sex and gender, and other characteristics of individual indigenous prisoners are to be taken into account when developing policies as well as individual responses to ensure a dignified stay and to prevent torture and ill-treatment.

Addressing the special cultural, religious, and linguistic needs of indigenous prisoners can minimize discrimination and allegations of ill-treatment. It is the Special Rapporteur's view that attention to these issues does not require substantial inputs, and can be accommodated where there is political will, yet such changes will reap sizeable benefits.

Recommendations

- States to consider adopting the comprehensive approach taken by the Inter-American Court of Humans Rights as good practice for approaches to indigenous prisoners.

- Prison authorities to improve the employment rates and representation of indigenous staff and those with specialist expertise in indigenous affairs.

- Prison authorities to provide culturally appropriate training, risk and needs assessments, health care, rehabilitation and reintegration programs and respect for the right to practice customs and traditions.