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Indigenous children’s rights
Opportunities in appropriation and transformation

Natasha Blanchet-Cohen

1. Introduction

The United Nations Convention on the Rights of the Child (CRC) is the first international human rights treaty that specifically protects the rights of the Indigenous child. After unsuccessfully struggling at the international level for the recognition of their unique rights, Indigenous peoples and their allies welcomed this inclusion hoping it would address the historical breach of their rights (Price Cohen, 1995). What can be said about the significance of the CRC for Indigenous children, a quarter of a century after its adoption?


Taking a critical perspective, this chapter posits that despite a grim situation, the CRC presents an opportunity to advocate for an alternative worldview for, with and by Indigenous children. Although the CRC has been critiqued for promoting Eurocentric conceptions of childhood that have resulted in paternalistic policies and programmes which are often disrespectful and detrimental to Indigenous ways of life (Boyden and Mann, 2005), given the proper conditions, the CRC can support Indigenous children’s best interests in ways that respect...

1 The author is Associate Professor at Concordia University. Acknowledgments: This paper draws on the research, field experiences and participation in international processes related to the promotion of Indigenous children’s rights over the past two decades. I wish to thank the many Indigenous mentors and relationships that have helped inform this paper, and the advice and feedback from Mutang Urud, Vanessa Currie, Peggy Herring and literature review by Kristy Franks.
dignity rather than negating identity. This is evidenced today in the way Indigenous peoples are putting into practice certain aspects of the CRC and other international human rights laws, redefining the legal terms and ideas behind them, posing deeper questions, and finding new meaning. In other words, when Indigenous children and communities are able to interpret the Convention and be actively involved in implementation, universal and paternalistic applications can be avoided. Through the process of appropriation and transformation by stakeholders, the CRC is being brought to life, realizing its “emancipatory objective” and becoming a “lever to change societal conditions” (see Chapter 1 in this Handbook, p. 11).

To illustrate this process of appropriation and transformation, I examine three overarching areas of the CRC that Indigenous peoples are actively involved in defining and interpreting to actualize their rights. These are (a) defining the concept of Indigenous, (b) understanding the significance and implications of the phrase “to enjoy his or her own culture,” and (c) identifying duty-bearers and right-holders. This section is followed by a review of education and child protection, two sectors in which Indigenous peoples are putting into practice CRC principles.

Setting the tone for this chapter is Noeli Pocaterra explaining how she presents the CRC to children and mothers in the community. As a Wayuu leader from Venezuela and former vice-president of the World Council of Indigenous Peoples and member of the Venezuela Senate, I also credit her for introducing me to the potential of Indigenous children’s rights twenty years ago.

I often begin a presentation on children’s rights by drawing a pregnant mother, and asking what an unborn child needs to be healthy when it is born. … We write the points down, and invite the children to mention those that have been omitted. It is then explained how all that has previously been said is essentially what constitutes the CRC. The CRC articles as such may never be mentioned; emphasis is placed on content and meaning rather than exact terminology.

The introduction is followed by a discussion on the Indigenous world and non-Indigenous world, and the tensions between them. A drawing is made of two circles, and the group identifies what constitutes Indigenous ways (i.e., oral tradition, traditional clothing, honour system) in one circle and in the other non-Indigenous ways (i.e., written, legalistic, individual). Then, the CRC is presented as a tool that comes from the non-Indigenous world, but that offers the possibility to support children’s well-being and some of the Indigenous ways and views.

I then raise the question: who is responsible for implementing these rights? Children often mistakenly begin by mentioning the government or teachers. What about us? I sometimes need to point out. The idea of organizing children’s rights committees is then introduced.

(Noeli Pocaterra, personal communication, June 8, 2007)

While children correctly identified governments as the primary duty-bearers, Pocaterra’s intentional emphasis on communities’ role reflected her view that actualizing the CRC would depend largely on the participation of Indigenous children and communities. As an educator and community developer, I shared her interest in the role and possibilities of empowering communities to give meaning to their rights.

Indeed the CRC provides an opportunity for non-Indigenous and Indigenous worlds to come together, but this meeting of two worlds poses challenges because of a non-alignment of worldviews, and nation-states’ lack of commitment toward respecting Indigenous peoples’
rights. As discussed herein, working through the tensions is part of “broadening cross-cultural understanding and gaining a broader capacity to take competing views into account when thinking about or establishing international human rights treaties” (Libesman, 2007, pp. 285–286). Acknowledging a diversity of meanings and embracing questioning is a way of finding “out in which way further development of children’s rights can promote culturally specific ways of living and the equality and acceptance of children” (Liebel, 2012, p. 21). This is part of moving away from the “technalization” and “decontextualization” that has characterized the CRC (Reynaert, Bouverne-de Bie, and Vandevelde, 2009, p. 358), and better serving Indigenous children. In discussing the activism (in or with Indigenous communities) surrounding seeking and giving meaning to the CRC, this chapter hopes to demonstrate the potential of this international document to advocate for the positive advancement of Indigenous children’s rights, and to reverse generations of oppressive and discriminatory state policies and practices.

2. Indigenous children’s rights


The 42 substantive rights of the CRC apply equally to all children; however, specific reference to Indigenous children appears in three articles. Article 30 protects the cultural, religious, and language rights of Indigenous children:

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

(United Nations, CRC, 1989)

This article was introduced into the draft of the Convention by an Indigenous organization, the Four Directions Council, which pointed to the unique situation of Indigenous children and the importance of their cultural rights (Hodgkin and Newell, 2007). Inclusion of Article 30 also reflected the human rights community embracing a diversity of cultures.

Article 17(d) on access to mass media also makes specific reference to Indigenous children: “Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is Indigenous.” Finally, Article 29.1(d) identifies that education shall be directed to “the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.”

Since the ratification of the CRC in 1989, several events have served to bring further attention to Indigenous children’s rights. A General Discussion on the Rights of Indigenous Children was held by the CRC Committee in 2003. The preamble to its recommendations stated that “indigenous children were disproportionately affected by specific challenges … yet are not sufficiently taken into consideration in the development and implementation of policies and programmes for children.” Its 24 recommendations covered a range of topics including a call on State parties to strengthen data collection on Indigenous children, the right to identity, access, and appropriate education and health, as well as a call for international cooperation and follow-up. The following year, UNICEF’s Innocenti Research Centre dedicated an issue of
Digest to Indigenous children stating in its editorial that “indigenous children have not always received the distinct consideration they deserve,” and closing with a recognition that “indigenous children carry with them a reserve of knowledge that is their special inheritance, and from which we can all benefit” (UNICEF, 2004, p.1).

Six years later, the Committee on the Rights of the Child (2009) published General Comment No. 11: Indigenous Children and Their Rights under the Convention. The General Comment identified that states needed direction on interpreting and implementing this Convention, given the “insufficient attention” (para. 20) paid to the rights of Indigenous children in state parties’ reports. The General Comment considers that the right established in Article 30 “is an important recognition of the collective traditions and values in indigenous culture. … [and that] the right to exercise cultural rights among indigenous peoples may be closely associated with the use of traditional territory and its resources” (para. 16). Relevant issues for Indigenous children are also identified as they relate to (a) the general principles, (b) civil rights and freedom, (c) family environment and alternative care, (d) basic health care, (e) education, and (f) special protection measures. Considering the importance of working with Indigenous peoples, the General Comment also states: “In order to develop policy and programming efforts in a culturally sensitive manner, state parties should consult with indigenous communities and directly with indigenous children” (para. 80).

In a reflection of more skilled leadership and recognition of Indigenous peoples internationally, Indigenous organizations were actively involved in the development of the General Comment (Rae, 2006). For instance, the expert writer who was appointed to undertake the drafting was an Indigenous person who was recommended by the sub-group on Indigenous Children and Young People that reports to the UN Committee. As well, consultations were carried out with Indigenous groups and youth on four continents. This involvement provided opportunities to influence the framing and content of the General Comment, while creating awareness and ownership of the CRC among Indigenous peoples.

2.2. Supportive developments in international law

In the introductory chapter, the editors point out that human rights and children’s rights regrettably have grown apart; conversely, positive developments in international law with respect to Indigenous peoples have contributed to furthering Indigenous children’s rights. Indeed after receiving scant attention from the international community for most of the twentieth century, Indigenous peoples in the last two decades have gained an international personality with legal recognition and presence (Meijknecht, 2001). Numerous mechanisms at the UN have supported this, including the establishment of the UN Permanent Forum on Indigenous Issues with a thematic focus on Indigenous children and youth, the presence of the Special Rapporteur on the rights of Indigenous peoples, and the proclamation of two International Decades of Indigenous Peoples (1995–2004 and 2005–2014). Other important international treaties are the International Labour Organization (ILO) Convention No. 169 Indigenous and Tribal Peoples Convention (1989), and earlier ILO No. 107 The Indigenous and Tribal Populations Convention (1957), as well as the Convention on Biological Diversity (1992), which includes specific references to Indigenous peoples.

2 The Innocenti Digests provide summaries of current knowledge and debate on specific child rights issues, written in an accessible style for use by a wide range of audiences.
A major breakthrough in international law for Indigenous peoples took place after more than twenty years of negotiation and lobbying with the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 by the General Assembly (Charters and Stavenhagen, 2009). Victoria Tauli-Corpuz, of the Igorot people of the Philippines and former Chairperson of the United Nations Permanent Forum on Indigenous Issues, stated in her opening remarks:

This Declaration has the distinction of being the only Declaration in the UN which was drafted with right holders, themselves, the Indigenous Peoples. We see this as a strong Declaration which embodies the most important rights we and our ancestors have long fought for.

While Indigenous children would of course be covered by the entire Declaration, there are also several specific provisions for them in the document. The preamble recognizes in particular “the right of Indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child.” Among the other five articles that mention Indigenous children is Article 7(2), which indicates that “Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.” Furthermore, Article 14 acknowledges Indigenous peoples’ right to “establish and control their education systems and institutions” and states that all Indigenous individuals “particularly children” should “have access, when possible, to an education in their own culture and provided in their own language”.3

Given that declarations are not legally binding on states, implementation remains uncertain. Indigenous activists and their allies see the Declaration as a “framework of reference, a point of departure” (Charters and Stavenhagen, 2009, p. 357) that will lead to a new recognition of Indigenous peoples’ rights. Implementing the Declaration includes promotion; to this effect an adolescent-friendly version of the Declaration was co-produced by UNICEF and the Indigenous Youth Caucus (2013). This document is being distributed among Indigenous organizations worldwide to raise awareness among youth.

The rise of the Indigenous movement internationally has been a source of power, increasing the ability to resist the abuses of states as well as providing a “source of moral appeal shared with that large part of humanity” (Niezen, 2003, p. 216). In his address to the UN Human Rights Council on the 60th anniversary of the Universal Declaration on Human Rights, Chief Wilton Littlechild of the Cree Nation in Canada stated, “[w]hen Indigenous Peoples WIN, the whole world WINS” (Charters and Stavenhagen, 2009, p. 375). Indigenous movements have reached out to broader society considering common values and shared interests. In the Idle No More campaign in Canada for instance, which was led largely by Indigenous youth, Canadian citizens were invited to join the vision for “just, equitable and sustainable communities”.4 Indeed, increased presence of Indigenous peoples on the international stage and support from allies have created a favourable context for bringing attention to the provisions relating to Indigenous children in the CRC.

3 The other three articles: Article 17 (2) on protecting indigenous children from economic exploitation, Article 21 on the right to economic and social conditions and Article 22 on the rights and needs of vulnerable groups including children.

4 For more information, see: www.idlenomore.ca/manifesto.
3. Appropriation and transformation through the challenges of implementation

While international law may at its foundation agree on the principles of Indigenous children’s rights to survival, to respect, and to communicate (Price Cohen, 1995), the significance of many such notions is undetermined and undesignated. Below, developments in three areas are discussed: the concept of Indigenous; the meaning of culture; and assuming responsibility for implementing the CRC. In each area, I discuss how dealing with the challenges of implementation have involved some appropriation and transformation of the CRC. Though understanding the significance and implications of concepts remains complex and uneven across societies, the fact that they are being addressed in diverse contexts is to be welcomed, as it is indicative of an active dialectic process with the involvement of multiple stakeholders.

3.1. Defining indigenous

The term Indigenous – while commonly used in both international fora and the CRC – raises challenges because it lacks universal and easily applicable criteria.

The most cited definition of Indigenous peoples comes from the Study on the Problem of Discrimination against Indigenous Populations (UN Commission on Human Rights, 1986) by José R. Martinez Cobo:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.

While capturing core aspects of defining Indigenous peoples, its universal application has been considered problematic because of the absence of a universal and exclusive characteristic of Indigenous peoples (United Nations, 2009), such as a history of European colonialism and marginalization.

A conceptual note by the Secretariat of the Permanent Forum on Indigenous Issues (United Nations, 2004) states that, “the prevailing view today is that no formal universal definition of the term is necessary” (para. 8). The Working Group on Indigenous Populations in 1997, after meeting regularly since 1982 concluded that a common definition was neither possible, nor necessary. A definition would “inevitably be either over- or under-inclusive, making sense in some societies but not in others” (United Nations, 2009, pp. 6–7). Instead of a definition, the UNDRIP asserts in Article 33(1) that self-identification is the only consideration: “Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the states in which they live” (United Nations, 2007b). The ILO Convention No. 169 also considers self-identification in Article 1.1 as a fundamental criterion along with other criteria such as “social, cultural and economic conditions distinguish them from other sections of the national community” (ILO, 1989, Article 1(a)).

The absence of a standard definition is however problematic because states often do not recognize self-identification. Many countries under-account for Indigenous peoples, lacking...
mechanisms to self-identify; national surveys regularly do not include the category of Indigenous origin. In several cases, Indigenous children do not hold birth certificates, violating their right to identity and to a name as identified in Article 7 and in Article 8 of the CRC. In Bolivia for instance, as much as one-quarter of the Indigenous population in rural areas has no birth registration and therefore cannot fully enjoy their individual and collective rights (UNICEF, 2010). Challenges to birth registration include lack of awareness about its importance among communities, difficulty of access including language barriers and costs, as well as the coexistence of cultural norms that may discourage birth registration for newborn babies. In Chiapas, Mexico, for instance, many Indigenous children are not registered because children are born at home, and obtaining birth certificates requires journeying long distances (Gupta, 2012). In the absence of formal recognition of citizenship by the government, many Indigenous children in Mexico are prevented from accessing basic services in education, health, and social services.

Histories of discrimination and exclusion have meant Indigenous peoples have also chosen to deny their identity. Confronted with the predominance of a “Western” capitalist way of living, young people have chosen to deny their indigenous origin. This negation of identity can become a source of tension within communities, particularly with the older generation who value remaining connected to their roots.

As a result of globalization and mixed-marriages, Indigenous identities have become more complex. In Canada, for instance, women and their children would lose their Indian status upon marrying a non-status person. After aboriginal women’s organizations pointed out the discriminatory nature of these provisions in the Indian Act, the women’s and their children’s status were reinstated with Bill C-31 in 1985 (Henry et al., 2000). Conversely, resource shortages have resulted in Indigenous communities requesting evidence of Indigenous origin. In a Mohawk community in Quebec, Canada, DNA testing was required to claim rights to community resources. These examples show that the ambiguity and variety around definitions of the term Indigenous will continue to be a question that Indigenous peoples and societies will grapple with; its resolutions and impact on children will also vary greatly depending on Indigenous people’s political and economic positioning within a given context. It is expected that appropriation will unfold differently in contexts where recognition of Indigenous identity signifies increases in resource allocation from state parties compared to where indigenous identity remains a source of shame and discrimination.

3.2. Scope and implications of “to enjoy his or her own culture”

Another challenge raised in the CRC is the meaning of the right to enjoy his or her own culture in Article 30. What is included (or excluded) will determine the scope of Article 30. For many Indigenous peoples, children’s right to culture is all-encompassing. The Wayuu in Venezuela, for example, translate children’s rights as sujutu tepichi which means “the integral value of humanity.” It incorporates the spiritual and physical, as well as the wisdom of the individual and collective knowledge (Blanchet-Cohen and Fernandez, 2003). This holistic view broadens the meaning of culture.

One critical question is whether the right to land, territories, and natural resources is implied in children’s rights (see also Desmet and Aylwin, Chapter 22 in this Handbook). This could be assumed given that connection with the land, territory, and natural resources is considered to be the foundation of Indigenous culture. Upholding children’s rights is often considered interconnected with defending the right to land. As Mutang Urud of the Kelabit people from Malaysia shared in his speech to the opening of the UN International Decade on Indigenous Peoples when speaking about the implications of logging and deforestation:
A woman I know who has seven children once came to me and said, “This logging is like a big tree that has fallen on my chest. I often awake in the middle of the night, and I and my husband talk endlessly about the future of our children. I always ask myself, when will it end?”

(Wade et al., 1995, p. 140)

As pointed out by Hodgkin and Newell (2007), while Article 30 may not be intended to cover economic and political rights, these cannot be separated easily. For example, in its concluding observations for Nicaragua, the Committee on the Rights of the Child “notes with concern that, despite constitutional recognition of indigenous customary rights, indigenous communities still suffer from institutional neglect, historic abandonment and indiscriminate pillaging of natural resources, especially in the Caribbean region” (United Nations, 2005a, para. 75). This is equally the case for Colombia’s report: “The Committee welcomes the legal steps taken to recognize ethnic diversity, autonomy and collective land rights of minorities, in particular the Afro-Colombian and indigenous peoples” (United Nations, 2006, para. 94). In response to the Malaysia report, “the Committee recommends that the State party carefully and regularly evaluate existing disparities in the enjoyment by children of their rights and undertake on the basis of that evaluation the necessary steps to prevent and combat discriminatory disparities against children belonging to vulnerable groups, such as the Orang Asli, indigenous and minority children” (United Nations, 2007a, para. 32). Such interpretations by the Committee can become advocacy tools for Indigenous peoples when negotiating with governments in countries where there is a colonial history of appropriation of land, territories and natural resources, although effectiveness will depend on local mobilization and lobbying (Save the Children, 2008).

On the other hand, some cultural practices could be detrimental to children. The General Comment (United Nations, 2009) makes clear the distinction, stating: “Should harmful practices be present, inter alia early marriages and female genital mutilation (Leye and Middelburg, Chapter 17 in this Handbook), the State party should work together with indigenous communities to ensure their eradication” (para. 22).

While some cultural practices may not be in children’s best interests, others may need to be redefined to better reflect contemporary realities. For instance, children’s participation is a core principle of the CRC, with Article 12 stating the right to “express those views freely in all matters affecting the child”, and its meaning is evolving. Traditionally in Indigenous communities, each stage of life was associated with distinct roles and responsibilities, with children participating by observing and being involved in the affairs of the family and the community (Blanchet-Cohen and Fernandez, 2003). Among Indigenous communities in Canada, care was generally provided according to a holistic worldview that deemed children important and respected members of an interdependent community and ecosystem (Blackstock, 2009). However, this form of children’s participation is often more indirect than what is implied in the UN CRC. Still, modernity, colonization, and discrimination have shattered traditional structures, and have displaced children as they traverse life stages. As a result, new forms of expression are emerging. Indigenous young people seek new forms of engagement, and adopt a variety of means of expression that provide for empowerment and well-being that reflect their contemporary realities (Blanchet-Cohen et al., 2011). Young people are not just perpetuating culture but becoming creators of culture: “Youth recognize that meaningful engagement is not simply about returning to the past, but rather building on the past to accommodate to their changed and contemporary realities” (Blanchet-Cohen et al., 2011, p. 106).

In sum, the right to enjoy culture in Article 30 is an evolving concept, and as Indigenous young people and their communities take leadership, they are broadening its scope and creating
new meanings. As warns Libesman (2007, p. 298), “the relationship between article 30 rights and Indigenous children’s rights to their identity requires a subtle and nuanced interpretation of the Convention if inadvertent domination is not to occur”. The process of young people claiming other forms of expressing themselves is a response to external conditions that should be welcomed as part of healthy development, even if it may give rise to difficult questions. A similar point was made by Alston (1994) in his analysis of the possible incompatibility between culture and best interests, and recognition that although the CRC provides broad signposts, in practice the Convention needs to be interpreted by local communities.

3.3. Identifying responsibility

A third challenge relates to the question of who assumes the responsibility for implementing the CRC, given that the Convention addresses state parties with whom Indigenous peoples are often in conflict. This context makes it problematic for an Indigenous community to rely on the state to act as duty-bearer, obligated to implement, monitor and report on progress.

Recognizing that non-state actors should also be duty-bearers with responsibility to implement the principles of the CRC, there is growing emphasis on non-state duty-bearers recognizing shared responsibility for implementation (Lundy and McEvoy, 2009). In the case of Indigenous peoples, this would involve Indigenous organizations, non-Indigenous organizations that are allied and Indigenous children (Rae, 2006). These actors are increasingly taking an active role in advocating for Indigenous children’s rights, and pressuring governments to take the CRC and other relevant international human rights law seriously.

One example of Indigenous organizations taking on this role is in Canada, where First Nation organizations filed a human rights complaint against the government claiming discrimination in child welfare funding on reserves, given the over-representation of First Nation children in state care (Blackstock, 2011; Federal Court, 2012). Despite explicit references in the case documents to children’s right to participate in matters affecting them, the government has refused to include the public in the hearings. “Consistent with the UNDRIP and CRC, First Nations are eager to have the case decided on the evidence of the discrimination allegation but Canada has repeatedly tried to derail a full hearing” (Blackstock, 2012, p. 2505). Indigenous organizations have been calling on the international community to pressure the government to open up the hearings to the public. The case has shed light on the difficulties of challenging government; five years in the federal court granted an application for judicial review following the earlier decision by the Canadian Human Rights Tribunal to dismiss the case on the grounds of lack of evidence.

To denounce abuse by governments, Indigenous organizations have also submitted reports to the UN Committee on the Rights of the Child. Complementary reports by organizations in Canada and Australia (Harris and Gartland, 2011) have brought attention to the situation of Aboriginal children and resulted in the Committee making several references in its concluding observations to the state about the need to address discrimination against Aboriginal children (United Nations, 2012). Throughout, Indigenous organizations have been reaching out, seeking alliances with non-state actors in order to increase the pressure on governments to comply with their international obligations.

Alongside Indigenous organizations and other non-state actors, Indigenous children and young people have become active, showing that children can also be right-holders claiming their rights (Liebel, 2012). Interestingly however, youth empowerment and requests for partnering with adults have not always been welcomed in their own communities (Blanchet-Cohen, 2010). For example, a Cree youth explained how youth issues were viewed...
by leaders in his community: “The youth agenda has fallen to the bottom of the list. Our leaders are, ironically, fighting against each other. We youth work together ... We need to control the agenda, to set the pace, to learn how to work together” (personal communication, April 18, 2012). In recognition of this reality, an adult who works with youth in Canada reflects: “We shut down as leaders ourselves ... [though] when kids are yelling and screaming they are telling us something. ... We don’t give [them] the opportunity to fight and give back. We are not good at that. We don’t hear the anger” (Blanchet-Cohen et al., 2011, p. 105).

At a conference on Indigenous social determinants of health held in Canada (National Collaborating Centre for Aboriginal Health, 2009), a youth participant spoke before an adult audience of the need for better support: “Youth feel weak; position us to learn to become strong.” Another youth participant added, “We want to learn from you, so please extend your hand to us so we hold it.” Indeed, youth call for capacity-building at all levels. Indigenous youth think that their communities should see resources spent on youth as an investment, not an expense, and that young people should be more involved in all community issues, not just those that are youth-specific. Youth feel able to transcend beyond the political divisions that curtail leaders. In confronting their own communities, Indigenous children and young people may transform culture.

Thus, with responsibility for implementation comes a need for partnering with Indigenous organizations and young people themselves. Young people’s participation, consistent with a core principle of the CRC, may give rise to conflicting views between generations, but if children’s rights is not to be prescriptive it must invite dialogue and reflection and consider embracing tensions rather than ignore them. The significance and priorities of each actor or the specific nature of actualization will therefore need to be figured out, claimed, and then often negotiated, paying particular attention to context which, as pointed out in the introductory chapter, is central to a critical approach to children’s rights.

4. Examples of appropriation and transformation

To illustrate the unfolding of the process of appropriation and transformation, this section presents examples of how Indigenous children’s rights are being actualized in the fields of education and child protection. This overview points to the complexities and possibilities in implementing alternative programming, given the situation of Indigenous peoples within specific contexts, but it also highlights the multiple systemic issues that impede Indigenous peoples’ well-being.

4.1. Education

According to the CRC Article 28, states are obligated to provide primary education (Swadener et al., 2013) and Article 29 outlines the aims of education including a specific reference to respecting Indigenous culture (Quennerstedt, Chapter 12 in this Handbook). Education has however often been used as a means of assimilation to promote singular dominant models of knowing, at the cost of ethnic minority and Indigenous languages, and ways of knowing (Battiste, 2010). The UN Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous peoples observes that formal education has been a “two-edged sword,” aimed at knowledge and skill acquisition, while at the same time removing Indigenous children from their culture (United Nations, 2005b). In many countries boarding schools were established for assimilation. As a result, Indigenous identities have been shattered: children have been “caught in a no man’s land whereby they lose an important aspect of their identity while
not fully becoming a part of the dominant society” (para. 15). An analysis of Indigenous children’s school experience in Peru shows, for instance, that disregard of Indigenous language and culture is detrimental to education performance: “School experience not only contributes to the disempowering of Indigenous students and communities, but also prompts their academic failure by denying them the tools and motivation for cognitive engagement and identity investment” (Ames, 2012, p. 460).

Generally, subtractive education where Indigenous children are taught at the cost of their mother tongue has been shown to be harmful to the child linguistically and psychologically (Skutnabb-Kangas and Dunbar, 2010). The absence of Indigenous perspectives in formal curricula results in feelings of exclusion and low self-esteem, contributing to discrimination and racism. Indigenous students experience lower enrolment rates, higher drop-out rates, and poorer educational outcomes than non-Indigenous persons (United Nations, 2009).

Despite these facts, there have been in recent decades a growing number of positive developments in supporting Indigenous education as a result of state policies and leadership of Indigenous organizations (United Nations, 2005b). These examples illustrate implementations of Article 29.1(d) CRC and UNDRIP Article 14 to provide indigenous children with an “education in their own languages in a manner appropriate to their cultural methods of teaching and learning”. Bilingual education, developing Indigenous curricula, and recognizing non-formal education as well as having Indigenous peoples managing their own schools (self-determination) illustrate Indigenous communities – with the approval and cooperation of the government in question (or, if not exactly approval, then at least they are not standing in the way) – “appropriating” Article 30 of the CRC (and UNDRIP Article 14), and after processing it through their own contexts “transforming” their rights.

However, experiences in creating a culturally relevant programme have not been devoid of challenges. In New Zealand, formal progress has been made in adopting Indigenous children’s education rights, but narratives with Māori educators suggest that more training, resources, as well as parental support are necessary (see Swadener et al., 2013). Similarly, in South Africa, despite a policy that supports instruction in their primary language, and evidence that learning in the mother tongue in the early years will improve the future schooling experience, many parents chose to send their children to formerly White-only schools where instruction was given in English instead of their own African mother tongue (see Swadener et al., 2013). In Canada, the absence of accompanying infrastructure has often resulted in poor quality of First Nations controlled education, where parents complain about the catch-up required to transition to the general public system, and acquire the language skills necessary for obtaining employment (Senate of Canada, 2011). Success in appropriation in education is difficult without also attending to other systems, including training and resources for education and employment sectors.

Placing emphasis on mainstream education institutions that respect and accommodate Indigenous languages and cultures, and prioritizing Indigenous control of education with programmes specifically tailored to Indigenous children remains difficult. While there is perceived value in integrating traditional Indigenous teaching methods into mainstream education because it will “not only become more likely to serve the developmental needs of Aboriginal children and youth; it will also improve society in fostering a culture of human rights” (Cook and White, 2001, p. 345), others fear integration presents risk to Indigenous identity and culture.

Implementing the CRC requires focusing on more than just access to education. Attention also needs to be paid to the quality and place of education, and provision of other basic human rights including prospects for future employment. An analysis of experiences in Botswana and
Namibia suggests that context as well as involvement of Indigenous communities is critical in designing education that respects Indigenous rights (Hays, 2011). This will require a “focus on increasing the options available to Indigenous communities – as well as their ability to negotiate on their own behalf and thus to decide for themselves what is the best approach to take – through a variety of complementary approaches” (p. 149). Giving meaning to the provisions of Article 29.1(d) requires empowering Indigenous communities in seeking how to find a balance between supporting Indigenous children’s cultural identities on the one hand, and their economic and social needs on the other.

4.2. Child protection

Another key sector of concern for Indigenous children is child protection, which deals with preventing and responding to violence, exploitation, and abuse against children (UNICEF, 2006, p. 1). Multiple articles in the CRC provide for children’s right to protection, including dealing with hazardous work (Article 32), illicit production and drug trafficking (Article 33), sexual exploitation (Article 34), sale, trafficking and abduction (Article 35), as well as armed conflict (Article 38). Child protection includes the right not to be separated from parents unless it is in the child’s best interests (Article 9), as well as the right to state assistance and protection in the absence of a family environment (Article 20).

The question of protection is most relevant to Indigenous children given that their families and communities experience high levels of violence, exploitation and abuse. Historically, Indigenous children have suffered from slavery and forced labour, and been at risk for the worst forms of child labour, commercial sex trafficking, and exploitation (United Nations, 2012). They are also particularly vulnerable to migration caused by conflict-induced displacement, loss of traditional livelihoods, armed conflicts, and environmental degradation (United Nations, 2012).

While there is a need to be concerned with protection of Indigenous children, a closer examination shows that underpinning child protection programmes and services are perspectives on childhood that may not be consistent with Article 30 CRC. As argued by Myers and Bourdillon (2012), the application of international law has often resulted in a standardization of policies and programmes that are “assumed to be technical and moral standards for all. They show no concern to place protection of children in the contexts of the communities in which they live. … Although they affirm children’s rights to a say in decisions that affect them, these decisions are clearly determined by adults from outside” (Myers and Bourdillon, 2012, p. 440). The prevailing child protection models – child rescue, social services, and medical models – commonly neglect local community assets, including the role of children themselves. An alternative approach considers that these assets play a critical role, particularly when family and community are the primary line of defence to protect children from violence. Research shows that child protection approaches can be ineffective, and even counterproductive, when local context is not given sufficient attention (Bissell et al., 2007; Hand, 2006).

One key area of tension has been the removal of children from their culture as a result of biases in child welfare programmes. The impact in Australia (Douglas and Walsh, 2013), Canada (Blackstock, 2009), and the United States (Hand, 2006) has led to Indigenous children being taken into the care of the state at alarming rates. Appropriation is happening with Indigenous peoples denouncing this practice, declaring that it violates Article 30 CRC. There is transformation as greater recognition is being made of different cultural practices, including the crucial role of extended family and community members in child development, which has often been misconstrued as neglect in the current nuclear family-based system.
Just as it is in the education field, there have been a growing number of positive experiences in child protection where Indigenous communities have assumed greater control in child protection programmes and policies (Long and Sephton, 2011). Several Indigenous communities have been reviving traditional practices. The Dane-zaa people in northeastern British Columbia, for instance, are bringing traditional decision-making practices into the child welfare system (Ney et al., 2014). Engaging community members in reviving local knowledge and rebuilding child protection capacity and protocols are ways of helping create institutions that resonate with what people view as appropriate for them. In Australia, Aboriginal and non-aboriginal understandings of best interests differ, requiring a better integration of indigenous perspectives into child welfare programming (Hays, 2011). In Māori communities, more restorative approaches to care, protection, and youth justice that move away from individual-based responses are being explored. At issue is not returning to the past but defining approaches that build on cultural practices. As Libesman (2014) argues, decolonizing Indigenous child welfare requires a sensitive approach that engages and builds on Indigenous ways while ensuring that children’s rights are met and these rights reflect the principles of the CRC.

5. Reflecting on moving forward

The CRC provides opportunities for enhancing Indigenous children’s lived realities. Along with other international human rights law, this instrument holds power because states have an obligation to report on implementation, and in a globalized world, they care about their international image. But as voiced by Noeli Pocaterra, one cannot depend solely on the government for implementation. The difference the CRC will make in the lives of Indigenous children will depend on non-state actors, namely Indigenous communities and children, as well as their allies, upholding these rights. For the Convention to become a catalyst for raising the status of Indigenous communities, non-state actors internationally and locally need to be active duty-holders, and Indigenous children and young people must become active right-holders. This is essential to reverse the bleak realities of the more than 370 million Indigenous peoples worldwide (United Nations, 2009) who continue to be discriminated against by assimilation-based state policies and programmes that violate their basic rights.

This chapter has shown that breathing life into the CRC has involved Indigenous peoples finding and giving meaning to various components of the Convention. In becoming involved, Indigenous communities have broadened and deepened understandings of key concepts such as the definition of Indigenous, and the meaning of culture, while considering the actors required for implementation and their roles. In the important sectors of education and child protection, Indigenous peoples have designed and implemented programmes and services that reflect Article 30 and contemporary realities. Indeed, contrary to what is often claimed, the CRC is not uni-dimensional, nor does it provide a single recipe to resolve the tensions that arise in implementing different rights (Alston, 1994; Liebel, 2012).

In moving forward, seeking and nurturing partnerships appear critical because in today’s globalized world, Indigenous peoples cannot realize their rights in isolation. As illustrated above, providing for a cultural lens in education and child protection requires the support and resources of the state system, including the infrastructure, as well as capacity-building, and recognition. In claiming rights, any changes or accommodations need to be negotiated, and within this, youth themselves need to be involved. The road to take is a complex one that will encompass strengthening communication within and between Indigenous organizations, communities, and young people, creating collaborations with allies in the multiple sectors that affect Indigenous children and young people’s livelihood, and building capacity.
As discussed in this chapter, the emancipatory objective in a critical perspective to children’s rights (see Chapter 1 in this Handbook) entails both appropriation and transformation. For children’s rights as protected under the CRC to become a lever of social change, Indigenous peoples have to take possession of the Convention. In taking on this active role, alternative methods of providing for Indigenous children’s dignity and well-being given diverse histories and cultural contexts are emerging; a contextual orientation is indeed central as pointed out in the introductory chapter.

The road ahead may appear blurry, but the point made in this chapter is that the CRC provides positive signposts that can significantly contribute to making this hope a reality, if taken on by Indigenous peoples and provided with the necessary supports. Finally as Chief Dan George (1974), Coast Salish from Canada, wrote, the youth “will be our new warriors; their training will be much longer and more demanding than it was in the olden days…but they will emerge with their hand held forward not to receive welfare, but to grasp a place in society that is rightly ours.”

Questions for debate and discussion

- How can international and local non-state actors support local Indigenous communities who are discriminated against by state parties despite being signatories to the CRC and other international human rights instruments?
- What is the best process for cultural rights to be implemented in ways that reflect Indigenous children and young people’s best interests? In what ways do Indigenous cultural rights need to be balanced with other human rights?
- What enabling environment is required to enhance Indigenous children’s right to culturally appropriate education and child protection? Are there some unintended consequences of such a focus that would need consideration?
- How can Indigenous children and young people be supported to sustain their role in shaping an alternative perspective on children’s rights? What would be (or not) relevant to non-indigenous children?
- What role can children’s rights play in helping Indigenous children navigate across inter-generational conflicts, to strike a balance between conserving and redefining their identities given modern and urban realities?

References


