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QUESTION OF A CONVENTION ON THE RIGHTS OF THE CHILD

Written statement submitted by the Four Directions Council,
a non-governmental organization on consultative status
(category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[12 January 1989]

Comparative analysis of the draft convention:

1. The following document identifies a number of concerns with the draft convention, as it now stands on second reading. Some articles of the draft convention weaken rights already guaranteed to children and their families by article 10 of the International Covenant on Economic, Social and Cultural Rights, and by articles 23 and 24 of the International Covenant on Civil and Political Rights. These rights are further weakened in the draft convention by restricting the concept of the family to the European nuclear household. As a result, the convention is adapted only to a single social and economic system.

2. Unless otherwise specified, references here are to articles of the draft convention on the rights of the child.

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3. "Parents". A fundamental problem with the draft convention is its inconsistent references to "parents" and "families" as the bearers of rights and responsibilities. Some examples follow:

(a) Article 5 recognizes the right of "parents, the members of the extended family or community" to provide the child with "appropriate direction and guidance". Article 14, dealing with the child's right to freedom of thought, conscience and religion, refers to guidance only by parents and legal guardians;

(b) According to article 27, "parents or others responsible for the child" are primarily responsible for the child's welfare. States only have an obligation to provide assistance to parents and legal guardians, however (art. 18), except in the case of a disabled child (art. 23);

(c) Although the extended family may be responsible for the child's welfare, as noted above, the child only has the right to be cared for, not be separated from, maintain contacts with, and be reunified across State frontiers with, his or her "parents" (arts. 7, 9 and 10). But this, too, is inconsistent, for the child who is a refugee, or who is incarcerated, has the right to reunification with "other members of the family" (arts. 22 and 37) as well. "Relatives" may have a right to oppose an adoption, moreover, under article 21, but they have no right to oppose any other separation of the child from the family or community.

4. Priority for children. Article 4 requires that States take measures to implement the economic, social and cultural rights of the child to the "maximum extent of their available resources". This is the same obligation States bear under article 2 of the International Covenant on Economic, Social and Cultural Rights to further the rights of all persons. It therefore does not give children a priority in the allocation of States' resources.

5. One possible exception to this is article 6, paragraph 2, of the draft convention, which protects the right of the child to "survival and development". This goes beyond the traditional conception of a civil right to "life", and is ensured "to the maximum extent possible", not to the "maximum extent of [States'] resources".

6. Family integrity. Articles 9, 10 and 20 to 22 establish detailed norms for the removal of children from their own homes or families, foster care and adoption and family reunification. As explained in paragraph 3, above, the draft convention does not protect all kinds of "families", only nuclear families. Extended families typical of most societies and cultures outside Europe are not protected.

7. Assistance to families. Articles 18 and 27 weaken article 10 of the International Covenant on Economic, Social and Cultural Rights. The Covenant requires that States give "the widest possible protection and assistance" to families, while the draft convention merely refers to "appropriate assistance". This undermines the clear priority given to the strengthening of families by the Covenant.

8. Standard of living. Article 27 is considerably weaker than article 11 of the International Covenant on Economic, Social and Cultural Rights. In the Covenant, States parties bear primary responsibility for ensuring that

"everyone and his family" enjoy an adequate standard of living. In the draft convention, this responsibility has been shifted to "parents or legal guardians". The legal effect is to afford States parties the excuse of arguing that a child's parents have sufficient resources to provide for the child's welfare - whether they actually do or not. States would not be prima facie accountable for poor health, nutrition or other conditions among children.

9. We consider it a striking example of lack of co-ordination that the Commission on Human Rights is considering a convention that would undermine the integrity of families, when the Economic and Social Council has recommended, and the General Assembly has just considered at its last session, the proclaiming of an International Year of the Family.

10. Other rights. Unlike article 12 of the International Covenant on Economic, Social and Cultural Rights, article 24 protects only the physical health of children, not their mental health. Likewise, article 28 refers to free education at only the primary and secondary levels, while article 13 of the International Covenant on Economic, Social and Cultural Rights also requires that higher education be free.

11. We have also repeatedly emphasized, in presentations to the Working Group, that, for indigenous children as well as perhaps for children of minorities, the right of "equal access to education" is meaningless without some provision for bilingual instruction. Early bilingual education has been researched extensively in a number of countries, and has been shown to be highly effective in helping children from linguistic minorities to "catch up" in school with children whose mother tongue is an official language.

12. We note, too, that the use in the draft convention of the term "persons of indigenous origins" is not in accord with current United Nations practice. Until recently the accepted terminology was "indigenous populations". The Sub-Commission on Prevention of Discrimination and Protection of Minorities has now expressed a preference, in its resolution 1988/18, for the term "indigenous peoples", and this term was moreover adopted by the Economic and Social Council in its resolution 1988/35. Both "populations" and "peoples" clearly denominate groups which exercise rights collectively. We therefore strongly object to the use of terminology in the draft convention on the rights of the child that undermines the collective character of indigenous peoples' rights.
