

United Nations Permanent Forum on Indigenous Issues

Eleventh Session – New York

7 - 18 May 2012

Agenda Item 4a: Implementation of the Declaration on the Rights of Indigenous Peoples: Child Protection

Joint Intervention Delivered by Shane Duffy on behalf of the Indigenous People's Organisation's (IPO) Network of Australia:

National Aboriginal and Torres Strait Islander Legal Services (NATSILS)
The Secretariat of National Aboriginal and Islander Child Care (SNAICC)
Turkindi - Indigenous Information Network of South Australia
Aboriginal Legal Service of WA (Inc.)
National Native Title Council (NNTC)
Marninwarntikura Women's Resource Centre Aboriginal Corporation
Gugu Badhun Limited
Aboriginal Legal Rights Movement (ALRM)
Queensland Culture Heritage and Native Title Management Services
Koort Marr Kaart – Aboriginal and Torres Strait Islander Social Workers of Western Australia
Victorian Aboriginal Legal Service (VALS)

Thank you Madame/Mr Chairperson,

In all Australian State and Territory jurisdictions Indigenous children continue to be significantly over-represented across all phases of the child protection system.

In 2010–11 Indigenous children were:

- 8 times more likely to be the subject of substantiated child abuse and neglect;
- 9 times more likely to be subject to a statutory child protection order; and
- 10 times more likely to be subject to out-of-home care.¹

Such over-representation has significant consequences for Indigenous children in relation to their right to culture and plays an important role in understanding the similar over-representation of Indigenous children in the juvenile justice system.

Indigenous children predominately come into contact with the child protection system due to neglect which is largely the result of the high levels of poverty, disadvantage² and social exclusion faced by Indigenous peoples.³

¹ Australian Institute of Health and Welfare, *Child Welfare Series no 53 Child Protection Australia 2010-11* (2012).

² Approximately 40 per cent of Aboriginal and Torres Strait Islander peoples living in major cities, outer regional, remote and very remote areas of Australia live below the poverty line and this rate increases to over 50 per cent in inner regional areas (B. Hunter, *Assessing the evidence on Indigenous socioeconomic outcomes: A focus on the 2002 NATSISS* (2006), 100.

³ Kelly Richards, 'Juveniles Contact with the Criminal Justice System in Australia', AIC Monitoring Reports 07, (2009), 19.

The rates of over-representation of Indigenous children in the child protection system are increasing. With such high percentages going into out of home care Indigenous children are increasingly being placed with non-Indigenous carers as the number of available carers that satisfy government set criteria becomes exhausted. For example, only 39 per cent of Indigenous children in out-of-home care are placed with their immediate family or other community members and 31% are placed with non-Indigenous carers.⁴

When placing children in out of home care it is essential that effective mechanisms are in place to ensure that the child's right to culture, as protected under Article 8 of the Declaration on the Rights of Indigenous Peoples and Article 20 of the Convention on the Rights of the Child, is protected. At present In Australia, many of the cultural retention mechanisms adopted by the child protection system are deficient and continue to fail to address cultural competency in service delivery, policy and legislation.

There has been little progress towards reducing the rates of over-representation and ensuring the effective maintenance of an Indigenous child's connection to their culture once they are taken into care. There is a distinct lack of focus on prevention and early intervention strategies to prevent Indigenous children being taken into out-of-home care in the first place. Furthermore, while current strategies, such as the Aboriginal and Torres Strait Islander Child Placement Principle and Cultural Support Planning, have attempted to integrate Indigenous cultural considerations within the mainstream system, their inclusion in law and policy across different jurisdictions varies significantly and analysis of their implementation has shown that they are not working to effectively protect a child's right to culture. Language barriers and a lack of cultural competence amongst child protection staff have also not been effectively addressed.

Canada and North America have employed Indigenous self-governance models since the 1970's which provide key insight into how a child's right to maintain a connection to his or her family, community and cultural group can be ensured regardless of their out of home care status.⁵ Such experience provides approximately 40 years of evidenced based international best practice that Australia desperately needs to catch up with. Indigenous family, community and cultural groups need to be granted increased participation in, and active ownership of, the enduring decisions that impact children and young people's holistic cultural wellbeing. They also need to be appropriately resourced to perform such functions.

Internationally, the connection between a child's involvement in the child protection system and the likelihood of that child to have future contact with the criminal justice system is well evidenced. While no nationally collated data exists within Australia, in Queensland for example, it has been found that 54 per cent of Indigenous males, and 29 per cent of Indigenous females, involved in the child protection system go on to criminally offend both as juveniles and adults.⁶ Given the over-representation of Indigenous children within the child protection system, there is no doubt that this trend has disastrous consequences throughout the country.

In fact, Indigenous children are 26 times more likely to be held in detention.⁷ Such over-representation in the juvenile justice system has been deemed a 'national crisis' by the

⁴ Australian Institute of Health and Welfare, above n 1.

⁵ Queensland Aboriginal and Torres Strait Islander Child Protection Peak, *Long-Term Guardianship Position Paper* (2011).

⁶ Anna Stewart, *Transitions and Turning Points: Examining the Links Between Child Maltreatment and Juvenile Offending* (2005) Office of Crime Statistics and Research

<www.ocsar.sa.gov.au/docs/other_publications/papers/AS.pdf> at 24 May 2010.

⁷ Australian Institute of Criminology, *Australian Crime: Facts and figures* (2009), 113.

Australian House of Representatives inquiry into Indigenous youth and the criminal justice system.⁸

Despite the evident connection, the issues of Indigenous children's over-representation in both the child protection and juvenile justice systems are seen as separate issues rather than interrelated issues that should be addressed together in a cooperative way. There is little recognition within Australia that by utilising prevention, early intervention and culturally competent strategies within the child protection system, over-representation within both this and the juvenile justice system could be reduced.

Recommendations

The IPO recommends that:

1. States explore full and partial self-governing Indigenous child protection models to ensure greater Indigenous responsibility for child placement decision-making, culturally competent practices and quality outcomes in cultural retention and preservation. Furthermore the Forum recommends that this process must be guided by Indigenous principles and values, the Declaration on the Rights of Indigenous Principles and the Convention on the Rights of the Child;
2. States resource and build the capacity of Indigenous peoples and organisations to develop and maintain targeted early intervention, prevention and reunification programs that address the underlying causes of the over representation of Indigenous children within the child protection and juvenile justice systems. Levels of investment should be proportional to rates of over-representation and effectiveness should be measured by a reduction in such rates;
3. States ensure that adequate, mandated and enforceable cultural support plans are in place for all Indigenous children in out of home care to support their ongoing connection to culture;
4. States should joint case planning between child protection and juvenile justice systems to ensure collaborative and consistent decision-making that balances the child protection and justice needs of Indigenous children;
5. States refocus juvenile justice systems away from punitive models towards human rights based models in order to address the underlying causes of offending and promote the overall wellbeing of Indigenous children; and
6. States are to prioritise the establishment of National Children's Commissions, which include an Indigenous Children's Commissioner, to develop culturally competent national agendas to address critical human rights concerns impacting upon Indigenous children.

⁸ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing* (2011), 2.4.