



**Convention on the
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COMMITTEE ON THE RIGHTS OF THE CHILD

Fortieth session

SUMMARY RECORD OF THE 1054th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 13 September 2005, at 10 a.m.

Chairperson: Mr. DOEK

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Second and third periodic reports of Australia

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4)

Second and third periodic reports of Australia (CRC/C/129/Add.4; CRC/C/Q/AUS/3; CRC/C/RESP/90; HRI/CORE/1/Add.44)

1. At the invitation of the Chairperson, Mr. Davis, Ms. Feeney, Ms. Hambling, Ms. Leon, Ms. Mudie, Ms. Nguyen and Mr. Smith (Australia) took places at the Committee table.
2. Mr. SMITH (Australia) said that the Federal Government and the governments of the six States and the two self-governing territories shared responsibility for ensuring respect of many of the rights contained in the Convention. In cooperation with the Federal Government, the Human Rights and Equal Opportunities Commission was making efforts to raise awareness of all human rights and to ensure their promotion and protection. Given the significant role played by civil society in implementing the Convention, the Government had consulted non-governmental organizations (NGOs) when preparing its second and third periodic reports.
3. The Government was developing its National Agenda for Early Childhood, with specific reference to the Convention, in order to improve coordination of child development activities and to guide future investment. While the final version of the Agenda had yet to be published, the current version had proved useful in strengthening coordination across sectors working to support young children and families. In 2005, the Australian Institute of Health and Welfare had published a report on children's health, education and social welfare, as well as information on family and community issues associated with child development.
4. Indigenous children were among the most disadvantaged in Australia. The Aboriginal and Torres Strait Islander Commission had been abolished in 2005, and the Office of Indigenous Policy Coordination had been established. The mandate of the Office was to ensure a coordinated approach to indigenous issues based on shared responsibility between the Federal, State and Territory governments. The Office included a network of 30 indigenous coordination centres, and national indigenous-specific spending had increased to \$A 3.144 billion in 2005.
5. Amendments to criminal legislation had strengthened the protection of children against trafficking, pornography and related offences. New offences of trafficking in persons had been introduced in the Criminal Code in order to enable Australia to fulfil its obligations under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. New criminal legislation had been adopted to punish persons who used the Internet to access and disseminate child pornography and child abuse materials. Current legislation allowed the police to identify and arrest adults before they had an opportunity to abuse children sexually. Australian jurisdiction had been extended, and Australian citizens or legal entities outside Australia could be prosecuted for such behaviour.

6. Since July 2005, the migration and visa system ensured that all families with children who entered Australia illegally were moved from immigration detention centres to the community. The community-based arrangements had been implemented in partnership with NGOs, which conducted individual assessments, developed care plans and provided caseworker support for each family, with government funding. Amendments to the Migration Act would introduce greater flexibility and fairness in immigration detention policy. In particular, the amendments reaffirmed the principle that minors should be detained only as a last resort.
7. The Family Law Act had been amended to facilitate shared parenting and to encourage parents to consult with one another on important decisions, such as children's schooling and health. A national network of 65 family relationship centres was being established to assist separated parents in making arrangements for their children; the centres provided information, advice and dispute settlement services. A national telephone information and advice line and a website would offer further support. The amended legislation also provided that indigenous children had the right to enjoy their own culture. Courts would be required to respect the kinship and child-rearing practices of indigenous cultures when they applied the Family Law Act.
8. Mr. FILALI, Country Rapporteur, commended the State party on its new framework for the protection of human rights, including the creation of a new federal Department of Family and Community Services, Families Australia and the National Plan of Action against the Sexual Exploitation of Children. While significant progress had been made since the consideration of Australia's first periodic report, the State party had yet to implement some of the Committee's recommendations. The Committee believed that Australia's reservation to article 37 (c) could impede its full implementation of the Convention. He requested additional information on the new situation of refugees and asylum-seekers and their children in the community, particularly in the light of the conclusions of the 2004 National Inquiry into Children in Immigration Detention.
9. The reporting State should indicate how the Ministry for Children and Youth Affairs would be able to implement and promote policies concerning children, particularly since its authority and budget had been reduced. It would be useful to have a full account of cooperation between the Federal and regional governments, particularly regarding children at risk. He asked why the Human Rights and Equal Opportunity Commission did not have a commissioner to monitor and promote children's rights. He requested information on the Commission's current budget and the powers of the judiciary to block its decisions.
10. The reporting State should explain why the police had the power to prevent children from gathering in certain places, since that appeared to violate the right of association guaranteed by the Convention.
11. Mr. ZERMATTEN, Alternate Country Rapporteur, requested additional information on the status of the State party's ratification of the two optional protocols to the Convention.
12. Since the Human Rights and Equal Opportunity Commission was the main body responsible for ensuring respect for the principle of non-discrimination, it would be useful to have further information on the Commission's need for a special rapporteur on children's rights, its ability to ensure respect for children's rights, and its budget and degree of independence.

13. He asked what measures the State party had taken to ensure that the principle of non-discrimination was applied to aboriginal children. The reporting State should indicate whether indigenous children and refugee children had access to the same standard of living as other Australian children. It would be useful to know whether the Government had all the necessary resources to inform indigenous children of their rights and to ensure implementation of those rights.

14. Mr. ZERMATTEN asked how the right of children to be heard was ensured in practice, particularly in administrative decision-making. According to the Committee's information, children rarely had an opportunity to express their opinions on school-related matters, particularly in cases of expulsion. He wished to know whether children could request to be heard by a judge in civil proceedings and, if their parents were divorcing, whether they could request separate legal representation from that of their parents. He wished to know how much weight was given to children's opinions in such cases. He asked how the National Youth Roundtable and the children's commissions were composed and represented. The delegation should indicate how many regions had children's commissions, and whether the National Indigenous Youth Leadership Group still existed.

15. Ms. AL-THANI said that the State party should prohibit the use of corporal punishment in institutions and the home. She asked what measures were being taken to raise awareness of corporal punishment, and whether the Government had considered holding a national debate on the issue, with the participation of children.

16. Ms. KHATTAB asked whether the measures that had been taken to increase resources for programmes to promote indigenous rights were sufficient to ensure that indigenous peoples had the same rights as the rest of the Australian population. She wished to know how the amendments to the family law system, which aimed to guarantee the right of indigenous peoples to enjoy their culture and identity, addressed the concerns expressed by the Committee in its concluding observations (CRC/C/15/Add.79). The Government should take measures to improve the national data collection system; in particular, she would be interested in receiving statistics on sectors of the population requiring special protection, such as street children and children with HIV/AIDS, and on child labour and juvenile justice. According to information available on the Internet, 100 per cent of births in Australia took place in the presence of a skilled health professional. She wished to know who had supplied that information, and whether such information - if correct - included indigenous births and births in remote areas.

17. Current Australian legislation defined the child as a person under the age of 19 years. She asked when that definition would be brought into line with the definition contained in the Convention. The Committee had received reports of discrimination against indigenous peoples, and discriminatory practices resulting from anti-terrorism legislation, particularly against Arabs and Muslims. She asked what measures were being taken to prevent violence against women and children. She wished to know whether domestic violence was prevalent only among indigenous families, or whether the problem affected the whole population. She wondered whether the High Court would eventually rule that the detention of asylum-seekers whose applications had been rejected was unconstitutional.

18. Ms. ALUOCH said that, since individuals in Australia could not lodge complaints in local courts on the basis of the Convention, and the Convention could not be invoked to override inconsistent provisions of domestic law, she wished to know whether the Convention could be applied directly in courts only at the discretion of judges. She asked under what “limited circumstances” (CRC/C/129/Add.4, para. 143) children could lose their citizenship.

19. Ms. SMITH requested further information on the status of the Convention in relation to domestic legislation. Measures should be taken to bring all domestic legislation into line with the Convention. She asked how the Federal Government allocated resources to State and Territory governments, and how it ensured that targeted allocations reached the intended recipients. The delegation should explain the concept of the social and economic participation of families. She asked how old a child had to be in order to exercise his or her right to be heard in court, and whether that right was guaranteed in schools and medical practices.

20. Mr. KRAPPMANN asked how the Committee could obtain copies of the Australian Government’s new report on children.

21. Mr. LIWSKI asked whether the establishment of the Ministry for Children and Youth Affairs had resulted in a marked improvement in the coordination of youth policies. He wished to know whether children, or persons acting on their behalf, could file complaints with their local ombudsman’s office and Office of Youth Affairs, and whether those bodies coordinated their efforts to provide timely responses to complaints. He asked what the results of the implementation of the Living in Harmony initiative had been, and which sectors of the population were involved in that initiative. He wished to know whether efforts were being made to ensure that there were no further cases of indigenous children being separated from their families, and to reunite families that had been separated under past policies.

22. Mr. KOTRANE asked why Australia had not ratified International Labour Organization (ILO) Convention No. 138 concerning Minimum Age for Admission to Employment and ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, and whether the Government intended to ratify those conventions and the two optional protocols to the Convention on the Rights of the Child. Further information should be provided on children affected by poverty in the State party. He would appreciate information on how the Government had amended its requirements regarding juvenile detention, as well as how those requirements and the relevant provisions of the Convention were disseminated to judges. He wished to know the minimum age of criminal responsibility, and whether children between the ages of 10 and 14 could be tried in a criminal court. He asked what measures were being taken to reduce the number of suicides among young people.

23. Ms. VUCKOVIC-SAHOVIC asked what had prevented Australia from allocating 0.7 per cent of its gross domestic product (GDP) to overseas development assistance, and whether the Government intended to continue its efforts to meet that target. The delegation should provide further information on trends in budgetary allocations for family-related issues, such as day care, health care and indigenous children’s issues. She commended the establishment of the Family Law Hotline and asked how the Government intended to ensure that sufficient action was taken to follow up the calls received. She wondered whether the Government’s provision of 10 per cent of the Hotline’s annual budget was sufficient, and whether such funding would increase.

24. Mr. SIDDIQUI asked how legislation on indigenous issues had been amended, particularly regarding issues such as participation and funding for indigenous projects. He wished to know whether there was a time limit on the implementation of programmes for indigenous children in the areas of education, health and juvenile justice.

25. Mr. POLLAR asked whether the State party had encountered any difficulties in implementing article 12 of the Convention and, if so, what they had been. He requested further information on specific measures to prevent discrimination against girls. He wished to know whether the Convention's provisions on non-discrimination were ever invoked in court.

26. Mr. PARFITT asked whether the Office of the Ombudsman supported the provisions of the Convention in respect of family and children's issues. He wished to know how the Federal Government's budgetary allocations for indigenous children would be administered, and whether indigenous people would participate in the decision-making bodies that dealt with the distribution of those funds. He wondered whether the discussion of the Convention had been incorporated into school curricula.

27. Ms. OUEDRAOGO requested information on measures to redress the imbalances in the provision of funds for basic social services, including health and education, in remote areas, and why agreements had been established only on the basis of compensation. She asked whether indigenous children were represented in the children's commissions, and how consideration of their opinions was guaranteed, particularly in their communities. She wished to know how the Government planned to combat violence between and against children.

The meeting was suspended at 11.20 a.m. and resumed at 11.40 a.m.

28. Ms. LEON (Australia) said that the Federal Government, the Commonwealth Government and the State and Territory governments shared the responsibility for implementing the Convention. A number of ministerial councils ensured close cooperation between the Federal Government and the States and Territories on all policy issues.

29. Over \$A 20 billion had been spent on economic assistance for families with children in the current financial year. The families concerned received payments directly from the Government.

30. The Government had taken steps to bring Australia's laws, policies and programmes into line with the Convention before ratifying it. A special parliamentary committee analysed proposed new legislation in order to ensure that it complied with the relevant provisions of the Convention. The Human Rights and Equal Opportunity Commission was responsible for ensuring that the Federal Government fulfilled its international human rights obligations. States and Territories had their own special human rights monitoring bodies.

31. The Human Rights and Equal Opportunity Commission promoted human rights, conducted awareness-raising activities, provided human rights education and reported to the Government on issues that needed to be addressed. The Commission's independence was guaranteed by law. Commissioners and the President of the Commission were appointed by the Governor-General of Australia for a fixed term, and there were very few reasons for which they could be removed from office. Although each commissioner currently had a specific mandate, in

future all commissioners would be responsible for the implementation of the whole range of human rights. None of the commissioners dealt specifically with children's rights. The Commission was currently engaged in a dialogue with children between the ages of 11 and 18 in order to hear their concerns and assess to what extent they were aware of their rights.

32. Pursuant to a High Court decision that a non-judicial body should not make binding decisions, the Commission's decision-making function had been transferred to the Federal Court and the Federal Magistrates Court, and its budget had been reduced accordingly. No other significant reductions had been made to the Commission's budget over the past few years.

33. The CHAIRPERSON wished to know the type of cases in which the Commission had previously made binding decisions, and why the removal of its decision-making function had resulted in a considerable reduction in its budget.

34. Ms. LEON (Australia) said that, in the past, the Commission had investigated individual complaints concerning discrimination on the grounds of race, sex, age or disability, and had made binding decisions concerning the measures to be taken in such situations.

35. Mr. FILALI asked what measures the Federal Government could take if a State or Territory did not apply certain provisions of the Convention.

36. Ms. KHATTAB asked whether the fact that the Commission could no longer take binding decisions made it more difficult for individuals to file complaints.

37. Ms. LEON (Australia) said that there was an ongoing debate in the Government and the general public on the powers of the Federal Government vis-à-vis those of the States and Territories. If a State or Territory failed to ensure that certain legislation complied with the Convention, the Government tried to persuade it to do so.

38. The Government had been compelled to implement the High Court's decision to rescind the power of the Human Rights and Equal Opportunity Commission to make binding decisions. However, complaints were submitted to a court only if the Commission failed to deal with them by conciliatory or other means. Primary jurisdiction in human rights matters had been given to the Federal Magistrates Court, which had been established with a view to ensuring relatively easy and inexpensive access to the courts. Court fees for human-rights related cases had been reduced.

39. The Ombudsman was competent to receive complaints concerning any type of action by government agencies that violated a person's rights. Depending on the nature of a particular complaint, the Ombudsman decided whether or not it should be dealt with by the Office of the Ombudsman, the Human Rights and Equal Opportunity Commission or a State anti-discrimination body.

40. Disaggregated data on HIV cases had been provided in the written replies. The Australian Bureau of Statistics was currently taking steps to improve and facilitate access to the data collection system. Several studies on the development, health and education of various categories of Australian children were currently being conducted.

41. The Government had taken the necessary legislative steps to ensure compliance with the two optional protocols to the Convention, as well as with ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. It intended to ratify those instruments in the near future. Although Australia's legislation generally complied with the provisions of ILO Convention No. 138 concerning Minimum Age for Admission to Employment, it did not meet some of the Convention's technical requirements. Children of school age were required by law to attend schools and were prohibited from working during school hours.

42. Mr. ZERMATTEN asked whether Australia's lack of a national action plan for children, and the fact that none of the commissioners in the Human Rights and Equal Opportunity Commission dealt specifically with children's rights, was considered to be more advantageous than disadvantageous. He wished to know whether economic assistance was provided to all families with children or only to certain categories of families. Lastly, he requested the delegation to explain what was meant by an "anti-discrimination body".

43. Ms. LEON (Australia) said that the Government provided assistance to families with children on a sliding scale. All single-income families were entitled to a tax benefit. The Government had not established a commission that dealt specifically with children's rights because it was of the view that human rights should be addressed in a unified manner. The division of responsibility for human rights among specialized departments was inefficient and made it difficult to deal with issues on a priority basis. The Human Rights and Equal Opportunity Commission carried out specific functions related to the implementation of the Convention and actively advanced the cause of human rights.

44. Ms. HAMBLING (Australia) said that indigenous Australians were entitled not only to the services provided by the national social security, health-care and education systems but also to specialized programmes to compensate them for their socially and economically disadvantaged position. More than one quarter of the 400,000 persons who identified themselves as Aboriginals or Torres Strait Islanders lived in remote parts of Australia. Of that number, one half lived in communities of fewer than 20 people, which complicated the delivery of government services to those communities. The Council of Australian Governments, which was made up of the heads of the Federal, State and Territory governments, was committed to promoting reconciliation between indigenous and non-indigenous Australians and to addressing the social and economic disparities that existed between them. The Council had prepared a national framework of principles on delivery of government services to indigenous Australians. Those principles provided a framework for bilateral agreements between the Federal Government and each State and Territory government on how best to cooperate with indigenous populations at the local and regional levels.

45. The Council of Australian Governments had commissioned a series of reports on addressing the root causes of disadvantage among indigenous Australians. The reports provided a framework that included both a vision of what life should be like for indigenous Australians and strategies to achieve that vision. Many of the strategic areas in which efforts were likely to have the greatest impact involved early intervention with children and families. A number of positive initiatives - some undertaken by indigenous communities themselves - were leading to constructive new relationships between indigenous Australians and the Government and the private sector.

46. Mr. FILALI wished to know whether the Federal Government had developed a comprehensive family assistance strategy. He asked what steps had been taken to ensure that the right to paid maternity leave was respected in all sectors of the Australian economy. Improvements were needed to increase the number of childcare facilities and to make them affordable to all families. He would appreciate clarification concerning reports of repeated expulsions of indigenous children from school and of indigenous children who refused to attend school regularly.

47. He asked whether measures had been taken to address the insufficiency of mental health services for young persons. It would be interesting to know whether studies on suicide among the indigenous population had been conducted, and whether qualified psychiatric staff provided support for suicide prevention. He was concerned that children who received a temporary protection visa did not have access to health, education or social security. The delegation should provide statistics on the number of street children and the number of indigenous juvenile offenders. The fact that the minimum age of criminal responsibility in Australia was only 10 was cause for concern.

48. Mr. ZERMATTEN, noting that among the 20,000 children living outside their nuclear family, 51 per cent were placed in foster homes and 40 per cent were placed with their extended family, asked where the remaining 9 per cent were placed. The delegation should explain why indigenous children accounted for 20 per cent of all placements, when they made up only 2.7 per cent of the youth population of Australia. He enquired whether any evaluations of placement centres had been made subsequent to the 1999 evaluation and, if so, what results had been obtained. He wished to know what possibilities children living in institutions had to keep in touch with both sides of their family.

49. He was concerned at the level of domestic violence in Australia and the disproportionate number of indigenous children that it affected and he wondered whether the federalist judicial system was the appropriate means of dealing with cases of domestic violence. He requested clarification of the Partnerships against Family Violence programme.

50. The delegation should provide information on the number of school dropouts, and the relevant statistical data should be disaggregated into indigenous and non-indigenous groups. He asked whether courses on the history of indigenous groups, as well as courses on human rights, had been introduced in school curricula. The delegation should explain the term "flexible detention arrangements". He enquired whether refugee families with children who had been released from prison enjoyed freedom of movement and had access to education and jobs. The delegation should comment on the status of refugees, particularly children, who had been transferred to neighbouring countries.

51. Ms. AL-THANI said that the Government should address the fact that all categories of children with disabilities in Australia faced disparities in the provision of services as compared with other children. She requested additional information on vocational training for young people with disabilities and clarification of reports of the sterilization of those young people.

52. She would welcome statistics on breastfeeding and further information on nutrition, obesity and eating disorders, including what measures schools had taken to address the issue of eating disorders in school-age boys and girls. She was concerned at the reported overdiagnosis

of attention deficit/hyperactivity disorder in Australia and the possible harmful side effects of the medication prescribed for it. She wished to know the reasons for the decline in teenage pregnancies. She asked what measures were being taken to deal with sexually transmitted diseases and substance abuse among teenagers.

53. Mr. KRAPPMANN asked whether there had been any change in the Government's reasoning regarding Australia's lack of an official poverty line. He requested information concerning poor children in Australia, and asked whether any programmes had been set up to address their needs.

54. He asked whether the Government provided mainstream schools with the materials and equipment that they needed to accommodate children with disabilities. He enquired whether youth unemployment was a problem in Australia and whether there were programmes to assist young people entering the labour market. He wished to know whether the Government had launched programmes to deal with bullying in schools. He wondered whether Australia had had any experience with using peer education to address such problems.

55. Mr. KOTRANE wished to know the length of maternity leave to which women in Australia were entitled, and whether paternity leave existed. He asked what was the status of child labour in Australia and whether there were labour inspectors to prevent the employment of children.

56. Mr. PARFITT asked why the incidence of youth suicide was much higher among males than females. He requested information on Australia's policy on the sterilization of young people with disabilities, particularly with regard to court procedures and consent. The delegation should explain the reasons for the increased number of children in institutional care. He asked whether the Council of Australian Governments had sought the participation of indigenous people in developing its goals for overcoming indigenous disadvantages.

57. Mr. LIWSKI requested information on health care in rural and remote areas, including the Rural Health Information Project and rural health and aged care programmes.

58. Ms. SMITH said that the Government of Australia should incorporate the principles of the Convention into its domestic legislation so that the Convention could be invoked in the courts. She wished to know how many children could be accommodated by the family centres that provided safe havens for children involved in custody disputes. She requested additional information on pretrial detention, including parents' involvement and legal assistance. She was surprised that Australia had not abolished corporal punishment and that maternity and paternity leave was not more generous or widely granted.

59. Ms. ALUOCH asked whether the developments in the Family Law Act regarding shared parenting applied to unmarried couples with children.

60. The CHAIRPERSON said that the delegation should explain why only 20 per cent of the cases of reported child abuse and neglect were corroborated.

The meeting rose at 1.05 p.m.