

# Human Rights Watch

## Indigenous Peoples' Rights

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Human Rights Watch makes this submission in response to the request for contributions for your study on the rights of the Indigenous child. This submission is based on research conducted by Human Rights Watch in Australia, Canada, Colombia, Indonesia, New Zealand, and the United States, and covers the following topics:

Repercussions of Covid School Closures on the Indigenous Childs Right to Education

The Indigenous Childs Right to Food, Water, and Health

Disproportionate Presence of Indigenous Children in Criminal Justice Systems

The Covid-19 pandemic, and related school closures, has negatively affected childrens right to a quality education around the world. Indigenous children both those living in and outside of Indigenous communities frequently faced additional barriers to distance learning alternatives. Often these barriers are due to historic marginalization, exclusion, and systemic discrimination that resulted in disparities prior to the pandemic, and which can manifest in lower-incomes, lower levels of education within families, failure to adequately accommodate Indigenous languages, and under-investment in necessary infrastructure such as the internet. As an education official in the Pueblo of Jemez, a Native American community in the United States, said: This pandemic has exacerbated the inequities that exist.<sup>[1]</sup>

### Failure to adequately accommodate Indigenous languages

Many families in the Pueblo of Jemez, a Native American community in New Mexico, United States, do not have internet access, or sufficiently strong internet, to support video- or audio-based teaching. To overcome this, many teachers distributed printed handouts. This created problems for some younger students, because their Towa language is an oral language that the tribal council has decided is not to be written down. The communitys pre-school is taught entirely in Towa, and at one school the kindergarten is taught 90 percent in Towa, first grade at 80 percent, and second grade at 70 percent. An education official said: Families who have a strong language background and are fluent, then they can use these instructions and materials to help their students. But for students who arent fluent and their families arent fluent, those are the families that are having trouble. He added, Weve been conditioned to think of education as solely in English. Ever since the 2000s, weve been trying to address that and decolonize our education through a Jemez-based curriculum, including language and culture.<sup>[2]</sup>

The director of cultural programs in a rural school district with a predominately Alaska Native student body noted that because schoolwork packs were in English rather than Yupik, many students first language, it was really hard to get them engaged.<sup>[3]</sup>

In an example of good practice, in Aotearoa New Zealand a television channel, in collaboration with the education ministry, swiftly began offering six hours a day of educational programming in the Mori language during school closures.<sup>[4]</sup>

### Inequalities in access to internet and devices

The lack of internet access and adequate equipment for online learning was a key obstacle for many Indigenous children. Annie Sneaky, 15, is a member of Asubpeeschoseewagong Netum Anishnabek, also known as Grassy Narrows First Nation, in Ontario, Canada. Some teachers at Annies school which is in a town 90 kilometers from where she lives set up Google Classrooms and Zoom meetings, but, she explained: Since I live in a reservation with no internet its been really difficult, I dont have 24-hour access... Its hard for me to even email teachers for help I think my situation is harder than for normal students, but Im doing my best. Annie said that being at home on her reserve was a welcome break from encounters at her school where she felt stigmatized or treated differently by school officials or students because she is Indigenous.<sup>[5]</sup>

A 16-year-old girl in Papua, Indonesia, told Human Rights Watch that In my class, all students who do not have an [Android] phone are

Indigenous Papuan students plus three new settler children [inhabitants from Java or other Indonesian islands that have moved to Papua]. How could you learn without an [Android] phone?[6]

A senior administrator in a rural school district with a predominately Alaska Native student body, where most families live below the poverty line, noted: Maybe 25 percent of our families have computers, and an even smaller amount have access to WiFi. Teachers therefore contacted students not just by email, but also phone and even letters.[7] A teacher in another predominantly Alaska Native community said: There's no technology and the homes are full [of people]. She felt her students were at a disadvantage: There are so many learning opportunities online, especially now. She explained, The kids in grades 8 to 12 all have Google Chromebooks [at school], but we didn't send them home with the students. Most of them don't have Wi-Fi or internet access.[8] A principal at a school with a predominately Yupik student body in Alaska said: I have the maximum plan for internet here, with 100 gigabytes of data [equal to about 200 hours of online video], and it is US\$315 per month. I can start loading a web page and go sweep my floors while I wait for the page to load... I don't believe that going to online learning could ever be an option unless the internet infrastructure is better.[9]

An administrator of a school district with a predominately Alaska Native student body, which also faces difficulties recruiting teachers noted, An immediate response to this situation with coronavirus is to buy computers for all of the students. However, that solution could extend beyond the pandemic because of the difficulty with finding teachers right now. A solution to a teacher and resource shortage could be blended learning, so students are working on computers for half of the day and doing self-work [packets] for the other half.[10]

An education official in the Pueblo of Jemez, a Native American community in the United States, said, of efforts to provide distance learning devices, Yes, thank you for giving us iPads but how are we supposed to utilize these iPads if we don't have internet? He also noted that the community's only public access points were the tribal libraries and schools: It's not like everybody can congregate in the parking lots of these places to utilize the internet. We can't provide a sound, structured environment that is also safe for students to do distance learning.[11]

Mia Sulastri, 17, is Indigenous Dayak, in Borneo, Indonesia. Her teachers send assignments by WhatsApp, which she returns via email, working on just her mobile phone. Phone signal is slow in her village. I have to take my motorcycle and to go to [another village] about 12 kilometers from home. I usually went there four times a week to get phone signal.[12]

In Aotearoa New Zealand, a principal at a secondary school where most students are Mori said that when his school shut down due to the coronavirus, his school distributed Chromebooks that the school already had to all students in the last three years of studies. Most families already had some internet connection at home, although often using a phone with cellular data connection. The school directed families without connectivity to a commercial service offering low-cost connections. For all students, teachers also prepared printed packets of schoolwork in the days prior to lockdown. Our photocopiers were going red hot, said the principal. Students were asked to pick them up from the school or had them delivered to their homes. In this way, all but seven families were able to be reached, he said.[13]

At another school, where around a quarter of students are Mori, and the majority of students are Pasifika meaning they or their families migrated from the Pacific Islands in recent decades many come from large families. Just because a student had a device it didn't mean that they had it in front of them all the time. It could be shared by five kids, said the school's principal. It's such an injustice, she continued.[14]

***Human Rights Watch suggests that the EMRIPs study make the following recommendations:***

#### **Limited Progress to Ensure Access to Food, Water, and Health Services for Wayuu in Colombia**

Throughout Latin America, extreme poverty, environmental degradation, and the loss of land, territory, and access to traditional foods have contributed to rates of malnutrition for Indigenous children that are double that of the region's general population. For years, reports out of Colombia's northeastern state of La Guajira have suggested that the disproportionate impact of malnutrition on the Wayuu is even more acute.[15]

While La Guajira is only home to about 7 percent of Colombia's population, it accounts for more than 20 percent of malnutrition deaths among children under 5. In recent years, over 75 percent of malnutrition deaths in La Guajira are of Indigenous children, although the Indigenous population is 42 percent of the state's population, according to government data.

The arrival of over 160,000 Venezuelans since 2015 has further strained already overstretched health, water, and food systems, according to doctors, teachers, and government officials.

The government has made efforts to improve access to food, water, and health services for the Wayuu amid the influx of Venezuelan exiles in La Guajira, with limited results. According to government data, there were 1,121 cases of severe malnutrition in 2021, 1,607 in 2019, and 1,661 in 2016. There were 52 deaths connected to malnutrition in 2020 and 64 in 2019. The rate relative to births of children suffering malnutrition or dying because of it has remained largely unchanged since 2016.

Deaths of children under 5 from diarrhea often linked to unsafe water or insufficient water for good hygiene also occur at high levels, according to government data. Forty-six children under 5 died of diarrhea in 2019 in the state, compared with six in 2015. These deaths, like deaths from malnutrition, are largely considered preventable. La Guajira's disproportionately high diarrheal disease death rate, which is five times greater than the national average, highlights its poor access to water and sanitation.

In an investigation in 2020, Human Rights Watch and the Johns Hopkins Center for Humanitarian Health identified serious shortcomings in many government programs and policies to address malnutrition.[16]

The Colombian Family Welfare Institute (Instituto Colombiano de Bienestar Familiar, ICBF) had established two recovery centers for children with acute malnutrition in La Guajira and provided mobile units to screen children, each with a physician, nurse, social worker, and healthcare promoter. Between 2015 and 2018, the government expanded the number of units from 4 to 10. These units screened

almost 27,000 children in 2018.

However, a local health authority interviewed in January 2020 said that about half of children diagnosed with malnutrition in the state are not served by the agency's meal or treatment programs. Moreover, extramural teams run by the Ministry of Health to visit remote communities only operated for three months in 2019, and they did not operate between at least January and July of 2020 due to lack of funding, health officials said.

The lack of familiarity and language capacity within the health system, as well as a history of discrimination and neglect, also creates barriers that limit the Wayuu's access to health services. Many Wayuu people speak only Wayuunaiki, not Spanish. Not all healthcare workers speak Wayuunaiki, and translators are not always available.

Malnutrition treatment can involve long in-patient hospital stays, in particular for children suffering both acute malnutrition and other illnesses. Parents may be unaccustomed to staying in hospitals or cities and feel uncomfortable leaving their sick child with healthcare workers they do not trust, health authorities and residents said. And the cost of staying near hospitals while their children are hospitalized is often prohibitive for families, residents, and healthcare workers said.

Gaps in healthcare coverage also stem from the logistical difficulties to reach remote communities. Virtual options such as telehealth services are difficult due to the limitations to internet access in the state.

To supplement food security for at-risk children, the government has also invested millions of dollars in school meal programs since 2014. Yet the food provided has at times been too little or spoiled, Wayuu community authorities, local prosecutors, and regional aid workers said. Private food providers hired by the government have at times failed to account for the hundreds of children coming from Venezuela; teachers said they have had to split meals to cover those children.

Government initiatives to bring water to La Guajiras Indigenous communities are being carried out slowly, even as water is becoming scarcer and more urgently needed. Government authorities have created wells, provisional public water points, and aqueducts to improve communities access to water. As part of a multi-agency program, Alliance for Water and Life in La Guajira, which began in 2015, the government reported it had built or repaired 249 water solutions as of late 2019, including wells based on solar energy and wind, facilities to store water, and some deep tube wells.

But residents said that many water solutions have been contaminated or stopped working due to lack of maintenance and others depend on wind to operate their pumps, so they only work intermittently. Wayuu people, government officials, and aid workers said that water from these wells may be dirty, brown, green, or salty. In January 2020, Human Rights Watch visited several wells and jageyes Indigenous open-pit water reservoirs in various communities in 2020, and found that, while some were functioning and accessible, water in some cases was turbid and the reservoir or well was frequented by animals such as goats or dogs, risking contamination.

The Housing Ministry had begun to install provisional public water points in the region as part of its initiative Guajira Azul, which began in 2018. While these can provide access to water in this urgent context, they are not permanent. Instead, safe and sustainable drinking water sources should be constructed and maintained.

Even these emergency measures are being carried out slowly: as of March 2020, the ministry had only finalized one of the 19 provisional water points it planned to build with support of international cooperation before 2022. It had also secured the budget for four others, a high-level government official in La Guajira said.

As another temporary measure, some communities receive government water tank deliveries, but delivery is difficult because Wayuu communities tend to be rural and dispersed. Deliveries can be infrequent, and people at times need to walk for hours to retrieve this water, residents and local authorities said. The quality of the water and prevention of contamination at the points of collection or use cannot be assured without ongoing funding for monitoring and water treatment supplies, which is currently lacking.

Colombian authorities, including the Inspector General's Office, the Comptroller General's Office, and the Human Rights Ombudsman's Office, have also identified serious shortcomings in the government's response to the crisis. An official from the Inspector General's Office, an independent body charged with protecting human rights and conducting oversight of decisions by government officials, said that most [government] entities had failed to take adequate and necessary actions to address the situation in La Guajira. Similarly, in December 2019, the Human Rights Ombudsman's Office concluded, in a report reviewed by Human Rights Watch, that there was no significant progress in the long-term measures required to address the crisis.

### **Barriers to Prosecuting Corruption**

In 2016 and 2017, the Constitutional Court of Colombia concluded that corruption was one of the main factors undermining children's access to water, school meal programs, and health services in La Guajira. The court found limited transparency in the procurement of these services and said that the Attorney General's Office, the Inspector General's Office, and the Comptroller General's Office should prioritize prosecuting corruption in the state.

As of mid-2020, the Attorney General's Office estimated that, in cases under investigation involving corruption in health and food programs, over 13 billion Colombian pesos (US\$5 million) have been lost to corruption in the state since 2014. In April 2020, the Comptroller General's Office found, through 14 audits into school meal programs in La Guajira, that approximately 30 billion pesos (almost US\$10 million) had been lost to corruption or mismanagement. In most of these cases, corruption occurred during the execution of contracts with companies hired to provide health and food services. Since these figures only reflect investigations into a limited set of cases, the total money lost to corruption in La Guajira is most likely much higher.

In April 2020, the Attorney General's Office, which carries out criminal investigations and prosecutions, told Human Rights Watch that it was conducting at least 28 investigations in La Guajira for misappropriation of public funds intended for food and health services. As of March 2020, 21 people had been charged in corruption cases and at least 13—including one state governor and five private contractors—had been convicted, the Attorney General's Office said.

For example, in two investigations carried out in 2015 and 2016 involving ICBF programs, investigators found that agency officials, as well as employees of a private health provider, misappropriated nearly 3,712 million pesos (roughly US\$1.2 million) from plans to provide food and comprehensive healthcare to over 28,000 children under age 5 and pregnant or breastfeeding women in 2015. As of March 2020, the Attorney Generals Office had indicted 17 people, including senior ICBF officials.

In 2017, the then-mayor of Riohacha, a La Guajira municipality, and his then-education secretary were charged in another case for misappropriating over 1 billion Colombian pesos (US\$385,000) in 2016 from a plan to feed over 16,000 children in schools in rural and Indigenous communities in Riohacha.<sup>[17]</sup> The Attorney Generals Office found that some contractors were paid twice and that there were cost overruns in transportation. Some food was not delivered, not fit for human consumption, or of poor quality, prosecutors found. The former mayor and secretary were charged and sent to pretrial detention in February 2017, while other people are still under investigation in the case, prosecutors said.<sup>[18]</sup>

There have also been cases of corruption connected to water services in La Guajira. For example, in November 2016 prosecutors charged 11 people, including a former mayor of Riohacha, for corruption in the 2012-2014 building of an aqueduct.<sup>[19]</sup> The aqueduct never functioned, and prosecutors estimate that over 12 billion Colombian pesos (roughly US\$3.9 million) were lost to corruption.

While prosecutors have initiated and pursued many investigations into corruption in La Guajira, these and future investigations into corruption in the state face major hurdles, including a limited number of investigators and prosecutors. Security risks to prosecutors and investigators have also undermined their ability to investigate crimes. Moreover, the Superior Council of the Judiciary, which is charged with overseeing the work of judges nationwide, said that only six courts in La Guajira handle corruption cases; as of June 2020, they were handling an average of 1,000 cases each and had between three and five staff members each. As of June 2020, the state had two criminal appeals courts with only two staff members each, including the judge. Because of the overwhelming number of cases, corruption hearings are scheduled roughly every seven months, causing significant delays, said prosecutors, authorities within the Attorney Generals Office, and an Inspector Generals Office official.

Other types of investigations into corruption in La Guajira have also been limited. As of July 2020, the Inspector Generals Office, which carries out disciplinary investigations of government officials, has made limited, if any, progress in investigating corruption in La Guajira. The Comptroller Generals Office, which can fine government officials or private citizens who mismanage government resources, has also achieved very limited results. In March 2020 the Comptroller Generals Office said that it had only recovered 8 million Colombian pesos (roughly US\$2,719) of the almost 6.4 billion Colombian pesos (roughly US\$2.1 million) the Office estimates had been lost to mismanagement.

#### ***Human Rights Watch suggests that the EMRIPs study make the following recommendations to the Government of Colombia:***

**Food poverty** now risks reaching increasingly dangerous levels as climate change impacts across the country intensify and accelerate, undermining First Nations access to food and worsening health outcomes, including for First Nations children. In a 2020 report, Human Rights Watch documented how climate change impacts including more extreme weather, thawing permafrost, reduced snow and ice, and more wildfires are depleting First Nations traditional food sources, increasing the danger and difficulty of harvesting and driving up the cost of imported alternatives.<sup>[20]</sup>

First Nations members Human Rights Watch interviewed described having to skip meals or purchase less healthy, but more affordable food in local stores to supplement inadequate supplies of traditional food. In several First Nations Human Rights Watch visited, teachers reported that some children do not get enough food at home. Social stigma surrounding poverty and fears related to the removal of First Nations children from their families by social services for poverty-related reasons present obstacles to families seeking assistance for food insecurity in some cases.<sup>[21]</sup>

First Nations children in Canada disproportionately experience impacts on their right to food.<sup>[22]</sup> The 2017-2018 Canadian Community Health Survey (CCHS) by Statistics Canada reported that 28.2 percent of Indigenous households off-reserve experienced food insecurity compared to 11.1 percent of white households.<sup>[23]</sup> The First Nations Regional Health Study, meanwhile, reports that approximately half of First Nations households on-reserve and in Northern communities nationwide were moderately or severely food insecure. Of those households with children, 43.2 percent were classified as food insecure.<sup>[24]</sup>

Climate-exacerbated food poverty, increasingly requiring community members to skip meals or buy more low-nutrient store-bought food, carries serious health implications, especially for children. Studies have shown that loss of traditional food and related harvesting practices, along with increased reliance on processed, lower-nutrient imported foods, is tied to increased negative health outcomes in northern and remote communities, such as increased chronic diseases, and in particular, higher rates of obesity and diabetes, including among First Nations children.<sup>[25]</sup> Some studies also suggest that malnutrition at an early age may increase risks of developing Type 2 diabetes.<sup>[26]</sup> While diabetes tends to be present in individuals 50 years and older, it has been appearing earlier and at increasing rates among First Nations children.<sup>[27]</sup>

Climate-induced food insecurity also adds to an already significant **mental health crisis** facing many First Nations as a result of historical and intergenerational trauma, discriminatory government policies, enforced separation of children from families and communities, insufficient access to mental health care and psychosocial support, and more.<sup>[28]</sup> Suicide is one of the leading causes of death among First Nations children.<sup>[29]</sup>

Climate change impacts on traditional food sources also affect First Nations childrens abilities to practice and maintain their cultures, resulting in significant impacts on mental health and wellbeing.

As climate change impacts result in reduced access to traditional food sources and decreased ability of First Nations to safely spend time on the land, it threatens not only communities food supplies but also their ability to engage in cultural practices and ultimately maintain their cultural identities. In key part, climate change is threatening the land-based knowledge systems that are essential to harvesting. First Nations peoples use these knowledge systems, called Indigenous knowledge or traditional knowledge, to predict and determine seasonal cycles and optimum timing for harvesting activities, but this knowledge, based on generations of land-based observations, is increasingly unreliable as climate change makes seasonal patterns and weather conditions less predictable.<sup>[30]</sup>

Climate change is also challenging First Nations ability to maintain and grow their land-based knowledge systems by passing them on to their children. Indigenous knowledge, including knowledge about harvesting and cultural histories, is taught and passed down the generations through hands-on learning, requiring time spent on the land harvesting. As climate change degrades habitat and increases the danger of harvesting, limiting harvesting opportunities, communities face fewer opportunities to develop and transmit Indigenous knowledge.<sup>[31]</sup> Increased danger can also result in fewer youth joining hunts, missing out on opportunities to learn harvesting methods and engage in cultural practices.<sup>[32]</sup>

These impacts on Indigenous knowledge and harvesting practices carry significant implications for mental health and wellbeing among First Nations people. Studies report a sense of loss related to the inability to pass on Indigenous knowledge, leading to feelings of anxiety, sadness, depression, fear, and anger as a result of climate change.<sup>[33]</sup>

While First Nations children are disproportionately exposed to the physical and mental health impacts of climate change, health care available in First Nation communities is often limited and of lower quality compared with the care offered to the non-Indigenous population, partly due to inadequate and inequitable government funding. A 2016 ruling by the Canadian Human Rights Tribunal, for example, affirmed that the federal government knowingly underfunded child welfare and medical services for 165,000 First Nations children living on reserves and in the Yukon.<sup>[34]</sup>

Canadian federal climate change policies have largely ignored the impacts of climate change on First Nations children's right to food. Most existing policies were designed without meaningful participation of First Nations and fail to monitor let alone address human rights impacts in these communities. Food subsidies and health resources required to respond to the current and projected impacts are often not available, insufficient, or do not reach those who need it the most.

For example, the federal government's Nutrition North program subsidizes a list of nutritious foods transported from registered southern retailers. This program is the major means of supplementing inadequate supplies of locally harvested food. However, since its inception in 2011, the program has not led to remote, northern communities securing access to affordable, healthy food: food prices in community-based stores remain high with healthy food options financially unattainable for many.

Meanwhile, Canada is not doing its part to advance global efforts to address the change in global temperature, which is contributing to loss of traditional food sources. In 2015, it made a weak pledge to only reduce emissions by 30 percent below 2005 levels by 2030. At time of writing Canada has not set an adequately ambitious Nationally Determined Contribution, a country's domestic climate change action plan, to keep global temperature rise below 1.5°C. In any case, the government is not on track to meet either its 2030 emissions targets or net-zero by 2050, and has acknowledged that more needs to be done. Despite its relatively small population of approximately 37.5 million people, Canada is still among the top 10 countries worldwide in GHG emissions, with per capita emissions approximately three to four times the global average, and growing.

***Human Rights Watch suggests that the EMRIPs study make the following recommendations to the Government of Canada:***

The lack of access to clean water in First Nations communities is felt most by at-risk populations such as children. The daily hardship of living under a water advisory for years means that some people become frustrated and drink it without boiling or otherwise treating it, risking exposure to contaminants. Others use tainted water for bathing or for household tasks, such as washing dishes or clothes. Some avoid the water at all costs, but do not have sufficient safe water to meet their daily needs. Many households surveyed by Human Rights Watch reported problems related to skin infections, eczema, psoriasis, or other skin problems, which they believed were associated with water conditions in their homes.<sup>[35]</sup> Many people also reported changing hygiene habits in an effort to avoid using contaminated water, including limiting baths or showers for children, based on concerns about water quality.<sup>[36]</sup>

Community water is often treated with chlorine. A significant number of households reported to Human Rights Watch that they believed the water they used for hygiene made them or their children itch, and some suspected this was due to the chlorine.<sup>[37]</sup> While chlorine, when used correctly, can safely disinfect water, the World Health Organization recognizes that exposure to chlorine and hypochlorite is associated with episodes of dermatitis.<sup>[38]</sup>

Amid the Covid-19 pandemic, federal and provincial governments have urged handwashing and social distancing, but the lack of access to clean water in First Nations communities and inadequate funding for on-reserve housing has led to severe overcrowding.

***Human Rights Watch suggests that the EMRIPs study recommend that the Government of Canada:***

Work closely with First Nations to promulgate enforceable drinking water and sanitation regulations, in a manner consistent with communities' rights under Canadian law and international law; with sufficient funding and technical support for First Nations to meet these standards; and under an appropriate timeline for full enforcement that permits First Nations to bring all systems up to the safety standards established by the regulations.

**Over-Imprisonment of Indigenous Children in Australia**

On an average night, over 50 percent of all children in detention in Australia are Aboriginal or Torres Strait Islander. Aboriginal and Torres Strait Islander children are 21 times as likely as their non-Indigenous peers to be in detention on an average night. <sup>[39]</sup>

This reflects over-policing of Aboriginal and Torres Strait Islander children, the introduction of more punitive laws, and changes in the way the criminal justice system treats offenders for example, a rise in the number of prisoners on remand, more punitive sentencing laws and practices, and limited availability of non-custodial sentencing options.<sup>[40]</sup>

The attorney general of Australia has called the over-imprisonment of Aboriginal and Torres Strait Islander peoples, including children, a national tragedy.<sup>[41]</sup> The United Nations special rapporteur on the rights of Indigenous peoples has called the gross overrepresentation of Aboriginal and Torres Strait Islander children in the prison population the end result of years of dispossession, discrimination and intergenerational trauma faced by Aboriginal and Torres Strait Islanders, as well as lack of political will to address the situation.<sup>[42]</sup>



Multiple forms of disadvantage mean that Aboriginal and Torres Strait Islander children, particularly girls, are more likely to end up in jail than non-Indigenous peers, including greater likelihood of living in out-of-home care, dropping out of school, being homeless, or having earlier and more frequent contact with the criminal justice system.[\[43\]](#)

### **Over-imprisonment of Aboriginal and Torres Strait Islander Children with Disabilities**

Aboriginal and Torres Strait Islander people with disabilities, including children, are overrepresented within this prison population.[\[44\]](#) An estimated 18 percent of the Australian population has a disability, but almost half of all people entering prison have a psychosocial disability, with more than one in four reporting that they are currently taking medication for a psychosocial condition. Three out of ten have long-term health conditions or disabilities.[\[45\]](#)

Data on Aboriginal and Torres Strait Islander people indicates that they have a higher incidence of disability than other Australians. For example, the National Aboriginal and Torres Strait Islander Social Survey 2014-2015, conducted by the Australian Bureau of Statistics in conjunction with the First Peoples Disability Network (Australia), found that almost half of all Aboriginal and Torres Strait Islander people over 15 years of age were living with a disability.[\[46\]](#)

In non-remote areas, Aboriginal and Torres Strait Islander people were 1.5 times more likely than other adults to have a disability or a long-term health condition.[\[47\]](#) Children in Aboriginal and Torres Strait Islander communities are at heightened risk that they will have an undetected and unsupported disability.[\[48\]](#) Thus, by the time Aboriginal and Torres Strait Islander people encounter the criminal justice system, it is very likely that they have had a disability their entire lives with no real support or accommodation.

Expert organizations such as First Peoples Disability Network have found that Aboriginal and Torres Strait Islander people rarely identify as having a disability.[\[49\]](#) First, there is no concept of disability or equivalent word in traditional languages. Second, if they have already faced discrimination based on their Aboriginality, they may be hesitant to take on an additional and potentially stigmatizing label. Since disability is only one factor among many that contribute to disadvantage in Aboriginal and Torres Strait Islander communities, members rarely speak about their own disability as a front of mind (priority) issue.[\[50\]](#)

Aboriginal and Torres Strait Islander people with disabilities, including children, who have experienced social disadvantage and face barriers accessing services are more likely to have contact with the justice system.[\[51\]](#) Research shows that Aboriginal and Torres Strait Islander people with cognitive disability experience custody and get their first conviction earlier than other Australians.[\[52\]](#) A study found that the median age of first police contact for Aboriginal and Torres Strait Islander children with cognitive disabilities was 13.8 years of age.[\[53\]](#)

Those Aboriginal and Torres Strait Islander people who have disabilities experience added challenges: the disability is often undetected in childhood, and even when it is, support services are difficult to access, putting them on a path where they are more likely to be incarcerated than get a university degree. Research shows that most offenses by Aboriginal and Torres Strait Islander children with disabilities are relatively less serious and pertain to theft, public order, traffic, and vehicle regulations.

Inadequate disability service recognition and support increases the chances that a child with an undetected disability will enter the criminal justice system.[\[54\]](#)

Once in prison, they are often seen as easy targets or weak, exposing them to a range of abuse including bullying; harassment; and verbal, physical, and sexual violence at the hand of other prisoners and staff. In Queensland prisons, Human Rights Watch found 17-year-old Aboriginal and Torres Strait Islander children detained in adult prisons where they were exposed to harassment and abuse by adult prisoners.

For example, in the absence of support and accommodations, a person with a psychosocial or cognitive disability may not understand or immediately follow orders to come out of a cell or raise their hands above their heads. Custodial staff receive limited training on disability and mental health and can mistake their behavior as a prisoner acting up or being disobedient.

Instead of providing psychosocial support and accommodations for a person's disability, prison staff can reprimand or punish the prisoner for behavior that is perceived as disruptive, disobedient, or acting up. Human Rights Watch documented cases of people being sent to a punishment unit after experiencing anxiety or a crisis that medical staff did not manage on time. Human Rights Watch also found evidence of 17-year-old children with psychosocial disabilities spending days or weeks locked in solitary confinement in crisis or safety units for 22 hours or more a day.[\[55\]](#)

While the Queensland government has now banned 17-year-olds from being detained in adult prisons, it has reversed the presumption for bail for serious offenses and has strengthened anti-hooning laws related to certain anti-social driving.[\[56\]](#)

### ***Human Rights Watch suggests that the EMRIPs study make the following recommendations to the Government of Australia:***

Indigenous women and girls are far more likely to be victims of abuse and homicide including at the hands of law enforcement. There have been numerous reports in Prince George, British Columbia, about connections linking the law enforcement and legal establishments with use of children in sex work and other forms of child sexual exploitation.[\[57\]](#)

In British Columbia, as in Canada as a whole, disproportionate numbers of Indigenous youth, and Indigenous girls in particular, come into conflict with the criminal justice system.[\[58\]](#) In British Columbia, Indigenous girls, although 8 percent of the overall girl population,[\[59\]](#) make up 54 percent of girls held in pretrial custody, 50 percent of girls sentenced to custody, and 48 percent girls on probation.[\[60\]](#)

Victims of abuse, as well as community activists interviewed by Human Rights Watch, believe that Royal Canadian Mounted Police (RCMP) officers bring a general presumption of criminality to their interactions with Indigenous girls in the north.[\[61\]](#)

Alcohol and substance use is a problem for Indigenous communities in Canada. Aboriginal youth are at two to six times greater risk for

alcohol-related problems than non-Aboriginal youth, and the rate of death due to alcohol use in the Aboriginal population is double the rate in the general population.<sup>[62]</sup> Community service providers decried the reliance on jailing as a means of addressing public intoxication in communities plagued by high alcoholism rates linked to decades of trauma.<sup>[63]</sup> Human Rights Watch research has found that police routinely incarcerate Indigenous girls for intoxication if they are found to have consumed alcohol and are in need of transportation home (a particular challenge in communities with almost no public transportation), while white girls in the same situation are likely to be driven home by the police.<sup>[64]</sup> While it is appropriate for police to intervene when children are intoxicated in public because they are in a vulnerable state, their focus should be on helping the children; insistence on incarceration with respect to Indigenous girls appears to reflect a discriminatory approach.

There have also been incidents of children being attacked by police dogs during arrests.<sup>[65]</sup> Under RCMP use of force policy, there are no restrictions on the use of police dogs with youth, despite calls from advocacy groups for the police to prohibit their use with children or severely restrict their use to situations presenting a threat of death or grievous bodily harm.<sup>[66]</sup> While the Vancouver Police Department has released information on police dog incidents involving youth, the RCMP has refused requests from advocacy groups to provide such statistics.<sup>[67]</sup>

***Human Rights Watch suggests that the EMRIPs study recommend that the Government of Canada ensure that:***

<sup>[1]</sup> Human Rights Watch interview with a student program outreach coordinator, Pueblo of Jemez, New Mexico, United States, June 20, 2020.

<sup>[2]</sup> Human Rights Watch interview with a student program outreach coordinator, Pueblo of Jemez, New Mexico, United States, June 20, 2020.

<sup>[3]</sup> Human Rights Watch interview with director of cultural programs in a rural Alaska school district, United States, June 4, 2020.

<sup>[4]</sup> Human Rights Watch interview with Dr. Hinurewa Poutu, director of Te Reo Mori at Mori Television, Auckland, New Zealand, July 15, 2020.

<sup>[5]</sup> Human Rights Watch interview with Annie Sneaky, 15, Grassy Narrows First Nation, Ontario, Canada, June 11, 2020.

<sup>[6]</sup> Human Rights Watch interview with student, 16, Wamena, Papua, Indonesia, July 16, 2020.

<sup>[7]</sup> Human Rights Watch interview with a senior administrator in a rural school district, Alaska, United States, May 29, 2020.

<sup>[8]</sup> Human Rights Watch interview with secondary school teacher, Alaska, United States, June 4, 2020.

<sup>[9]</sup> Human Rights Watch interview with Missy Rivers, Scammon Bay, Alaska, United States, June 3, 2020.

<sup>[10]</sup> Human Rights Watch interview with a senior administrator in a rural school district, Alaska, United States, May 29, 2020.

<sup>[11]</sup> Human Rights Watch interview with a student program outreach coordinator, Pueblo of Jemez, New Mexico, United States.

<sup>[12]</sup> Human Rights Watch interview with Mia Sulastris, 17, Sampit, Central Kalimantan, Indonesia, July 11, 2020.

<sup>[13]</sup> Human Rights Watch interview, teacher, New Zealand, June 2020; also with principal, New Zealand, July 17, 2020.

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