



1 March 2021

Secretariat
Expert Mechanism on the rights of Indigenous Peoples
OHCHR-UNOG, 8-14 Avenue de la Paix
1211 Geneva 10
Switzerland

By email: expertmechanism@ohchr.org

Dear Secretariat

Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) Study on the rights of the Indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

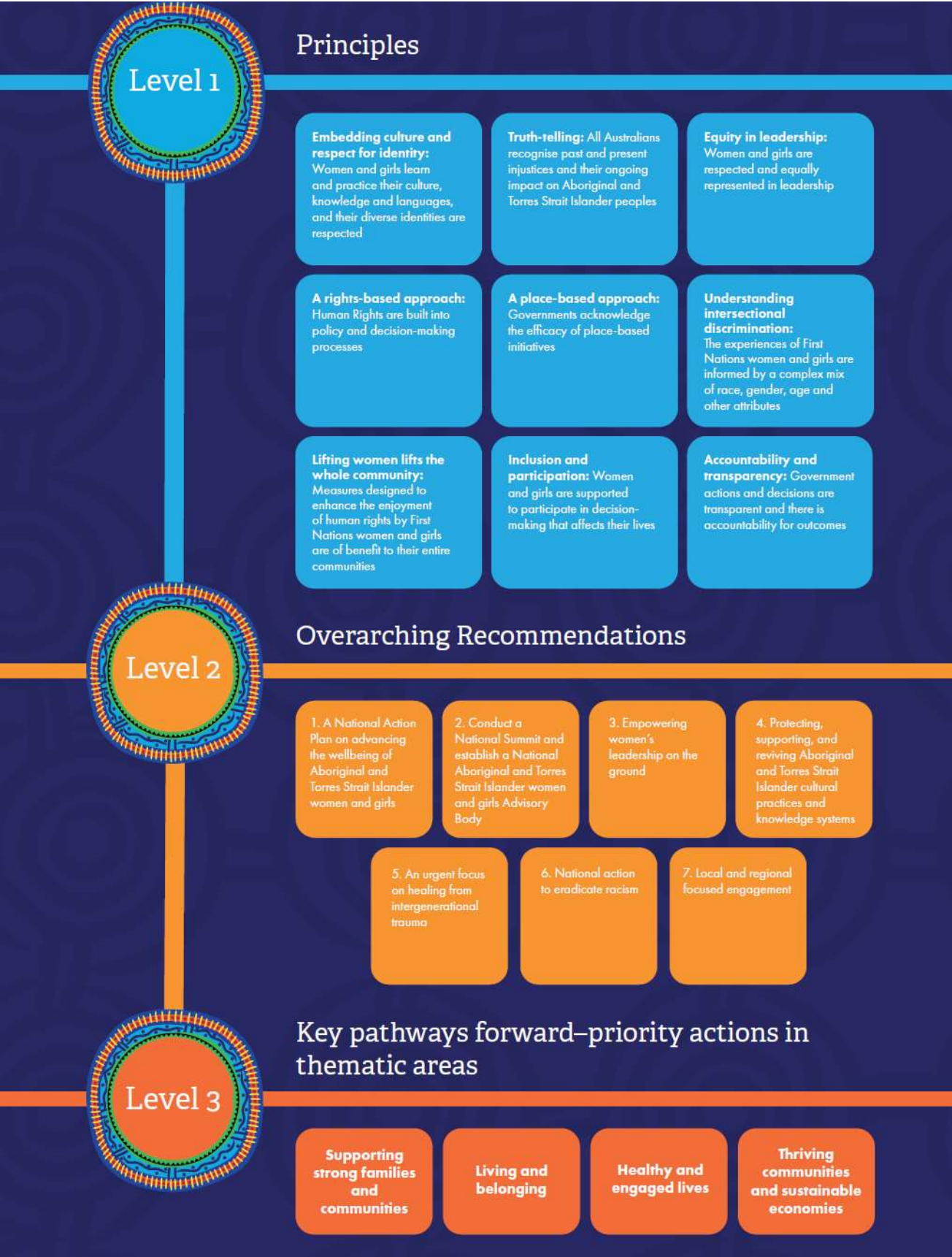
As the Aboriginal and Torres Strait Islander Social Justice Commissioner at the Australian Human Rights Commission—Australia’s National Human Rights Institution (NHRI)—I welcome the opportunity to make a submission to EMRIP on its study into the rights of the Indigenous child under UNDRIP.

In December 2020, I launched the Wiyi Yani U Thangani (Women’s Voices): Securing Our Rights, Securing Our Future report—the first national-level report in 34 years to represent the voices of First Nations women and girls in Australia as a collective.

This whole-of-life report—which elevates the voices of over 2,000 Aboriginal and Torres Strait Islander women and girls who were engaged throughout 2018—applies a much needed First Nations gender lens to a broad range of issues and policy areas. Furthermore, it sets out a comprehensive plan for structural reform to address structural obstacles to the enjoyment of human rights by First Nations women and their children, families and communities throughout Australia.

Implementation of this plan would enable alternative system responses to emerge that are grounded in the self-determination and knowledges of First Nations women and girls and which effectively target the root causes of the multiple inequalities faced by Aboriginal and Torres Strait Islander peoples, including children.

As shown in the following graphic from the report, the guidance provided by Wiyi Yani U Thangani takes form of a series of principles to guide action, seven overarching recommendations and four pathways forward corresponding to the thematic sections of the report.



The purpose of this submission is to:

- Signpost key areas of the report that address issues included in the concept note for the EMRIP study on the rights of the indigenous child under UNDRIP
- Raise awareness within the international human rights community—and in particular amongst its Indigenous representatives—of the Wiyi Yani U Thangani report as a source of information on a number of different themes and subject areas.

Wiyi Yani U Thangani engagement with UNDRIP

Wiyi Yani U Thangani engages UNDRIP extensively. Included within the methodology section in Part One is a subsection on human rights implications which provides an overview of international treaties relevant to the report as a whole. This emphasises the importance of UNDRIP and outlines and expands upon four of the Declaration's key underpinning principles and how each relates to the report. These are:

- Self-determination
- Participation in decision-making and free prior and informed consent
- Non-discrimination and equality
- Respect for and protection of culture.

Parts Two, Three, Four and Five of the Wiyi Yani U Thangani report each begin with a human rights context section which discusses key international instruments (including UNDRIP) relevant to the areas covered under each Part respectively.

Issues which engage the rights of First Nation's children are discussed throughout the report insofar that many of the human rights issues facing First Nations peoples in Australia are applicable to the entire community. There are also a number of sections within the report which are of particular pertinence to key human rights issues facing children and I have signposted these overleaf. These issues relate specifically to the following articles in the Declaration:

- Indigenous peoples' right to self-determination (Article 3)—a right inextricably linked to the realisation of all other rights contained in UNDRIP

- Youth justice and child protection (Article 7)
- Education (Article 14)
- Economic development and income security (Article 21)
- Disability (Article 22)
- Housing and community infrastructure and the delivery of essential services (Article 23)
- Physical and mental health (Article 24)
- Sustainable land management and climate change (Article 29).

Signposting to key sections of the report

Part Two—Supporting strong families and communities

Chapters 5 (Community safety), 6 (Law and justice) and 7 (Child protection) highlight key areas relevant to children's rights with respect to early childhood trauma, domestic and family violence, child removal, the age of criminal responsibility, policing and oversurveillance, and juvenile detention (including of children with cognitive disability).

Part Three—Living and belonging

Chapter 9 (Housing and homelessness) discusses the impact of poor housing on child development and Chapter 10 (Disability) covers the rights of children with disabilities including those with Foetal Alcohol Spectrum Disorder (FASD).

Part Four—Healthy and engaged lives

Maternal and infant health is discussed in Chapter 12 (Health), children and young peoples' social and emotional wellbeing is covered in Chapter 13 (Social and Emotional Well-being) and education ranging from early childhood through primary and secondary school as well as whole-of-life cultural education is addressed in Chapter 14 (Learning and education)

Part Five—Thriving communities and sustainable economies

Access to childcare as an enabler for women and families is discussed in Chapter 15 (Pathways to employment and empowerment) and food security for families and children is covered in Chapter 16 (Economic participation).

Actions taken from the report's 'pathways forward'

Across the 'Pathways forward' at the end of Parts Two to Five, the report also puts forward a number of priority actions which are of particular relevance to the EMRIP study.

These are:

- prevention and early intervention supports including addressing the systemic issues of poverty, disadvantage and intergenerational trauma
- investment in diversionary pathways away from the criminal justice system and child protection through sufficient provision of community-led safe houses, drug and alcohol rehabilitation, alternative sentencing options, and improved cultural representation in the justice system
- the implementation of mechanisms to keep women and children safe and families together through implementing a Child Protection Notification Referral System, increasing accessibility to legal services, and expanding the role of peak bodies to advocate for the safety and protection of women and children
- culturally safe and responsive systems through investing in community-controlled supports, ensuring protection of family violence victims, establishing police misconduct reporting mechanisms, mechanisms for compliance with the Aboriginal and Torres Strait Islander Child Placement Principle, and implementing recommendations from inquiries, inquests and reports
- prioritisation of safety for women and children by investing in housing models that meet the needs of women experiencing domestic and family violence
- significant investments into country-based programs and economic opportunities through land management, cultural tourism, art and design, country-based healing, education programs, diversionary and reconnection programs for young people, bush food and health product development
- sexual, maternal and infant health supports by investing in programs that focus on healthy relationships and sexual health; improving access to maternal and infant health programs; and supporting First Nations models of care
- suicide prevention through developing a National Aboriginal and Torres Strait Islander Suicide Prevention Strategy Implementation Plan

- the survival of Indigenous knowledge and languages through resourcing schools to integrate cultural learning and practices; ensuring access to technology; and supporting traditional knowledge and languages
- Indigenous culture embedded in our curriculums through incorporating Indigenous languages at all levels in the school curriculum
- culturally safe and inclusive environments through mandatory university units on First Nations knowledges and investment in early childhood services and community-controlled child and family centres
- create accessible and affordable education and training for First Nations women and girls through increasing scholarships and financial assistance to higher education and training; ensuring cultural safety across institutions through increased representation of Indigenous students, staff and culture.

Thank you for the opportunity to provide a submission to this study. The Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future report and its accompanying community guide can be found online at:

<https://wiyiyaniuthangani.humanrights.gov.au/report>

Yours sincerely



June Oscar AO

Aboriginal and Torres Strait Islander Social Justice Commissioner

T: +61 2 9284 9781

F: +61 2 9284 9611

E: june.oscar@humanrights.gov.au