

**Permanent Forum on Indigenous Issues
Eighth Session
New York, 18 May – 29 May 2009**

Agenda Item 3 (b): Indigenous Women

JOINT STATEMENT ON BEHALF OF

**National Native Title Council (NNTC)
Foundation for Aboriginal and Islander Research Action (FAIRA)
Marninwarntikura Women's Resource Centre
New South Wales Aboriginal Land Council (NSWALC)
Office of the Aboriginal and Torres Strait Islander Social Justice
Commissioner
National Indigenous Higher Education Network (NIHEN)
Aboriginal and Torres Strait Islander Women's Legal and Advocacy
Service Aboriginal Corporation (ATSIWLAS)
Aboriginal Legal Rights Movement (ALRM)
Bullana, The Poche Centre for Indigenous Health
National Indigenous Youth Movement of Australia (NIYMA)
Aboriginal Legal Service of Western Australia Inc
Indigenous Peoples Organisation Network Youth Delegation**

Madam Chairperson, this Intervention is presented on behalf of Australian
Caucus of Non-Government Organisations:

- Aboriginal Legal Rights Movement
- Aboriginal & Torres Strait Islander Women's Legal & Advocacy Service
- Foundation for Aboriginal & islander Research Action (FAIRA)
Indigenous Peoples Organisation Network Youth Delegation
- Marninwartikura Women's Resource Centre
- National Indigenous Higher Education Network (NIHEN)
- National Native Title Council Ltd (NNTC)
- New South Wales Aboriginal Land Council (NSWALC)
- Office of the Aboriginal & Torres Strait Islander Social Justice
Commissioner

Indigenous women across the globe continue to suffer multiple violations affecting their physical, emotional, social well being and enjoyment of basic human rights. The nature and extent of these violations is often compounded by the discrimination suffered due to the intersection of ethnicity/race and gender.

Australian Indigenous women's denial of justice is mirrored by the history of injustice experienced by Indigenous populations worldwide. In most, if not all countries that have been colonised this social disadvantage began as a result of the racism that was brought by the colonising nation. This racism continues today in many States and the worst offender of racism is Government itself.

Indigenous women have been denied an existence comparable to that enjoyed by their non Indigenous counterparts, especially in relation to the disproportionate rates to which we suffer:

- violence
- poverty
- entering the criminal justice system
- poor health and
- lack of political standing/participation in the broader society

It is acknowledged that in many States three fundamental services are denied to Indigenous women:

1. Social and Family Violence Prevention Legal Services - these services may have differing names in various countries throughout the world. In Australia, they are generally provided to assist Indigenous women escape family violence and access redress through the legal system by means of a discreet Indigenous women's legal service. Services must be offered in a culturally inclusive and accessible manner focusing on:

- Intervention in the cycle of social and family violence and sexual assault, promoting changes in behaviour of individuals and the community;
- Lowering or eliminating the prevalence of social and family violence in Indigenous communities, and
- Being accessible and culturally appropriate and victim sensitive to Indigenous women.

Whilst any approach by the UNPFII must be based on the human rights principle of non-discrimination, it must be based upon recognition that formal protection of those significantly disadvantaged such as Indigenous women should have approaches that ensure specifically focused access to services and justice.

2. Legal Aid - accessing legal aid is a basic human right however in many States this is denied to Indigenous women because they have no collective voice to express their concerns about disadvantage. Funding for Indigenous legal aid is well below mainstream legal aid or even non-existent in many States. This has resulted in appalling incarceration rates for Indigenous peoples as a percentage of the main non-Indigenous population.

In Australia Indigenous legal aid has remained static since 1996 whilst non-Indigenous legal aid has increased over 120% for the same period. Indigenous service providers world wide are disadvantaged like those in Australia. Indigenous women's incarceration is significantly disproportionate to their percentage of the general population.

Indigenous women find non-Indigenous service providers including legal aid, unwelcoming and Governments have a responsibility to ensure these Indigenous service providers are resourced properly in compliance with the UN Declaration on Human Rights, CERD, CEDAW and now the Declaration on the Rights of Indigenous Peoples.

3. Aid to Members of Indigenous peoples forcibly removed from families and communities due to racial or genocide policies of Government - in many States genocide policies were introduced to breed out the Indigenous populations. States did this through deliberate policies of removal of children from their families and communities and placed these children in white foster care or adoption agencies. The removal of these children by Government Policy denied basic human rights to Indigenous peoples and in particular our women who were abused by foster parents and adoption agencies. They were placed into a life of servitude and a denial of basic human dignity and robbed of their Indigenous heritage and culture. States have a fiduciary duty of care of these children of which 50% were girl child. Numerous courts throughout the world have found such policies and practices of removal of Indigenous children a breach of basic human rights and should therefore compensate these Indigenous women appropriately. Many Nations, and sadly including Australia, continue to deny access to justice for these Indigenous peoples by refusing to fund access to justice legal cases, or to pay appropriate compensation in contravention of the Covenant on Civil and Political Rights Article 2(3)(1).

The above three examples of denying access to justice for Indigenous women denies them of their basic rights to access to services and suitable compensation for the harm caused by forced removal.

Recommendations:

We the Australian Caucus members recommend that this UN Permanent Forum on Indigenous Issues support the following:

1. **All States must cease policies and practices that deny Indigenous women access to services including social and family violence prevention, legal aid and compensation for past wrongs committed by the State;**
2. **All States must fund Indigenous specific services to assist Indigenous women to access social and family violence prevention legal services, legal aid and compensation schemes for those Indigenous women forcibly removed from family and community;**
3. **All States should implement suitable compensation schemes for Indigenous women forcibly removed from family and community. These schemes should be developed in partnership with Indigenous organisations such as Indigenous Women's advocacy groups.**

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Madam Chairperson, this Report and the accompanying Intervention are presented on behalf of Australian Caucus of Non-Government Organisations:

- Aboriginal Legal Rights Movement
- Aboriginal & Torres Strait Islander Women's Legal & Advocacy Service
- Foundation for Aboriginal & islander Research Action (FAIRA)
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Indigenous women across the globe continue to suffer multiple violations affecting their physical, emotional, social well being and enjoyment of basic human rights. The nature and extent of these abuses are often compounded by the discrimination suffered due to the intersection of ethnicity/race and gender.

The most insidious violations experienced by Indigenous women in Australia stem from a history of policies and practices imposed by successive

Governments that have ignored and undermined maternal, cultural, social and economic rights.

Australian Indigenous women's denial of justice is mirrored by the history of injustice experienced by Indigenous populations worldwide. In most, if not all countries that have been colonised this social disadvantage began as a result of the racism that was brought by the colonising nation. This racism continues today in many States and the worst offender of racism is Government itself.

All levels of Government in Australia for example have been called upon to address the unresolved injustices that have contributed to the erosion of the foundations of Indigenous families and Indigenous gender roles. In Australia there has been an increased focus on issues that are integral to the wellbeing of Indigenous families and communities and in particular Indigenous women and children.

Indigenous women have been denied an existence comparable to that enjoyed by their non Indigenous counterparts, especially in relation to the disproportionate rates to which we suffer:

- violence
- poverty
- entering the criminal justice system
- poor health and
- lack of political standing/participation in the broader society

Violence

There has been an increasing tendency to refer to all types of violence within Indigenous communities as "family violence" to reflect that violence between individuals in an Indigenous context which can manifest through broad kinship relationships as well as the western concept of violent behaviour between a husband and a wife. It was hoped that broadening the common understandings of violence in Indigenous communities would promote a holistic response by Governments.

In asserting the indivisibility of our human rights, Australian Indigenous men and women have called on Governments to develop a more holistic approach to what constitutes violence and what causes violence within communities. Access to adequate education, essential services and culturally appropriate justice has been central to the concerns that have been raised in holding the State to account for the incidence of violence in Indigenous communities.

However, as a result of the use of the term "family violence" Governments appear to have perpetuated the myth that all Indigenous men are perpetrators of family violence and that the only type of aggression that Indigenous women and children experience is within the family unit. This is a notion that Indigenous women are fighting strenuously to refute. As there are many perpetrators of violence and intimidation within Indigenous communities that involve non-Indigenous actors; including non-Indigenous individuals and those

acting on behalf of the State who use excessive force such as police and the uninvited personnel from the military in some communities.

In asserting the universality of our human rights, Indigenous men and women advocate “zero tolerance” toward violence within their communities. Many Indigenous women are referring to violence within their communities as “social violence”, in yet another attempt to encourage a more holistic approach adopted by Government to address the multiple levels of violence that Indigenous women and their families experience.

Faced with the ongoing contradictions between political rhetoric and their reality, many Indigenous women are fearful of the imposition of policies that act to undermine their emotional and social wellbeing. Ironically, at a time when Australia, as a nation, has declared its support for reconciliation, Indigenous women are being denied basic rights that are afforded to all other Australians.

As reported to you last year Madam Chair, the Australian Government has taken control of remote Indigenous communities in the Northern Territory using the protection of Indigenous women and children to legitimise these “special measure”. These racially based measures required the operation of the Racial Discrimination Act to be suspended.

Notwithstanding calls from many Indigenous and non-Indigenous Australians, the Australian Human Rights Commission and the United Nations Human Rights Council; the Australian Government has not yet reinstated the Racial Discrimination Act or changed the policies that racially discriminate against Indigenous people.

Despite the Australian Government’s recent endorsement of the Declaration of the Rights of Indigenous Peoples, their actions have provided Indigenous women and their families with little comfort that a “new day in dealing with Indigenous impoverishment, has dawned”.

These race based laws have resulted in unprecedented levels of poverty and disadvantage within Indigenous communities, culminating in an increasing presence of trauma and other stress related illnesses.

Poverty

The impoverishment of many Indigenous communities has come about as a result of many of their families having been denied the right to create for themselves an economic base. The ability of Indigenous women to create an economic base is integrally linked to our gendered and collective rights as Indigenous people to care for and develop our lands and natural resources.

The inherited poverty experienced by many Indigenous women has resulted from a history of slavery, servitude, unemployment, lack of access to education or the right to access wages that were often withheld without their permission by Government policies that sanctioned these practices.

It is appalling that even Indigenous women from many affluent countries (including Australia) report such endemic levels of poverty.

The suffrage of Indigenous women, in particular, is directly correlated to these historical injustices. The additional discrimination due to class further compounds the marginalisation already suffered by Indigenous women due to race and gender. The ongoing pressures they continue to experience as mothers, partners and, in many cases, the primary care giver of children is a direct result of the removal of vital social capital which is integral to a healthy and sustainable family and community environment.

This situation is further exacerbated and then used against Indigenous women to legitimise the ongoing practice of children being removed from their family by the State. In Australia for example, Indigenous children are placed in out-of-home care by the government at a rate that is more than six times higher than the rate for other children.

The right to be a mother and to exist without unjustified and unwarranted interference by Governments is perhaps the most serious form of injustice experienced by Indigenous women.

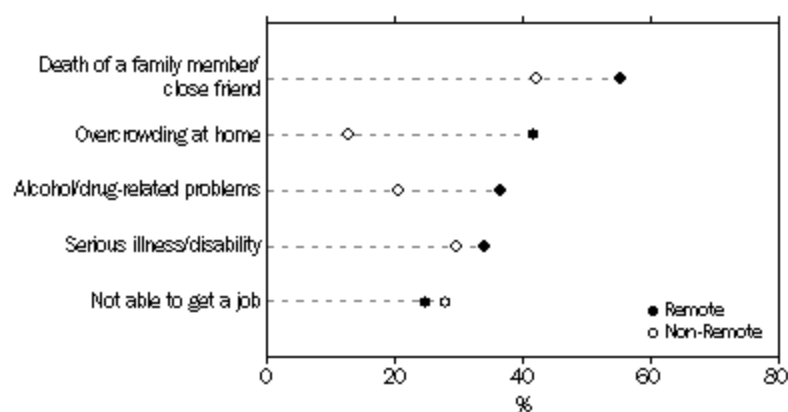
Health

(Awaiting input from NB)

Criminal Justice System

Indigenous women across the world are over represented in incarceration. The endemic levels of poverty and social disadvantage experienced by Indigenous communities, the generations of trauma and discrimination experienced by Indigenous families, are all contributing factors to the rates of Indigenous women's incarceration as the graph below shows. In Australia the incarceration rate for Indigenous women is 20 times the rate of other women.

Selected reported stressors (a) in the past 12 months, Indigenous persons aged 15 years or over.



(a) Respondents may have reported more than one type of stressor.

Source: Australian Bureau of Statistics, 4714.0 - National Aboriginal and Torres Strait Islander Social Survey, 2002

Despite the concerning statistics, there has been limited research conducted into the needs of Indigenous women in the criminal justice system.

The gendered analysis of research and statistics regarding Indigenous people is an important resource that is lacking for Indigenous people everywhere. This lack of specific information on gender issues has rendered Indigenous women invisible. The invisibility of Indigenous women's needs has led to policies and services for Indigenous women failing to properly represent or respond to their needs.

This is certainly the case in Australia when it comes to effective laws and policies for Indigenous women and their contact with the criminal justice system. Indigenous women in Australia are sentenced for violent crimes at a significantly higher rate than the rest of the female population. Indigenous women are also victims of violence at an alarming higher rate than the rest of the Australian population. The recidivism rates of Indigenous women are also of serious concern.

It is clear that the criminal justice system currently does not respond appropriately to underlying causes of Indigenous female criminal behaviour or Indigenous female victimisation. The criminal justice system is not responding to Indigenous women's distinct issues from either side of the system; that is, Indigenous women as offenders or as victims of crimes.

Indigenous people have identified a need to provide ways of accessing justice that do not follow western concepts. Once again Indigenous people have made calls for a more holistic approach to be adopted. We need ways to address offending behaviour that incorporate and recognise our cultural values in dispute resolution and at the same time addressing the underlying grief and trauma experienced by many Indigenous women and communities.

Many people are seeking not just restorative justice models to be put in place in Indigenous communities but also therapeutic justice models. These models will only be effective if Indigenous women are involved in their formulation.

Access & Participation

Whilst we acknowledge that the United Nations has passed the Declaration on the Rights of Indigenous Peoples, and we note Australia has now agreed to support the Declaration, Article 22 of the Declaration calls for particular attention to be paid to the rights and needs of Indigenous women and calls on Governments to adopt measures to protect Indigenous women and children from violence and discrimination. The participation of Indigenous women in the pursuit of these objectives is essential to any success in their achievement.

In Australia, successive Governments have failed to address the rights of Indigenous women to access justice for themselves and their children. It is

concerning to note that despite the readiness of Indigenous women to work alongside Governments to develop policies to address these issues, there continues to be a reliance upon archaic remedies which have shown to be ineffective in creating solutions.

The propensity of Government to demonstrate a narrow understanding of the disadvantage experienced by Indigenous women is exemplified by their inability to instigate suitable policies and programs to address these issues. Despite the existence of international instruments such as, the Declaration of Human Rights and the Declaration on Rights of Indigenous Peoples, Indigenous women continue to be denied basic maternal, cultural and social rights that are enjoyed by non Indigenous women.

It is our view that States should appropriately fund Indigenous Women's national advocacy bodies that represent the special interests of Indigenous women, particularly as they relate to access to justice and violence prevention.

A key point of discussion is that in many States various tiers of Governments continue to argue over whose responsibility it is to fund these services. This unfortunately is the case in Australia where the National and State Governments argue over funding responsibilities. This demarcation of responsibilities between two tiers of Government results in a failing to properly fund services thereby denying access to services to Indigenous women and their children which adds to their social disadvantage.

Access to justice through specialised legal aid services for Indigenous peoples continues to be denied. These services must be located in city, rural and remote regions throughout all States

It is acknowledged that in many States three fundamental services are denied to Indigenous women:

1. Social and Family Violence Prevention Legal Services - these services may have differing names in various countries throughout the world. In Australia, they are generally provided to assist Indigenous women escape family violence and access redress through the legal system by means of a discreet Indigenous women's legal service. Services must be offered in a culturally inclusive and accessible manner focusing on:
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Whilst any approach by the UNPFII must be based on the human rights principle of non-discrimination, it must be based upon recognition that formal protection of those significantly disadvantaged such as Indigenous women should have approaches that ensure specifically focused access to services and justice.

Many States acknowledge that urban Indigenous populations also require social and family violence, family and civil law services and locate Social and Family Violence Prevention Legal Services accordingly. However some States such as Australia reject this notion on the basis that urban Indigenous victims of family violence have access to mainstream service. This view is ill conceived and fails to acknowledge that too often the mainstream services are failing to ensure that services are known to Indigenous people, are culturally safe and welcoming.

A very high proportion of Indigenous populations live in urban areas, and Indigenous women victims of family violence in urban areas do not have access to justice. It is also acknowledged by many States that services play an important role in ensuring Indigenous communities are taking a stand against family violence, but they refuse to fund such services in urban areas also means that there is a lack of critical leadership in urban services provision.

2. Legal Aid - accessing legal aid is a basic human right however in many States this is denied to Indigenous women because they have no collective voice to express their concerns about disadvantage. Funding for Indigenous legal aid is well below mainstream legal aid or even non-existent in many States. This has resulted in appalling incarceration rates for Indigenous peoples as a percentage of the main non-Indigenous population. For example, in Australia the incarceration rate for Indigenous women is 20 times the rate of other women. Indigenous peoples in Australia only make up 2% of the population; this one statistic is internationally unacceptable yet Australian Governments fail to address this appalling situation due to a demarcation over which tier of Government is responsible for funding.

In Australia Indigenous legal aid has remained static since 1996 whilst non-Indigenous legal aid has increased over 120% for the same period. Indigenous service providers world wide are disadvantaged like those in Australia. Indigenous women's incarceration is significantly disproportionate to their percentage of the general population.

Indigenous specific legal aid services continue to struggle to attract employees because of the low salaries offered, if available in some States at all. Indigenous women find non-Indigenous service providers including legal aid, unwelcoming and Governments have a responsibility to ensure these Indigenous service providers are resourced properly in compliance with the UN Declaration on Human

Rights, CERD, CEDAW and now the Declaration on the Rights of Indigenous Peoples.

3. Aid to Members of Indigenous peoples forcibly removed from families and communities due to racial or genocide policies of Government - in many States genocide policies were introduced to breed out the Indigenous populations. States did this through deliberate policies of removal of children from their families and communities and placed these children in white foster care or adoption agencies. The removal of these children by Government Policy denied basic human rights to Indigenous peoples and in particular our women who were abused by foster parents and adoption agencies. They were placed into a life of servitude and a denial of basic human dignity and robbed of their Indigenous heritage and culture. States have a fiduciary duty of care of these children of which 50% were girl child. Numerous courts throughout the world have found such policies and practices of removal of Indigenous children a breach of basic human rights and should therefore compensate these Indigenous women appropriately. Many Nations, and sadly including Australia, continue to deny access to justice for these Indigenous peoples by refusing to fund access to justice legal cases, or to pay appropriate compensation in contravention of the Covenant on Civil and Political Rights Article 2(3)(1).

The above three examples of denying access to justice for Indigenous women denies them of their basic rights to access to services and suitable compensation for the harm caused by forced removal.

Recommendations

We the Australian Caucus members recommend that this UN Permanent Forum on Indigenous Issues support the following:

- 1. All States must cease policies and practices that deny Indigenous women access to services including social and family violence prevention, legal aid and compensation for past wrongs committed by the State;**
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- 3. All States should implement suitable compensation schemes for Indigenous women forcibly removed from family and community. These schemes should be developed in partnership with Indigenous organisations such as Indigenous Women's advocacy groups.**