



ngo group for the crc

STATE PARTY EXAMINATION OF AUSTRALIA'S SECOND AND THIRD PERIODIC REPORTS

40TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

12 - 30 SEPTEMBER 2005

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Australia ratified the Convention on the Rights of the Child (CRC) in 1990. On 13 September 2005, the Committee on the Rights of the Child (the Committee) examined Australia's Second and Third Periodic Reports.

Opening Comments

The delegation was headed by the Australian Permanent Representative to the United Nations (UN) in Geneva, Ambassador Mike Smith. In his opening statement, Smith explained Australia's federal constitutional system and how the responsibility for children's issues was shared among nine governments, including federal and state governments. Smith also highlighted that the government engaged in dialogue with its national human rights institution, the Human Rights and Equal Opportunity Commission (HREOC), as well as non-governmental organisations to address human rights and children's issues. Improvements had been made in areas such as early childhood development, where a National Agenda for Early Childhood had been created. In addition, Australia was working to prevent the exploitation of children through changes in the criminal code regarding trafficking and child pornography. The Australian government had also changed its detention policies. In future, all families with children that arrived in Australia would be placed in communities rather than detention, taking into account the best interest of the child. However, Smith acknowledged that despite progress, indigenous children remained at a disadvantage. The government was addressing this problem based on the principle of shared responsibility between the federal, state and territory governments.

The country rapporteurs, Mr. Filali and Mr. Zermatten warmly welcomed the delegation. Filali noted that the Australian delegation had high officials present, demonstrating the importance Australia placed on children's issues and contributing to an open and fruitful discussion. The report was good, complying with the directives and enabling the Committee to better understand the situation of children in Australia. Filali also pointed out that much progress has been made in Australia, including a new framework for the protection of human rights, changes in legislation in 2005, a national plan to combat trafficking in 2005, as well as its ratifications of The Hague Convention and the Rome Statute. However, Filali also underlined some remaining concerns pertaining in particular to reservation 37c, the treatment of asylum seekers and the laws regarding immigration, the links and cooperation between the federal government and the state and territory governments, and civil rights and freedoms for children. Meanwhile, Zermatten highlighted that some areas of major concern were the influence of HREOC, general principles (such as the general definition of the term 'child' and age limits), and the situation of indigenous children and refugees/asylum seekers. Zermatten also noted that the best interest of the child was not always taken into consideration, especially in the areas of counterterrorism laws and asylum issues, and that children's views were not always heard.

Legislation

The Committee expressed concern about the status of the CRC under Australian law; citizens lacked the right to make complaints in court regarding violations of the CRC. The latter might be considered when needed, but it could never override domestic law. The Committee asked whether this meant that the CRC could not be applied directly in the courts or whether it was up to the individual judge. The Committee also pointed out that it should be the responsibility of the federal government to implement the CRC, not of each state. The delegation replied that the CRC did not require direct implementation but that the government made sure it was in compliance with a convention before ratifying it, and maintained this compliance through parliamentary scrutiny. Before new legislation and policies were implemented, they were considered in relation to compliance with the CRC. In addition, local courts applied domestic law. When this law was clear, there was no need for international conventions. However, when the CRC was relevant it could be referred to. Court decisions were also meant to be in compliance with the CRC.

The Commission was also concerned about the fact that Australia had not ratified the two Optional Protocols and ILO Convention No. 138. The delegation said that Australia was close to ratifying the Optional Protocols and that all amendments had been made, but that the government first wanted to make sure it was in compliance, for example concerning children in armed conflict and non-state actors. With regards to the ILO Convention, Australia was in compliance, but did not meet the technical requirements, such as a minimum age for employment. It had not been ratified as the government thought current laws and practices sufficiently protected children from exploitation.

Shared Responsibility

The Committee wanted to know the exact link between the federal government, the states and island territories. It wondered whether having so many different governments provided an obstacle to shared responsibility. For example, when funding for families was provided, did funding go from the federal government to each government which then decided how to give out the funding? The concern of the Committee was that the various governments, and levels of governance, could replace rather than complement each other. The Committee therefore asked if there was room for interaction and improvement between the various governments and how the CRC was implemented. The Committee also expressed concern about the fact that Australia lacked a specific commissioner to monitor and promote children's rights. The delegation said that the implementation of the CRC was shared between the various governments due to the federal system. The Council for Australia brought together leaders from all governments to discuss children's issues. For example, the National Agenda for Early Childhood had to be agreed upon across all levels of government to provide all children with the best possible start in life. In addition, it was the role of the federal

government to provide economic and social assistance directly to families, not indirectly through the state governments.

The Human Rights and Equal Opportunity Commission (HREOC)

The Commission was asking how independent HREOC was and whether a special rapporteur for children's rights should be created. The delegation explained that HREOC had a statutory position but that the policy was to be more general and deal with all forms of discrimination and implementation of human rights rather than dividing rights into categories (the former is more efficient). There was no specific children's rights commission but reports had been written on children's rights, for instance on immigration and detention policies. HREOC was completely independent and its officials were appointed by the governor and could not be removed by the government. The Committee also asked about the budget cut. The delegation explained that it resulted from a decision by the high court to remove some functions involving binding determination from HREOC which meant that the budget for these functions was no longer necessary.

Civil Rights

The Committee expressed concern regarding freedom of association and peaceful assembly. The police had the power to prevent children from assembling in public areas, which was a violation of the CRC. The Committee was also concerned about recent counterterrorism acts that allowed children to be detained and questioned. The delegation said that children could only be detained for up to two hours when suspected of a terrorist act, although the time-period could be extended if necessary. Children under 16 could not be questioned. Meanwhile, children over 16 could only be questioned if a crime had been committed, in which case a capable person had to represent the interests of the child. In addition, only people with relevant information could be questioned, and the prosecutor had to demonstrate that the person was intentionally associating with someone they knew was a terrorist and was actually supporting terrorist acts. The association with family members and public worship were excluded, thereby making it unlikely that a child would be eligible for questioning. Regarding freedom of association and peaceful assembly, the delegation explained that Western Australia had a special child protection act that allowed the police to assist unaccompanied children to better areas if it was decided that the present area put them at risk. This applied to young children after dark and children aged 13 to 15 after 10pm.

Indigenous/territorial children

The Committee noted that there were severe disparities between indigenous children and other children and wanted to know what effective measures had been adopted to safeguard non-discrimination and to improve the standard of living for these children. The Committee also asked to what extent indigenous people participated and if they were represented when it was decided how to allocate funds for indigenous people. The delegation said that Australia had a universal social net that made all families below a certain income entitled to economic help, education and health care. In addition, there were indigenous-specific programmes available that were meant to address indigenous-specific problems. However, because indigenous people often lived in small rural communities, it was difficult to reach them. The delegation also said that the disadvantages indigenous people face were not a result of systematic discrimination but of various factors and that it was difficult to solve all the problems immediately.

Thirty indigenous centres had been created nationwide and the National Indigenous Council served as a key source of advice. Funding had increased to AUS\$ 3,344 billion/year. Yet despite this amount, indigenous children were overrepresented in child protection centres and in the criminal system.

An aboriginal child placement programme had been created. Aboriginal children that were not living with their families were first placed with the extended family, then within the aboriginal community,

and then with other aboriginal people. Australia had also begun initiatives to improve attendance of indigenous children in school. These included tutorial assistance, youth leadership programmes, and youth mobility programmes so that indigenous children could reach schools in less rural areas. There was also a shared responsibility local initiative, where agreements were made directly with indigenous people on how to improve the indigenous communities.

Immigrants and Asylum Seekers

The Committee wanted to know what Australia was doing regarding children who were kept in detention while waiting for their asylum and/or visa applications to be handled. The Committee pointed out that these detentions were not good for children and did not protect their mental health or provide education. The Committee was also concerned about unaccompanied children and the length of time some children spend in detention and wanted to know what changes had been made to better address the needs of children in these situations. The delegation explained that there were no families with children in detention centres. Instead, these families were moved into communities where they had freedom of movement with the only requirements that they reported regularly and maintained a specific address while their visa status was addressed. While they waited, the families and children received welfare support from NGOs and children had their specific needs met, such as school and childcare. No family in need in such community arrangements should wait longer than 3 to 4 weeks, and no person seeking asylum should wait more than 3 months.

Citizenship

According to the citizenship act no child under 18 could lose his/her citizenship if at least one responsible parent had Australian citizenship, or if losing it meant that the child would be stateless. If both parents lost their citizenships the minister had discretion and could allow the child to keep his/her citizenship. Children could also resume their citizenship when over 18.

Best Interest of the Child and Children's Participation

The Committee wanted to know to what extent children were allowed to express their views. This included family matters and custodial cases as well as school expulsion. The delegation said that courts were educated, and children should be heard in court. However, in court, the best interest of the child had to be taken into consideration which usually meant protecting children from the court system. In order to achieve this, special family centres had been established to assist families in difficulty through counselling and reconciliation.

There was also separate representation for the child who was meant to independently advocate for the best interest of the child. The Committee commented that the representative's view was not the same as the child's and asked if there was an age-limit for children expressing their views. The delegation said that the age-limit varied and it was up to the court to decide.

The Committee also enquired about children's participation in national roundtables and regional bodies through the youth commissions referred to in Australia's report. The delegation said that HREOC promoted awareness among youth, including a website where teachers could download material and information regarding children's rights to participate. The youth roundtables consisted of children aged 18-24 who represented a wide range of backgrounds, gender, culture, and geography. The roundtables produced reports that were sent to the governments.

Corporal Punishment and Violence

The Committee noted that progress had been made in the area of corporal punishment, but that there should be a legal prohibition nationwide. The current legislation was weak and vague, making it possible to beat a child as long as it was not dangerous. Awareness-raising was also requested by the Committee, for example a national debate that would include children. The delegation replied that corporal punishment was prohibited in all public schools and that it was not endorsed in most private

schools. The delegation also said that it was hard to prohibit something that the community did not endorse, and that awareness-raising was being conducted through government agencies that gave advice to families on parenting. There was also mandatory reporting in place should violations occur.

The Committee also said that there should be a link between domestic violence and corporal punishment, especially as there had been an increase in neglect/abuse cases. The delegation said that the increase was probably due to a new law which meant that the slightest suspicion of abuse called for mandatory reporting. However, domestic violence was an important issue to the Australian government and there was a Women's Safety Agenda that addressed domestic violence and sexual assault. The New Family Relationship Centres also provided counselling and advice. Family Contact Centres provided safe hand-over environments.

Juvenile justice

The Committee said that there was a need to better inform judges of the CRC and that it wanted clarification concerning the age of criminal responsibility. It seemed that in Australia it was assumed that children aged 10 to 14 had criminal responsibility, whereas in most countries it was the opposite. The delegation replied that between the ages of 10 and 14 there was a presumption that children could distinguish between right and wrong, but it was up to each judge to decide. The governments also tried to assist young people and tried to use non-custodial options such as probation and community service. The delegation also said that contrary to the Committee's recommendations it was impossible for rural and remote areas to have separate juvenile and adult detention centres. The option was to send children far away and thereby separate them from their families, which was not in the best interest of children. This explained Australia's reservation to Article 37c. The Committee pointed out that the detention centres could have separate wings and that there was no need for Australia to have such a big reservation to the article.

Health

The Committee noted that there was a lack of mental health services for young people and that suicide rates were high. There were also problems with STIs, anorexia, bulimia, and obesity. In addition, there were disparities between rural and urban areas as well as between indigenous people and other groups. The delegation said that there were various mental health services available that focused on young people with mental health difficulties as well as drug and/or alcohol problems. There were anti-smoking campaigns and the governments were developing strategies to deter illicit drug use. The governments were also focusing on 3 main areas to combating STIs, namely indigenous, gay and territorial regions. There were dietary guidelines for families and children to tackle obesity, malnutrition, anorexia, and bulimia. The delegation also said that there had been positive results when it came to suicide with 150 community initiatives that addressed community-specific problems to prevent suicide in young people. The male-female disparity was probably a result of different suicide methods. In addition, an increased rate in depression and social situation had been identified as causes of suicide. A national helpline, which was a lifeline telephone service, had been set up to assist young people. The Committee pointed out the helpline received 500,000 calls a year but that the government was only responsible for 10% of the helpline's budget.

The Committee asked what the government was doing about female genital mutilation (FGM), especially in cases where girls were taken out of the country to undergo FGM. The delegation said that all states and territories had laws that made it illegal to perform FGM or to bring a child abroad to perform FGM and the practice carried heavy punishment.

The Committee also wanted to know what the government was doing regarding maternity and paternity leave since many women in the private sector were not entitled to maternity leave. The delegation said that since 2004 all women were entitled to approximately 12 weeks paid leave and that half of Australian employees were entitled to maternity leave through individual agreements.

Disabled Children

The 2005 Disability Discrimination Act introduced new disability standards in the context of education and applied them across all education levels. The act described the obligation of education providers and offered suggestions on how to meet these obligations. The Committee asked what the government was doing about the sterilisation of disabled young people. The delegation replied that illegal sterilisation, including those that took place overseas; of children with disabilities was a serious issue. There were strict procedures for the lawful sterilisation of disabled children that had been developed in cooperation with NGOs and Inter-governmental organisations.

Education

The Committee pointed out that there was no reference to the CRC in the educational national curriculum. The Committee also wanted to know if schools received sufficient funding to effectively integrate all children and asked why the dropout rates were so much higher for certain groups, such as indigenous children. The Committee replied that it was trying to improve the attendance of indigenous children through various programmes.

Bullying was also an issue and the Committee wanted to know what the government was doing and if the government worked together with students to combat bullying. The delegation replied that all schools must implement the National Safe Schools Framework and that there was a website called 'Bullying No Way'. Combating bullying was done in cooperation with the education ministers in various states.

Concluding remarks

The Committee observed that Australia had made several important legislative amendments in areas such as the family, immigration, child pornography and trafficking. The Committee also found it positive that the government had created several new bodies addressing children's rights, including the New Family Relationship Centres, the New Task Force on Indigenous Affairs, and the National Indigenous Council. However, the Committee felt that the government should make a commitment to ratify the ILO Conventions, as well as the Optional Protocols. The Committee also found that the status of refugee, indigenous, and territorial children remained questionable.

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