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Joint Submission to the UN Special Rapporteur on the Rights of Indigenous Peoples, Dr Albert K. Barume

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Submitted by: Dr Felicity Gerry KC and an Indigenous educator working in a remote community (name withheld for privacy and community reasons; details available to the mandate on request)[1]

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1. About This Submission

This is a joint submission prepared at short notice to assist the Special Rapporteur during his first official visit to Australia since 2017 (OHCHR media advisory). It addresses two linked failures of the Australian state against Indigenous peoples: the criminal justice system, in particular mandatory sentencing and its effect on long term Indigenous prisoners, and the education system's failure of Indigenous children in remote communities. The two authors write from direct professional experience.

We note with concern that the Special Rapporteur has been refused access to youth detention facilities in the NT (Holtze) and Queensland (Cleveland) because state governments declined to engage with the mandate (OHCHR media advisory). That refusal is itself a finding the mandate should record.

2. The Authors and the Basis of Our Expertise

2.1 Dr Felicity Gerry KC

Dr Gerry KC is an international King's Counsel practising in domestic and international criminal law, with particular expertise in complicity, joint enterprise and accessorial liability. Her expertise in relation to this submission arises directly from leading a small **Indigenous Justice and Exoneration Project** in the Northern Territory when at Charles Darwin University School of Law, which resulted in the pardon (by exercise of the prerogative of mercy) of Zak Grieve, a young Indigenous man serving life imprisonment under NT mandatory sentencing laws (SBS NITV; Deakin University). **The Project had an Indigenous advisory board and Indigenous students worked on Zak's case**. Dr Gerry led the petition for mercy (filed when she had moved to Deakin University) with the NT Administrator on 20 July 2018 with the Deakin Law Clinic and others (Deakin petition document), which succeeded in reducing Mr Grieve's non-parole period from 20 years to 12 years, the first significant exercise of the prerogative of mercy in the NT since self-government in 1978 (Monash University Law Review). Mr Grieve was released on parole in October 2023 after more than 12 years in prison (ABC News). Zak gave evidence at the inquiry into a death in custody spoke about the miserable prison conditions and the severe victimisation and psychological harassment from correctional staff he suffered. He was forced to sleep in the exact cell where his friend had died. He described his immense psychological anguish(ABC News).

Dr Gerry has also defended Indigenous people in court in Darwin in the Northern Territory where the building is too cold and communication is poor, especially for Indigenous persons with poor hearing. She discovered

[1] Note – AI used to draw sources together but the content is accurate and properly reflects the authors' experience and recommendations.

that giving a notepad and pencil to an Indigenous client had not happened before. She was told by one client, who was visibly distressed, that he had been placed in solitary confinement at Holtze prison to "take the bite out of him". Dr Gerry also has expertise in relation to neurodiverse people in criminal justice and is seriously concerned that neurodiversity is not considered in relation to accused Indigenous people at all.

2.2 The Indigenous Educator

The second author is an Indigenous educator who has lived and taught in NT and WA communities for over 15 years. She has knowledge "**two-way" methods of teaching**, incorporating Indigenous knowledge, languages, culture and ways of learning alongside Western content, and she has delivered culturally appropriate education in communities where children face serious health and welfare issues, and where school attendance is low. Her expertise is practical and classroom-based: she knows, from daily experience, that the traditional curriculum imposed on remote Indigenous schools does not work for Indigenous children and that two-way learning does.

3. Mandatory Sentencing and Indigenous Peoples in the Northern Territory

3.1 The Zak Grieve Case

Zak Grieve was 19 years old when he was convicted of murder in 2013 for a killing at which the sentencing judge found he was not physically present. He had withdrawn from the plan, but under NT law he was still guilty of murder as an accessory, a finding that by going home he had not sufficiently withdrawn and because of the NT's mandatory sentencing regime the judge had no choice but to impose life imprisonment with a non-parole period of at least 20 years (ABC News explainer). Judge Dean Mildren described the laws as "unprincipled and morally insensible" and recommended mercy, stating: "It is the fault of mandatory minimum sentencing provisions which inevitably bring about injustice" (CLANT conference paper, Murphy, Gerry, Tisdale, Kretzenbacher). Mr Grieve, a young Indigenous man with no prior convictions, was sentenced to a longer effective minimum term than one of the men who actually carried out the killing (Deakin University).

3.2 What the Law Requires

The NT retains a mandatory life sentence for murder with a standard minimum non-parole period of 20 years, and a heightened 25 year minimum in some circumstances, with only a narrow exceptional circumstances carve-out. Data presented at the time of the Grieve petition showed 67 people imprisoned for life in the NT, 65 of them with the standard minimum or higher, and only two who established exceptional circumstances, with no empirical evidence supporting the efficacy of the regime (CLANT conference paper). Mandatory sentencing has since been extended: it now applies to assaults on frontline workers (three months minimum), breaches of domestic violence orders in certain circumstances, aggravated property offences, and serious sexual and drug offences (Go To Court, NT mandatory sentencing; NT Government sentencing reform page). Researchers conclude these expansions are likely to entrench the vicious circle of trauma, poverty and criminalisation in Indigenous communities (Crime Justice Journal). The 2025 bail reforms known as "Declan's Law" removed the presumption in favour of bail and made community safety the priority consideration, driving record remand numbers (AIC, Bail and remand across Australia).

3.3 Prison Data and Conditions in the NT

The numbers are stark and should be examined by the mandate as a systemic human rights failure:

- At 30 June 2025, the NT held 2,842 prisoners, up 24 per cent in one year, with an imprisonment rate of 1,419 per 100,000 adults (ABS Prisoners in Australia 2025).
- There were 17,348 Aboriginal and Torres Strait Islander prisoners (average daily number), up:
    - 1% (200 persons) from 17,148 in the September quarter 2025
    - 9% (1,447 persons) from 15,901 in the December quarter 2024
- The Aboriginal and Torres Strait Islander imprisonment rate was 2,630 persons per 100,000 adult Aboriginal and Torres Strait Islander population, up from:
    - 2,600 in the September quarter 2025

- 2,474 in the December quarter 2024.

- The Aboriginal and Torres Strait Islander imprisonment rate for:
  - males was 4,774 per 100,000 Aboriginal and Torres Strait Islander adult male population, up from 4,717 last quarter
  - females was 535 per 100,000 Aboriginal and Torres Strait Islander adult female population, up from 530 last quarter.(ABS Corrective Services, Dec quarter 2025).
- Around 88 to 90 per cent of the NT adult prison population is Indigenous, and Indigenous children are close to 100 per cent of the youth detention population (NIT; About Time). The NT imprisons more than one per cent of its total population; if the NT were a country its imprisonment rate would rank among the highest in the world (Sydney Criminal Lawyers).
- Since the National Agreement on Closing the Gap (which requires a 15 per cent reduction in Indigenous incarceration by 2031), Indigenous incarceration in the NT has increased by almost 40 per cent (NIT, NAAJA reporting).

Conditions for those imprisoned under these laws are failing basic standards:

- Severe overcrowding has forced hundreds of prisoners to be held long term in police watch houses, including reports of more than 20 women in a single cell at Alice Springs Watch House with drinking water available only from above the toilet, and 76 correctional prisoners held in the Palmerston watch house at one point (NIT). The NT Ombudsman found watch house cells holding an average of at least 13 prisoners and described the conditions as inhumane (NT Ombudsman Watch House Investigation Report).
- Nearly half of all NT prisoners are on remand, meaning they have not been convicted, and remand conditions are typically worse than those for sentenced prisoners (ABC News; Crime Justice Journal).
- Overcrowding has caused more than 60 per cent of prison rehabilitation programs to be cancelled, so prisoners serving mandatory sentences cannot access the programs that might earn them parole (ABC News).
- The NT has the highest recidivism rate in Australia, with around six in ten prisoners returning to jail within two years (Mirage News, IPA report).

3.4 Special Section: Accessories

The mandate should pay particular attention to the position of **accessories**, that is, people convicted as secondary parties under the law of complicity, known as 'joint enterprise' or 'common purpose', because mandatory sentencing operates with special cruelty on them.

Under NT law, a person who helps plan, organises or encourages a murder can be convicted of murder even if they did not kill, were not present at the killing, or withdrew from the plan before it was carried out. Because murder carries a mandatory life sentence with a 20-year minimum non-parole period, a sentencing judge cannot distinguish between the person who struck the blows and the accessory who pulled out of the plot. That is exactly what happened to Zak Grieve: the judge accepted he was not present, yet was compelled to impose a 20 year minimum, a longer effective minimum than the principal offenders (ABC News; Deakin University).

Dr Gerry KC also acted in the leading UK Supreme Court case *R v Jogee*, which corrected the overextended form of accessorial liability in that jurisdiction. Notably for some offending section 8 of the NT Criminal Code allows for a presumption of participation (with a reverse burden on the accused) which over-criminalises children. Dr Gerry observed the reaction of a Magistrate in Alice Springs in concluding that a very young Indigenous child, with no criminal priors, alleged to be part of a group, presumed guilty pre-trial and his mother admonished in court for not providing him with a traditional non-Indigenous education. Presumptions create assumptions of guilt.

Mandatory minimums strip judges of the sentencing discretion needed to reflect an accessory's true culpability. The result is that young Indigenous people, who are often vulnerable, face life sentences disproportionate to any wrongdoing, with no judicial discretion and no effective appeal on sentence. Mr Grieve's remedy of mercy, a power used only once before in the NT since 1978 (Civil Liberties Australia; Monash University Law Review) and only a footnote in legal texts. The criminal justice system as a whole fails Indigenous peoples but this case shows how even the systems that are in place are not used. Auditing prisons to identify those on mandatory sentences, especially alleged accessories, is urgent and alternative pathways found for release and rehabilitation. Long term Indigenous prisoners need to be given the voice that a funded Indigenous Justice and Exoneration Project could achieve.

4. The Education System's Failure of Indigenous Children in Remote Communities

4.1 The Educator's Experience

The second author teaches in a remote WA community where children come to school carrying serious health and welfare burdens and the effects of intergenerational trauma. These are well documented: Aboriginal and Torres Strait Islander children in remote Australia experience high rates of ear disease and hearing impairment, and the Australian Institute of Health and Welfare reports that First Nations children in remote and very remote areas carry substantially higher disease burdens than other children (AIHW Indigenous HPF, child health measures). In her professional experience, the curriculum imposed on her school is stifling it is designed for metropolitan, English-first, non-Indigenous classrooms, ignores Indigenous languages, knowledge and pedagogies, and disengages children whose strengths are in land, language, culture and hands-on learning. Attendance figures reflect that disengagement.

4.2 The Data Confirms Systemic Failure

- Attendance for First Nations students falls as remoteness rises: 75 per cent in major cities, down to 45 per cent in very remote areas (Indigenous HPF).
- Only 42 per cent of First Nations people aged 20 to 24 in very remote areas had completed Year 12 or equivalent in 2021, against 76 per cent in major cities (Indigenous HPF).
- In the NT and Western Australia, only 3.1 per cent and 1.9 per cent respectively of very remote First Nations students complete Year 12 (Journal of Curriculum Studies, 2026).
- Of 174 very remote schools with more than 80 per cent First Nations students, only half even offer Year 12, only 14 per cent reported completions and only 9 per cent reported Year 12 certificates (Australian Journal of Indigenous Education).
- Attendance in very remote schools with majority First Nations students declined from 69 per cent to 55 per cent between 2013 and 2023 (Australian Journal of Indigenous Education).

4.3 The Yiramalay Model and Two-Way Learning

There is a proven alternative. The Yiramalay/Wesley Studio School was established in 2010 through an equal partnership between the Bunuba people of the Fitzroy Valley in the Kimberley and Wesley College in Melbourne, and is now run with Studio Schools of Australia (Wesley College; Studio Schools Australia). Its method is **two-way learning**: Aboriginal and non-Aboriginal students learn side by side, on country, with a curriculum built on four circles of learning, being language and culture, living skills, industry skills and academic skills, in which Indigenous culture and language are treated as assets and the foundation of learning (Western Sydney University, Chancellor's speech). Two-thirds of its staff are Indigenous and are supported to become education leaders (Western Sydney University). Its results are striking: Year 11 retention of 79 per cent against 10 per cent nationally, Year 12 retention of 75 per cent against 19 per cent nationally, 85 per cent of graduates in further study or employment, and a ten-fold enrolment increase since 2010 (Wesley College). When Yiramalay opened in 2010, only four students had graduated Year 12 at the local district high school since the early 1950s; Yiramalay produced seven Year 12 graduates in its first two years and up to 15 every year since (Studio Schools Australia). More than 150 Aboriginal students have completed Year 12 there (Wesley College).

4.4 Dhupuma Barker and Community-Led Two-Way Education

A further example is Dhupuma Barker at Gunyangara in north-east Arnhem Land, established through the Yothu Yindi Foundation's partnership with Barker College; the Foundation identifies community control, including curriculum development, as critical to the school's success (Yothu Yindi Foundation submission to the Productivity Commission, 2023). The school blends the Australian Curriculum with traditional Yolŋu teachings and develops English language skills on a foundation of Yolŋu Matha, enabling children to learn on Country without leaving their community (Barker College, Dhupuma Barker). Barker College reports improved engagement and attendance through this bilingual approach (Dhupuma Barker).

The second author's own expertise is in exactly these methods: teaching Indigenous kids by incorporating Indigenous teaching, language, culture and on-country learning, so that children see themselves and their knowledge in the classroom. Her experience, and the Yiramalay evidence, show that the traditional curriculum is not effective for Indigenous children and that two-way learning delivers attendance, retention, completion and wellbeing.

4.5 Structured Mentoring and Pathways for Indigenous Young People

Both Dr Gerry and the Indigenous educator actively engage in structured mentoring. Dr Gerry has also delivered careers advice and encouragement to children and young people, including in a very remote community. These experiences inform the authors' joint recommendation for community-led Indigenous youth mentoring alongside two-way teaching.

We propose regular round-table mentoring in which young Indigenous adults mentor younger Indigenous children, supported by Elders, educators and other adult mentors. Older and younger participants should share knowledge and learn from one another, with Indigenous knowledge, language and culture valued alongside educational and careers guidance. This complements, rather than replaces, adult-led two-way teaching and should be locally designed, culturally safe and supported by appropriate training and child safeguarding.

5. Recommendations

We respectfully invite the Special Rapporteur to adopt the following recommendations in his report to the Human Rights Council.

Criminal justice and mandatory sentencing (Felicity Gerry KC)

1. **Find that mandatory sentencing in the NT disproportionately and unjustly targets Indigenous peoples** and is incompatible with Australia's obligations under UNDRIP, the ICCPR and the Convention on the Rights of the Child, consistent with prior UN expert concerns about mandatory detention laws in Australia (Amnesty International, UPR submission).

2. **Recommend repeal of mandatory sentencing in the NT**, including mandatory life with 20 year minimum non-parole for murder, and the 2024-2025 extensions to frontline worker assaults and domestic violence order breaches (Go To Court).

3. **Recommend a specific finding on accessories**: that sentencing judges must retain discretion to distinguish an accessory's culpability, including where the person withdrew from a criminal plan or was not present, and that no mandatory minimum should apply to secondary parties convicted under complicity or joint enterprise principles. The Zak Grieve case, where mercy rather than a court was the only remedy, shows why.

4. **Recommend a mechanism for an Indigenous Justice and Exoneration Project to include resentencing or review** for Indigenous prisoners already serving mandatory sentences, with an audit of prisoners affected and facilitated petitions for mercy where resentencing is unavailable (Felicity Gerry KC submission to the UK APPG on miscarriages of justice).

5. **Recommend urgent action on NT prison conditions**: an end to the long term use of police watch houses for prisoners, restoration of rehabilitation programs (including for long term prisoners seeking parole), and independent monitoring with access for UN mechanisms, noting that the NT Government's refusal to allow

the Special Rapporteur into the Holtze youth detention facility should itself be found a breach of cooperation obligations (OHCHR).

6. **Recommend reversal of the 2024-2025 bail reforms and youth justice amendments** that removed detention as a last resort for children and lowered the effective age of criminal responsibility to 10, which drives Indigenous child incarceration (Green Left, NAAJA reporting).

Education (Indigenous educator)

7. **Find that the Australian education system fails Indigenous children in remote communities**, as demonstrated by the attendance, retention and Year 12 completion data above.

8. **Find that the traditional curriculum is not effective for Indigenous children** and that its imposition on remote schools, where children also carry health and welfare burdens, is a structural cause of disengagement.

9. **Recommend sustained funding for community-led two-way education** across remote Indigenous communities, drawing on the Yiramalay model and the Yothu Yindi Foundation's approach at Dhupuma Barker. Funding should support local community control over curriculum, on-country learning, Indigenous languages and culture, academic and practical skills, and Indigenous educators in leadership. Implementation should be adapted with each community, not imposed as a uniform national curriculum (Wesley College; Studio Schools Australia; Yothu Yindi Foundation; Dhupuma Barker).

10. **Recommend integrated health, welfare and education services** in remote communities so that hearing health, nutrition and welfare needs are addressed as part of school readiness and engagement. Religious schools often provide vital funding but with a religious requirement. The focus should be on education and Indigenous culture.

Joint

11. **Recommend that Australia measure and report jointly** on the link between educational disengagement of Indigenous children and their later incarceration in the NT, since the school-to-prison pipeline for Indigenous children in the Territory is the central human rights problem this mandate can name.
12. **Recommend sustained funding for community-led Indigenous youth mentoring**, including regular round-table sessions in which young Indigenous adults mentor younger Indigenous children, supported by Elders, educators and adult mentors. Programs should complement adult-led two-way teaching, encourage reciprocal learning between older and younger people, and include careers advice, encouragement and education-to-employment pathways. Communities should lead program design, with mentor training, cultural safety and child safeguarding built in.

6. Conclusion

The NT imprisons a greater share of its people than almost any jurisdiction on earth, and almost all of its prisoners are Indigenous. The one Indigenous man whose injustice was corrected by the system, Zak Grieve, was helped not by a court but by a mercy petition drafted following Dr Gerry's Indigenous Justice and Exoneration Project. Meanwhile, across Australia in remote communities, an education system that ignores Indigenous knowledge is pushing Indigenous children out of classrooms and, too often, towards the very prisons described above. Both failures have the same solution: respecting Indigenous peoples' own law, knowledge and self-determination, in sentencing courts and in classrooms and recognizing that traditional European models fail Indigenous people in education and criminal justice. Mentoring, two way teaching and models for non-incarceration are vital.

7. Sources

- OHCHR, UN expert on Indigenous Peoples' rights to visit Australia
- OHCHR, Special Rapporteur on the rights of Indigenous Peoples, country visits
- ABC News, Zak Grieve freed on parole after serving 12 years of life sentence
- ABC News, Zak Grieve's release puts NT mandatory sentencing laws back in spotlight

- SBS NITV, Zak Grieve to be released early after successful mercy plea
- Deakin University, Law students' fight for mercy for NT man sentenced for murder
- Deakin University, Petition for mercy in the matter of Zak Grieve (full document)
- CLANT, Murphy, Gerry, Tisdale and Kretzenbacher, Murder, mercy and mandatory sentencing
- Monash University Law Review, An ancient remedy for modern ills
- Felicity Gerry KC, submission to the UK APPG on miscarriages of justice
- Felicity Gerry KC, About
- The Big Smoke, Zak Grieve: doing time when you didn't do the crime
- Civil Liberties Australia, Evils of mandatory sentencing on display
- ABS, Prisoners in Australia, 2025
- ABS, Corrective Services, Australia, December quarter 2025
- NIT, NT Government under fire as watch house overcrowding reaches crisis point
- NT Ombudsman, Watch House Investigation Report
- ABC News, NT remand prisoner numbers spark legal system funding calls
- ABC News, Masses of NT prison rehabilitation sessions cancelled
- NIT, NT justice system faces looming crisis over Indigenous incarceration (NAAJA)
- Crime Justice Journal, Mandatory sentencing, remand and actual imprisonment in the NT
- AIC, Bail and remand across Australia
- Go To Court, Mandatory sentencing NT
- NT Government, Repeal of mandatory sentencing and reform of community based sentencing options
- Green Left, Justice not jails: NT bail reforms a direct attack on Black children
- Amnesty International, Australia UPR submission 2026
- Indigenous HPF, Education outcomes for young people
- Australian Journal of Indigenous Education, remote schooling research
- Journal of Curriculum Studies, Changing pedagogy to change attendance, engagement and retention
- Wesley College, Yiramalay Studio School
- Wesley College, Making a difference in the lives of Aboriginal students
- Studio Schools Australia, Yiramalay
- Western Sydney University, Chancellor's keynote speech at Studio Schools of Australia
- Wesley College, Yiramalay/Wesley Studio School transfers to Studio Schools Australia
- Yothu Yindi Foundation, submission to the Productivity Commission on Closing the Gap, 12 October 2023
- Barker College, Dhupuma Barker: community-led bilingual and on-country education