

Report to the
United Nations Permanent Forum on Indigenous Issues
Ninth Session - New York
19-30 April 2009

Agenda Item 7: Future Work of the Permanent Forum: Indigenous children and youth in detention and custody

Joint report submitted on behalf of the following Aboriginal and Torres Strait Islander organisations from Australia:

Aboriginal Legal Service of Western Australia (Inc.) (ALSWA)
Aboriginal Legal Rights Movement (ALRM)
Amnesty (International) Australia
Australian Human Rights Commission (AHRC)
Bullana, The Poche Centre for indigenous Health
Indigenous Peoples Organisation Network Youth Delegation
Foundation for Aboriginal and Islander Research Action (FAIRA)
National Aboriginal Community Controlled Health Organisation (NACCHO)
National Indigenous Higher Education Network (NIHEN)
National Native Title Council (NNTC)
New South Wales Aboriginal Land Council (NSWALC)
Oxfam Australia

Introduction

Aboriginal and Torres Strait Islander Organisations of Australia¹ are concerned at the alarmingly high rate of Aboriginal and Torres Strait Islander children and youth in detention and custody.

The Data

The Australian Institute of Criminology (AIC)² have recorded data that demonstrates that Aboriginal and Torres Strait Islander juveniles comprise 58 percent of all detained juveniles in Australia and that Aboriginal and Torres Strait Islander juveniles are 28 times more likely to be detained than non-Aboriginal juveniles. The breakdown by gender shows that Aboriginal and Torres Strait Islander boys are 28 more times more likely to be detained and girls are 24 times more likely. It is concerning that the data also demonstrates that the over-representation has been steadily increasing over the last decade.

The data further shows that the rates of Aboriginal and Torres Strait Islander over-representation among juveniles in detention vary among jurisdictions and that although high everywhere, it is especially high in the Northern Territory (NT) and Western Australia (WA).

Finally, the data shows that Aboriginal and Torres Strait Islander juveniles in detention are younger on average than their non-Aboriginal counterparts. Twenty-two percent of Aboriginal and Torres Strait Islander juveniles in detention were aged 14 years or less, compared with 14 percent of non-Aboriginal juveniles.

The Reasons for High Incarceration Rates

The failure of police to divert Aboriginal and Torres Strait Islander children and youth from the criminal justice system and other forms of over-policing practices are main contributing factors to this situation. This stems from a legacy of historical abuse and impact of past government policies combined with disturbing contemporary practices that directly and indirectly discriminate against Aboriginal and Torres Strait Islander children and youth.

Other reasons for high incarceration rates include:

- punitive police practices with respect to bail;
- absence of crisis care accommodation, bail hostels and rehabilitation programs;
- absence of an interpreter service in Aboriginal languages;
- limited access to legal advice; and
- mandatory sentencing and other punitive laws.

There is a critical need for a holistic approach to address the combined impacts of the underlying social, cultural and legal factors leading to over-representation.

¹ See the organisations listed on the front of this report.

² A. Tomison & K. Richards, 'Submission to the Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system,' AIC, 2009, <http://www.aph.gov.au/house/committee/atsia/sentencing/subs/Sub067.pdf> at 25/03/10.

Current Inquiry

The Australian Government is currently holding an inquiry into the high level of involvement of Aboriginal and Torres Strait Islander juveniles and young adults in the criminal justice system, but is yet to produce a final report.³ The issues explored in the current inquiry are directly relevant to this international issue of concern and in this regard we **attach** the submissions prepared by the Aboriginal and Torres Strait Islander Legal Services (ATSILS) in Australia to this report as follows:

- Annexure 1: Submission by the Aboriginal Legal Service of Western Australia (Inc)
<http://www.aph.gov.au/house/committee/atsia/sentencing/subs/Sub019.pdf>
- Annexure 2: Joint submission by the Aboriginal Legal Service of NSW / ACT, North Australian Aboriginal Justice Agency, Queensland Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd.
<http://www.aph.gov.au/house/committee/atsia/sentencing/subs/Sub066.pdf>
- Annexure 3: Submission by Queensland Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd.
<http://www.aph.gov.au/house/committee/atsia/sentencing/subs/Sub044.pdf>
- Annexure 4: Submission by the North Australian Aboriginal Justice Agency.
<http://www.aph.gov.au/house/committee/atsia/sentencing/subs/Sub015.pdf>
- Annexure 5: Submission by Victorian Aboriginal Legal Service Co-operative Ltd.
<http://www.aph.gov.au/house/committee/atsia/sentencing/subs/Sub026.pdf>
- Annexure 6: Submission by the Central Australian Aboriginal Legal Aid Service Inc.
<http://www.aph.gov.au/house/committee/atsia/sentencing/subs/Sub026.pdf>

These submissions refer to the historical context of Aboriginal and Torres Strait Islander peoples and provide an overview of the main causes and concerns about Aboriginal and Torres Strait Islander children and youth in detention and custody in Australia.

The submissions refer to the terms of reference of the Australian Government inquiry, which focus on early intervention, prevention and behaviour, as follows:

- How the development of social norms and behaviours for Indigenous juveniles and young adults can lead to positive social engagement;
- The impact that alcohol use and other substance abuse has on the level of Indigenous juvenile and young adult involvement in the criminal justice system and how health and justice authorities can work together to address this;
- Any initiatives which would improve the effectiveness of the education system in contributing to reducing the levels of involvement of Indigenous juveniles and young adults with the criminal justice system;
- The effectiveness of arrangements for transitioning from education to work and how the effectiveness of the 'learn or earn' concept can be maximised; and
- Best practice examples of programs that support diversion of Indigenous people from juvenile detention centres and crime, and provide support for those returning from such centres;

³ Further information about the Inquiry and submissions received is at <http://www.aph.gov.au/house/committee/atsia/sentencing/index.htm>.

These submissions highlight the need for culturally appropriate strategies being formulated by local organisations with relevant expertise and knowledge to address the underlying causes of the high levels of Aboriginal and Torres Strait Islander children and youth in detention and custody. These strategies require support and commitment from governments to ensure their effective implementation.

International Engagement

Although Australia has indicated its support for the Declaration on the Rights of Indigenous Peoples in 2008 and ratified important instruments such as the International Covenant on Civil and Political Rights in 1980 and Convention on the Rights of the Child in 1990, there is a lack of reference to these frameworks and standards in Australia.

Greater protection and promotion of human rights is needed in Australia to improve the contact of Aboriginal and Torres Strait Islander children and young people with the criminal justice system. A greater utilisation of international instruments and mechanisms is also needed as an additional form of addressing this situation.

The United National Permanent Forum on Indigenous Issues (UNPFII) provides a useful opportunity for Indigenous peoples to come together and discuss ideas and solutions to address the high incarceration rates of Indigenous children and youth around the world. For example, the UNPFII and UN system could consider the development of an accessible complaint mechanism for children and youth to communicate and have their concerns evaluated, encourage States to refer to their obligations under international law, provide opportunities for discussion and promotion of best practice models, and consider how Indigenous children can better access and utilise international mechanisms to ensure their voices are heard and concerns are addressed.

Recommendations

1. That the Permanent Forum urge States to divert Indigenous children and youth away from detention and custody as a matter of priority, using detention only as a matter of last resort.
2. That the Permanent Forum urge States to engage and consult with Indigenous Peoples and organisations to identify causal factors and strategies to overcome the disproportionately high level of involvement and overrepresentation by Indigenous children and youth in the justice system.
3. That the Permanent Forum urge States to provide resources to empower Indigenous organisations where possible, to implement or advise governments on culturally appropriate programs that prevent, intervene, divert and rehabilitate Indigenous youth in the justice system through counselling, mediation, employment, education, and cultural and family reconnections.
4. That the Permanent Forum encourage discussion and input from States and Indigenous Peoples and organisations about best practice models, and consider how to encourage a framework for broader application beyond local settings.
5. That the Permanent Forum work to identify mechanisms for increasing accessibility and participation for Indigenous children and youth in the UN system to highlight their

issues and concerns directly with the international community, including consideration of international complaint mechanisms.

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Indigenous Peoples Organisations of Australia

**Agenda Item 7: Intervention on the report of the expert group meeting
on Indigenous youth and children in detention**

JOINT INTERVENTION DELIVERED BY Sandra Creamer ON BEHALF OF:

Indigenous Peoples Organisation Network Youth Delegation
National Native Title Council (NNTC)
Foundation for Aboriginal and Islander Research Action (FAIRA)
New South Wales Aboriginal Land Council (NSWALC)
National Indigenous Higher Education Network (NIHEN)
Aboriginal Legal Service Western Australia (ALSWA)
Aboriginal Legal Rights Movement (ALRM)
Bullana, The Poche Centre for Indigenous Health
National Aboriginal Community Controlled Health Organisation (NACCHO)
Amnesty International Australia
Oxfam Australia
Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner

Mister Chairperson, this Intervention is presented on behalf of the Indigenous Peoples Organisations of Australia present at this forum.

The human rights and fundamental freedoms of Aboriginal and Torres Strait Islander children and youth in Australia and Indigenous children and youth around the world are severely threatened by alarmingly high rates of incarceration that are continuing to rise.

The International Expert Group Meeting on this issue has acknowledged the 'multifaceted, inter-related and mutually-reinforcing' human rights considerations relating to Indigenous children in state custody.

We note the Declaration on the Rights of Indigenous Peoples (Declaration) and Convention on the Rights of the Child (CROC) and together reaffirm that Indigenous children and youth enjoy all the human rights and freedoms recognised in international law, and especially recognise the social and cultural needs of children in Indigenous communities.

The International Expert Group Meeting noted the legacy of historical abuse and impact of past government policies and removal programs are a major contributing factor to this situation. The increasing rates of incarceration indicate that measures currently adopted by States are failing to address the unique situation of Indigenous children and youth in contemporary society.

The special place of Indigenous children and youth as leaders of tomorrow and bearers of Indigenous cultures require the international communities' urgent attention to identify and formulate methods to overturn this situation.

Indigenous children and youth often face disadvantage and marginalisation from birth until adulthood characterised by:

- intergenerational poverty;
- overcrowding in poor housing conditions;
- low levels of literacy and numeracy;
- low quality of health, well-being and life expectancy;
- welfare dependency;
- social marginalisation;
- poor and unsuitable service delivery by governments;
- inadequate resources, funding and support for culturally appropriate Indigenous owned and controlled services; and
- over-policing, targeting and discrimination by police and law enforcement authorities.

Programs need to address these multi-faceted and inter-related considerations to overcome disadvantage, marginalisation and the structural impediments and barriers in justice systems that all impact on the high involvement of Indigenous children and youth in detention and custody.

The Declaration, CROC and other international instruments can be better utilised and incorporated into measures identified to address this situation, with a particular focus on working with local communities to address local needs and increasing the participation of Indigenous children and youth in decision-making processes.

A particular framework proving successful in mainstream communities in the United States of America and the United Kingdom is 'justice reinvestment,' which is a localised criminal justice policy approach diverting a portion of funds for imprisonment to local communities where there is a high concentration of offenders. The money that would have been spent on imprisonment is reinvested in programs and services in communities where these issues are most acute in order to address the underlying causes and prevent crime in those communities. Justice reinvestment still retains incarceration as a measure for dangerous and serious offenders, but actively shifts the culture away from imprisonment and starts providing community wide services that prevent offending.

Justice reinvestment was recently recommended by the departing Aboriginal and Torres Strait Islander Social Justice Commissioner of Australia, and is supported by the Indigenous Peoples Organisations of Australia present at this forum.

Recommendations

1. That the Permanent Forum urge States to divert Indigenous children and youth away from detention and custody as a matter of priority, using detention only as a matter of last resort.
2. That the Permanent Forum urge States to engage and consult with Indigenous peoples and organisations to identify causal factors and strategies to overcome the disproportionately high level of involvement and overrepresentation by Indigenous children and youth in the justice system.
3. That the Permanent Forum urge States to provide resources to empower Indigenous organisations where possible, to implement culturally appropriate programs that prevent, intervene, divert and rehabilitate Indigenous youth in the justice system through counselling, mediation, employment, education, and cultural and family reconnections.
4. That the Permanent Forum encourage discussion and input from States and Indigenous peoples and organisations about best practice models, such as justice reinvestment, and consider how to encourage a framework for broader application beyond local settings.
5. That the Permanent Forum work to identify mechanisms for increasing accessibility and participation for Indigenous children and youth in the UN system to highlight their issues and concerns directly with the international community, including consideration of international complaint mechanisms.

Finally, please note that a more comprehensive report on these issues has been provided to the Permanent Forum for its consideration.

Thank you Mr Chairman.