

**United Nations Permanent Forum on Indigenous Issues
Twelfth Session – New York
20 - 31 May 2013**

Agenda Item 8: Future Work

Joint Intervention Delivered by Ms Nayuka Gorrie on behalf of the Indigenous Peoples Organisation (IPO) Network of Australia:

National Aboriginal and Torres Strait Islander Legal Services (NATSILS)
Secretariat of National Aboriginal and Torres Strait Islander Child Care
National Congress of Australia's First Peoples (Congress)
The National Indigenous Higher Education Network (NIHEN)
National Native Title Council (NNTC)
National Aboriginal Community Controlled Health Organisation (NACCHO)
Foundation for Indigenous Recovery and Development, Australia (FIRDA)

Thank you Mr Chairman.

The Indigenous Peoples Organisations Network of Australia would like to make the following recommendations:

Recommendations

1. Study the impact that child protection and criminal justice systems have on Indigenous Peoples, including Indigenous men, women, youth and children;
2. Undertake research to identify the common underlying causes for overrepresentation;
3. Identify and promote culturally sound best practice to structurally reform criminal justice and child protection systems including policy and legislation, to reverse trends of overrepresentation;
4. Report on the implementation of the recommendations of the Expert Group Meeting;
5. Conduct a half day thematic session on this issue at the 13th session of the Permanent Forum which acts as a follow-up to monitor the implementation of the recommendations of the Expert Group Meeting and in particular the recommendation in paragraph 119 of the Report; and
6. Provide information gained to the World Conference on Indigenous Peoples in 2014.

Thank you Mr Chairman,

We begin by acknowledging that we are meeting on Haudenosaunee Territory. We pay our respects to their Elders past and present and to all the Indigenous delegates here today.

The Indigenous Peoples Organisations (IPO) Network of Australia propose that Future Work of the Permanent Forum be focused on two inter-related issues that

have intergenerational consequences for Indigenous Peoples the world over, and which are having devastating effects on Indigenous Peoples. They concern the disproportionate impact of both the criminal justice and child protection systems.

We suggest these issues be jointly studied because of their clear links. For example, Indigenous children in care and protection often come into contact with the juvenile justice system and then in turn, the adult criminal justice system.ⁱ

Indigenous children and young people are vastly overrepresented in care and protection systems. In 2011-12, they were subjected to child protection substantiations at a rate of 41.9 per 1000,ⁱⁱ nearly eight times that of non-Indigenous children.ⁱⁱⁱ They are also ten times more likely to be in out-of-home care (comprising 31% of all children in care),^{iv} despite making up only 4.2% of the population of all children and young people.^v In addition to the rising rates, our children are increasingly being placed with non-Indigenous foster carers.

The statistics regarding contact between Indigenous Peoples and the justice system are also alarming. Our adults are 15 times more likely to be incarcerated^{vi} and our youth are almost 24 times more likely to be in youth detention.^{vii} Our people are also more likely to be victims of crime, being 23 times more likely to be hospitalised for assault, and 35 times more likely for our women.^{viii}

The rate of incarceration has been increasing in recent years and is projected to further increase over the next 20 years because the proportion of our youth is significantly higher than for the mainstream population,^{ix} and because they are impacted far more significantly by poverty^x and negative exposure to child protection and juvenile justice systems.

We know that Indigenous Peoples throughout the world are facing similar crises.^{xi} However, to prove this, there is a need for improved, standardised and aggregated data collection regarding criminal justice and child protection on a global level, to adequately understand the issues and put attention where it is most needed.

There has been some initial recognition of the importance of these issues through the '2010 Expert Group Meeting on Indigenous Children and Youth in Detention, Custody, Adoption and Foster Care' (Expert Group Meeting).^{xii} However, as the issues are escalating, a follow up by the Permanent Forum would be highly valuable.

We recommend that future work done by the Permanent Forum on these issues be broadened to consider incarcerated adults as well as children and youth, and justice system reforms which are aimed at preventing and diverting at Indigenous Peoples from justice systems. In this regard we recommend the Permanent Forum consider the success of Justice Reinvestment in USA and other reports from UN member nations like the Senate Inquiry into the value of a Justice Reinvestment approach to criminal justice in Australia, due for release in June this year.

The timing for such work is also good, because information gained will be able to feed into and build on the work of the Expert Mechanism on the Rights of Indigenous Peoples who in 2013 will study 'Access to Justice for Indigenous Peoples, Including Truth and Reconciliation Processes', and into the upcoming World Conference on

Indigenous Peoples.

Reports

Submitted as annexes to this Intervention are:

- *Doing Time, Time for Doing – Report from the Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system, Standing Committee on Aboriginal and Torres Strait Islander Affairs, 20 June 2011, available at http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=atsia/sentencing/report.htm.*
- *Australian Institute of Health and Welfare (AIHW). (2013). Child Protection Australia 2011–12. In AIHW (Ed.), Child Welfare Series no. 55. Canberra: AIHW, available at <http://www.aihw.gov.au/publication-detail/?id=60129542755>.*
- *The National Congress of Australia's First Peoples 'National Justice Policy', available at <http://nationalcongress.com.au/justice/>.*

ⁱ 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 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.

ⁱⁱ Australian Institute of Health and Welfare (AIHW) (2013), *Child Protection Australia 2011–12*, in AIHW (Ed.), *Child Welfare Series no. 55*. Canberra: AIHW, p 17.

ⁱⁱⁱ At 5.4 per 1,000 children. Ibid, p 16.

^{iv} Australian Institute of Health and Welfare 2011, Fact Sheet: “*Child protection and Aboriginal and Torres Strait Islander Children*” viewed 01 March 2013 <<http://www.aifs.gov.au/cfca/pubs/factsheets/a142117/index.html>.

^v Australian Bureau of Statistics (ABS), *2011 Census Counts — Aboriginal And Torres Strait Islander Peoples*, <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2075.0main+features32011> (accessed 7 February 2013).

^{vi} Australian Bureau of Statistics, *Prisoners in Australia 2012*, Cat no 4517.0, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0> (accessed 27 March 2013).

^{vii} Australian Institute of Health and Welfare (AIHW). (2011). *Juvenile Justice in Australian 2010–11*, Juvenile Justice Series no. 10. Cat No JUV 10, p.7.

^{viii} Productivity Commission 2011: *Overcoming Indigenous Disadvantage: Key Indicators 2011*, Productivity Commission, Canberra http://www.pc.gov.au/data/assets/pdf_file/0018/111609/key-indicators-2011-report.pdf (accessed 01 March 2013).

^{ix} Australian Bureau of Statistics (ABS), *2011 Census Counts — Aboriginal And Torres Strait Islander Peoples*, <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2075.0main+features32011> (accessed 7 February 2013).

^x For example, more than 27% of our youth (aged 15–24) reside within overcrowded housing, far greater than non-Indigenous youth population (9%): Australian Research Alliance for Children and Youth - ARACY (2013) Report Card: The wellbeing of Young Australians, ARACY. The extent of poverty experienced by Aboriginal and Torres Strait Islander peoples ranges from between 40 to more than 50% across Australia, whether for remote or urban areas: B. Hunter (2006) *Assessing the evidence on Indigenous socioeconomic outcomes: A focus on the 2002 NATSISS*, p.100.

^{xi} For example, in New Zealand, Maori comprise 51 per cent of the prison population while only representing 13% of the general population – see New Zealand Ministry of Justice, *Strategic Policy Brief* (2009) at <http://www.justice.govt.nz/justice-sector/drivers-of-crime/documents/spb-maori-over-representation>; and Māori make up just over half (51%) of the notifications for 0 to 2-year-olds received by CYF (Child, Youth and Family, 2010b) and are 4.5 times more likely than non-Māori, non-Pacific children to have a finding of neglect – see http://www.familiescommission.org.nz/web/m%C4%81ori-children-wh%C4%81nau/kupu-whakataki_introduction.html. Native American and Alaska Native youth comprise less than 2% of the national population, however they comprise 15 - 20% of the total population of incarcerated youth in the USA. The number of Native American youth in Federal Bureau of Prisons (BOP) custody has increased 50% since 1994, and more than 70% of the approximately 270 youth in BOP custody on any day are Native Americans http://www.ncjrs.gov/html/ojdp/jjnl_2000_12/ojdp.html#2, International Expert Group Meeting, Indigenous children and youth in detention, custody, adoption and foster care, 4–5 March, 2010, Vancouver, Concept Note, p.3.

^{xii} International Expert Group Meeting (EGM) on Indigenous Children and Youth in Detention, Custody, Foster-Care and Adoption, 4 -5 March, 2010, Canada, 6 April 2010, E/C.19/2010/CRP, Permanent Forum on Indigenous Issues ninth session, para 119, p.25.