

**Aboriginal and Torres Strait Islander Social Justice Commissioner,
Human Rights and Equal Opportunity Commission of Australia**

**Submission to the United Nations Committee on the Rights of the
Child for their Day of General Discussion on the Rights of Indigenous
Children, 19 September 2003**

Issue 2: Non-discrimination and equality

Introduction

This submission is made by the Aboriginal and Torres Strait Islander Social Justice Commissioner on behalf of the Human Rights and Equal Opportunity Commission (HREOC) of Australia. In recent years the Commissioner has undertaken many activities relating to the rights of Indigenous children. This submission provides an overview of the inequality and discrimination faced by Aboriginal and Torres Strait Islander children in Australia, and key concerns in relation to the Convention on the Rights of the Child in addressing this.

Two separate submissions have also been made which provide an overview of law and justice issues relating to Indigenous children and an overview of issues relating to the challenges faced by Indigenous youth in coming to terms with their identity.

The submission also includes an appendix which extracts from the most recent observations of the UN human rights committees on Indigenous peoples in Australia.

**Non-discrimination and Equality: the situation of Indigenous children
in Australia**

Indigenous Australians remain the most disadvantaged of all Australians. There are clear disparities between Indigenous and non-Indigenous Australians across all indicators of quality of life. In August 2000, the Committee on Economic, Social and Cultural Rights expressed concern about this as follows:

The Committee expresses its deep concern that, despite the efforts and achievements of the State party, the indigenous populations of Australia continue to be at a comparative disadvantage in the enjoyment of economic, social and cultural rights, particularly in the field of employment, housing, health and education.

An overview of related concerns expressed by the UN human rights treaty committees is provided in Appendix 2.

The following table provides an overview of key indicators of quality of life for Indigenous children.¹

Indicator	Selected statistics
Environmental health – water, power, sewerage	2001 survey found 56 communities where water has failed testing, nearly 1000 communities are not connected to state grid electricity, over 1000 communities with septic or other non-town sewerage systems.
Life expectancy	Indigenous people live approximately 20 years less than non-Indigenous people. Indigenous males 56.3 years, non-Indigenous 77 years. Indigenous females 62.8 years, non-Indigenous 82.4.
Infectious diseases	Scabies in many remote communities affect up to 50% of children, meningococcal is 5 times the national rate, tuberculosis is 15 per 100,000 for Indigenous people compared to 1.2 per 100,000 non-Indigenous.
Infant mortality	Indigenous infant mortality rates are 2 1/2 times that of non-Indigenous infant mortality. Indigenous perinatal mortality rate (ie, deaths of foetus or during birth) is twice that of non-Indigenous rate.
Birth weight	Babies born to Indigenous mothers are twice as likely to be of low birth weight (13%), compared with non-Indigenous mothers (6.5%)
Substance abuse	While Indigenous people are less likely to drink alcohol, those who do are far more likely to consume at hazardous levels. The prevalence of smoking is at least twice the rate of non-Indigenous.
Juvenile justice	Indigenous juveniles make up 43% of all juveniles in detention, despite comprising less than 4% of the total juvenile population. The level of over-representation of Indigenous juveniles in detention is 20 times the non-Indigenous rate.
Child protection	Indigenous children are over-represented in care and protection systems across Australia by 3.2 times the non-Indigenous rate. This over-representation increases with the seriousness of the intervention, with Indigenous children placed under care and protection orders and out-of-home care at 5.9 and 6.3 times the non-Indigenous rates respectively.
Income	Average gross household income for Indigenous persons was \$364 per week, or 62% of the corresponding income for non-Indigenous persons.
Unemployment and welfare	22% of Indigenous males are unemployed compared to 8% of Indigenous males; and 18% of Indigenous females compared to 7% of non-Indigenous females. This does not include Indigenous people participating in Community Development Employment Projects (a 'work for the dole' equivalent program). 1 in 6 Indigenous people classified as employed work on CDEP.
Education	32% of Indigenous Australians did not complete year 10 schooling, compared to 18% of non-Indigenous Australians. 18% of Indigenous Australians did complete school to year 12, compared to 41% of non-Indigenous Australians.
Housing	Home ownership rates among Indigenous households are significantly lower than non-Indigenous households (32% compared to 69%). Households with Indigenous persons were more than twice as likely to be living in rental accommodation than non-Indigenous households. These are relevant factors in explaining inter-generational poverty among Indigenous people.
Teenagers (aged 15-19 years) at risk of poverty	44% of all Indigenous teenagers are likely to be at risk of entering into poverty, compared to 15% of non-Indigenous teenagers. This situation worsens further in remote and very remote regions of Australia. The rate of risk of poverty is calculated according to the number of people that are either not in full-time work or education or combining part time work and education.

While there are significant concerns about the level of family violence in Indigenous communities, there is limited statistical information on the full extent of the issue. The Western Australian government's Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities (*Putting the picture together*) indicated that:

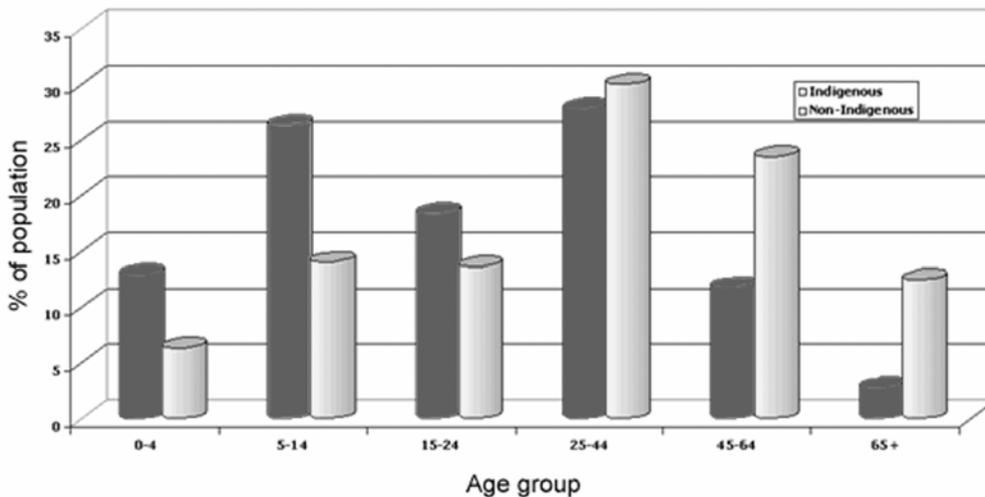
- Indigenous women account for as much as 50 per cent of all domestic violence incidents even though they account for less than 3 per cent of the population; and
- Indigenous women are 45 times more likely to be victims of violence than non-Aboriginal women and 10 times more likely to die as a result.ⁱⁱ

Key areas of concern relating to Indigenous children and inequality

There are three broad trends that are of great concern associated with these indicators of well-being for Indigenous children.

The first is that the age structure of the Indigenous population means that the issues faced by Indigenous people are unique and are on a scale that is not faced by non-Indigenous Australians. In common with many other 'western' nations, the non-Indigenous population of Australia is rapidly ageing, whereas the Indigenous population is facing increased growth in young age groups. The difference is illustrated in the following graph.

Graph: Proportion of Indigenous and non-Indigenous population in specific age groups, 2001



The graph indicates that the Indigenous population is considerably younger than the non-Indigenous population with a significant proportion of younger Indigenous people and relatively few aged over 65. This difference will not change a great deal over the next twenty years. The following table also illustrates the magnitude of this issue and the differences between Indigenous and non-Indigenous Australians.

Indicator ⁱⁱⁱ	Indigenous Australians	Non-Indigenous Australians
Median age at death (males)	52 years	76 years
Median age at death (females)	58 years	82 years
Growth rate of population	2.3% annually	1.2% annually
Median age of population	20 years	35 years
Percentage of population under the age of 15 years	Approx 40%	Approx 20%
Percentage of population aged over 65 years	2.8%	12.5%

The focus of governments in Australia, however, has begun to place greater emphasis on addressing the impact of an ageing population. Policies and programs will need to be focused on addressing the unique structure of the Indigenous population, and hence will need to be focussed on young Indigenous people and families if they are to make any headway in addressing the inequality experienced by Indigenous families and children.

This demographic profile of the Indigenous population in Australia also indicates that due to the growth of the Indigenous population, it will be difficult to maintain the current status quo of inequality currently experienced by Indigenous people, yet alone prevent it from deteriorating even further in coming years.

The second trend raised by the current situation of Indigenous people, is that over the past ten years there has been a distinct lack of progress in improving the situation faced by Indigenous people and children. The Aboriginal and Torres Strait Islander Commission recently commented:

The alarming feature of Indigenous poverty, disadvantage and distress is that it is worsening rather than improving despite available programs. In particular, Aboriginal and Torres Strait Islander people experience high levels of unemployment, poor health outcomes including increasing incidence of serious disease, far shorter life expectancy than other Australians, high levels of incarceration and widespread social dysfunction including unacceptable levels of alcohol and substance abuse. The situation represents a national emergency, and requires the application of considerable effort and resources.^{iv}

The third trend is that it has long been recognised that there is a clear connection between the level of disadvantage experienced by Indigenous Australians and the over-representation of Indigenous juveniles and adults in criminal justice and care and protection systems. The Royal Commission into Aboriginal Deaths in Custody concluded in 1991 that the over-representation of Indigenous people in the criminal justice system is inextricably linked to their socio-economic status. The Report found that:

The single significant contributing factor to incarceration is the disadvantaged and unequal position of Aboriginal people in Australian society in every way, whether socially, economically or culturally.^v

The emphasis on the social, economic and cultural disadvantage underlying incarceration and deaths in custody was a defining characteristic of the Report. It linked the *symptoms* of Indigenous distress, such as the high rate of encounters with

the criminal justice system, with the underlying *cause* of systemic disadvantage suffered by Indigenous Australians. The RCIADIC identified as fundamental the disempowerment and marginalisation of Indigenous people. Accordingly, it identified the necessity that:

principles of self-determination should be applied to the design and implementation of all policies and programs affecting Aboriginal people, that there should be maximum devolution of power to Aboriginal communities and organizations to determine their own priorities for funding allocations, and that such organizations should, as a matter of preference be the vehicles through which programs are delivered.^{vi}

Factors relevant to the Convention on the Rights of the Child

The Social Justice Commissioner, in monitoring the performance of government's in protecting the rights of Indigenous people, has expressed significant concerns about the current situation faced by Indigenous children.

A main concern is the failure of Australian governments to meet their obligations to progressively realise improvements in the socio-economic conditions of Indigenous people (in accordance with Article 2 of ICESCR, and Articles 2 and 4 of CROC). Concern has been expressed about the absence of an appropriate framework for establishing benchmarks and targets, with identifiable timeframes for achieving improvements. Associated to this is the failure to conduct negotiations with Indigenous peoples to set appropriate benchmarks that reflect the cultural priorities of Indigenous peoples, rather than imposing non-Indigenous goals and objectives. The Social Justice Commissioner convened a workshop on this issue in November 2002, the results of which are available at:

www.humanrights.gov.au/social_justice/sjreport_02/chapter4.html

Despite this concern, Australia has moved closer to a position which would allow such benchmarks to be set. In recent years all Australian governments have made commitments to addressing Indigenous disadvantage (through the Council of Australian Governments) and have established a national reporting framework on Indigenous disadvantage. Governments have also agreed to two significant processes:

- The conduct of whole of government trials to coordinate all service delivery to particular Indigenous communities; and
- The establishment of action plans at the inter-governmental level in each area of responsibility (eg health, education, housing etc).

These developments have, however, yet to result in an approach that is consistent with Australia's obligations of progressive realisation of economic, social and cultural rights under ICESCR and CROC.

A related concern is the limited role that the government is prepared to provide Indigenous peoples in setting the priorities for Indigenous communities and more broadly, the limited recognition that they are prepared to provide to the unique status of Indigenous Australians. The *Social Justice Report 2002* explains this concern as follows:

The Government seeks to limit the recognition of Indigenous peoples' status as if they were an undifferentiated minority group whose needs can be addressed under the umbrella of say multiculturalism and by guaranteeing sameness of treatment or opportunities for the same level of development. Indigenous peoples' circumstances, however, do not fit comfortably under such a banner...

It is a reality of 21st century Australia that Indigenous peoples *are* different, and that the expression of their cultures does involve unique forms of protection that do not apply to other Australians. A more wide-ranging definition of equality, which focuses on outcomes (such as in terms of equality of protection of culture) rather than on inputs (such as by purely guaranteeing equality of opportunities, as if there were a level playing field) is needed.

At present, the relationship between Indigenous people is defined according to little more than the beneficial intentions of Government to improve the life conditions of grossly disadvantaged Indigenous peoples. Such intentions are easily twisted into resentment and frustration at the amount of money spent when the desired improvements are not forthcoming. Defining a peoples' status and rights purely through their experiences of disadvantage is a dominating and disempowering approach. It is not a respectful basis for a relationship.^{vii}

Endnotes

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- i This table is adapted from Aboriginal and Torres Strait Islander Commission, *Submission to the Senate Community Affairs Committee Inquiry into poverty and financial hardship in Australia*, July 2003, www.aph.gov.au/senate/committee/clac_ctte/poverty/submissions/sub244.doc and Australian Bureau of Statistics and Australian Institute of Health and Welfare, *The health and welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2003*, Government of Australia, Canberra 2003.
- ii Clark, *op.cit.*, p41.
- iii This table is based on material in: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, pp58-60.
- iv ATSIIC, *Submission to the Senate Community Affairs Committee Inquiry into poverty and financial hardship in Australia*, *op.cit.*
- v *ibid.*, p15.
- vi Quoted in Commonwealth Grants Commission, *Report on Indigenous Funding 2001*, Canberra 2001, p89.
- vii Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, pp48-49.

Appendix 1: Concluding observations of human rights committees on Australia relating to Indigenous children

Committee against Torture: November 2000

53. The Committee recommends that:

(g) The State party continue its efforts to address the socio-economic disadvantage that, inter alia, leads to a disproportionate number of indigenous Australians coming into contact with the criminal justice system (UN Doc: A/56/44, paras 47-53, 21 November 2000)

Committee on Economic, Social and Cultural Rights: August 2000

15. The Committee expresses its deep concern that, despite the efforts and achievements of the State party, the indigenous populations of Australia continue to be at a comparative disadvantage in the enjoyment of economic, social and cultural rights, particularly in the field of employment, housing, health and education (UN Doc E/C.12/1/Add.50, 1 September 2000)

Human Rights Committee: July 2000

With respect to article 1 of the Covenant, the Committee takes note of the explanation given by the delegation that rather than the term "self-determination", the Government of the State party prefers terms such as "self-management" and "self-empowerment" to express domestically the principle of indigenous peoples' exercising meaningful control over their affairs. The Committee is concerned that sufficient action has not been taken in that regard. The State party should take the necessary steps in order to secure for the indigenous inhabitants a stronger role in decision-making over their traditional lands and natural resources (art. 1, para. 2).

The Committee recommends that the State party take further steps in order to secure the rights of its indigenous population under article 27 of the Covenant. The high level of exclusion and poverty facing indigenous persons is indicative of the urgent nature of these concerns. In particular, the Committee recommends that the necessary steps be taken to restore and protect the titles and interests of indigenous persons in their native lands, including by considering amending anew the Native Title Act, taking into account these concerns...

Legislation regarding mandatory imprisonment in Western Australia and the Northern Territory, which leads in many cases to imposition of punishments that are disproportionate to the seriousness of the crimes committed and would seem to be inconsistent with the strategies adopted by the State party to reduce the over-representation of indigenous persons in the criminal justice system, raises serious issues of compliance with various articles of the Covenant. The State party is urged to reassess the legislation regarding mandatory imprisonment so as to ensure that all Covenant rights are respected (UN Doc: A/55/40, paras.498-528, 24 July 2000)

Committee on the Elimination of Racial Discrimination: March 2000

15. The Committee notes with grave concern that the rate of incarceration of indigenous people is disproportionately high compared with the general population. Concern is also expressed that the provision of appropriate interpretation services is not always fully guaranteed to indigenous people in the criminal process. The Committee recommends that the State party increase its efforts to seek effective measures to address socio-economic marginalization, the discriminatory approach to law enforcement and the lack of sufficient diversionary programmes.

16. The Committee expresses its concern about the minimum mandatory sentencing schemes with regard to minor property offences enacted in Western Australia, and in particular in the Northern Territory. The mandatory sentencing schemes appear to target offences that are committed disproportionately by indigenous Australians, especially juveniles, leading to a racially discriminatory impact on their rate of

incarceration. The Committee seriously questions the compatibility of these laws with the State party's obligations under the Convention and recommends to the State party to review all laws and practices in this field.

18. The Committee acknowledges the efforts being made to increase spending on health, housing, employment and education programmes for indigenous Australians. Serious concern remains at the extent of the continuing discrimination faced by indigenous Australians in the enjoyment of their economic, social and cultural rights. The Committee remains seriously concerned about the extent of the dramatic inequality still experienced by an indigenous population that represents only 2.1 per cent of the total population of a highly developed industrialized State. The Committee recommends that the State party ensure, within the shortest time possible, that sufficient resources are allocated to eradicate these disparities. (UN Doc: CERD/C/304/Add.101, 19 April 2000)

Committee on the Rights of the Child: October 1997

13. While noting the information provided by the delegation of the State party on a number of programmes to raise health standards for Aboriginal and Torres Strait Islander children and the State party's intention to start a two-year anti-racism campaign, the Committee is nonetheless concerned about the special problems still faced by Aboriginals and Torres Strait Islanders, as well as by children of non-English-speaking backgrounds, with regard to their enjoyment of the same standards of living and levels of services, particularly in education and health.

22. The Committee is also concerned about the unjustified, disproportionately high percentage of Aboriginal children in the juvenile justice system, and that there is a tendency normally to refuse applications for bail for them. The Committee is particularly concerned at the enactment of new legislation in two states, where a high percentage of Aboriginal people live, which provides for mandatory detention and punitive measures of juveniles, thus resulting in a high percentage of Aboriginal juveniles in detention.

32. The Committee encourages the State party to take further steps to raise the standards of health and education of disadvantaged groups, particularly Aboriginals, Torres Strait Islanders, new immigrants, and children living in rural and remote areas. The Committee is also of the view that there is a need for measures to address the causes of the high rate of incarceration of Aboriginal and Torres Strait Islanders children. It further suggests that research be continued to identify the reasons behind this disproportionately high rate, including investigation into the possibility that attitudes of law enforcement officers towards these children because of their ethnic origin may be contributing factors. (UN Doc: CRC/C/15/Add.79, 10 October 1997)

Committee on the Elimination of Discrimination Against Women: August 1997

394. The Committee noted with concern that violence against women, notwithstanding major efforts, remained a central concern to Australian women, 7 per cent of whom experienced some type of violence in the course of a year. It noted the absence of data concerning violence against Aboriginal and Torres Strait Islander women and assessment of programmes directed at reducing such violence.

397. The Committee was concerned at the continuing adverse situation of Aboriginal and Torres Strait Islander women. Major causes of concern included a higher incidence of maternal mortality, lower life expectancy, reduced access to the full range of health services, a high incidence of violence, including domestic violence, and high unemployment rates. Their situation, as well as that of migrant women, was further compromised by an apparent rise in racism and xenophobia. (UN Doc: A/52/38/Rev.1, Part II, paras 365-408, 12 August 1997)