

aboriginal people it will mean that they are no longer "welfare cases" but Indigenous People with a special place in Australian society.

Naturally, remedies for the material problems are essential too. A wealthy society such as this with the standard of living and rights that non-aboriginal people enjoy should not tolerate the islands of want and oppression that exist. There must be a concerted assault against the areas of impoverishment. This means Government and non-government organisations discussing reports like "Aboriginal Child Poverty" with Aboriginal organisations like ours. We emphatically reiterate the principle that it must be aboriginal communities that decide what is in their best interests. This will also ensure less wastage and the delivery of more appropriate programs and projects.

In the field of child welfare we have long advocated a National Aboriginal Child Welfare Act along the lines of the North American Indian version of 1978. The Australian Law Reform Commission Report No. 31, 1986, "The Recognition of Aboriginal Customary Laws" went some way towards assessing this goal. It's recommendations were limited however, and we feel there is a need to actively move towards developing and implementing such an act.

Non-aboriginal Australians must also accept that there are no quick-fix solutions. Problems that take 200 years to create will

require some thought and experimentation to sort out. Government must therefore make a long-term commitment to aboriginal programs to enable them to try the solutions they wish and see what results obtain. Mistakes will occur and this must be taken into account in planning too.

The Government must also support Aboriginal community-controlled projects. These organisations are very good training grounds for aboriginal people who often find private enterprise far too alienating an environment in which to work especially after long periods of unemployment.

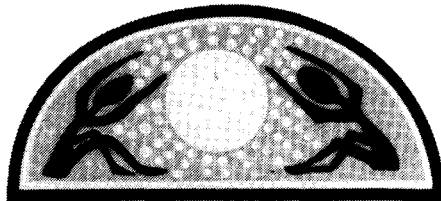
Australian society must also work towards changing attitudes. Racism denies people an opportunity to contribute their talents to the general well-being of that society. We must also eradicate the institutional racism; the sort that refuses to recognise different customs and laws and acts as a barrier to equal participation.

If these changes can be achieved we will move a long way towards creating the conditions for the deep-seated problems to

be worked out.

All of this will cost money and this is perhaps where the catch is. For inspite of the fact that money is generally regarded as the key to most things in this society, it is denied to aboriginal people. Aboriginal people still have no significant capital base within the community to develop their own independent structures. This, one must say, is the most accurate measure of dispossession. It is true that millions have been spent on aboriginal affairs and not much has apparently changed. Maybe it is too early to judge? In any case, without a commitment to further funding – which should be viewed as compensation not as welfare handouts – little will happen in the economic context we are in today.

For Aboriginal children the nineties will be crucial. The end of the decade will tell us not only whether we have been on the right path, but also whether the plans we make today will prepare them for the 21st century. Perhaps the ability and willingness of this society, to help find a genuine solution to the problems aboriginal people and their children face, will also be a measure of the effectiveness of the solutions we all need to find to the crises that face all mankind. Certainly the measure of the well-being of aboriginal children in Australia at the end of this millennium will be a barometer of the health of this society and the state of human rights for aboriginal people.



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Aboriginal Children 1990 and the International Convention on the Rights of the Child

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This paper was presented as an address to a Bureau Seminar on June 14, 1990

Seven days after he had attempted to gouge out his own eye with a paintbrush, 29 year old Malcolm Charles Smith, died in Sydney's Prince Henry's Hospital on January 5th 1989. Apart from the unusual circumstances of Malcolm's tragic death, inadvertently caused by his own actions, everything about his brief life since 1965 had been a complete denial of his existence as a human being and an aboriginal child.

At the age of eleven, Malcolm was taken

away from his family. I will quote Royal Commissioner Hal Wooten from his Report into Malcolm Smith's death:

Immediately prior to 5 May 1965, the other date from which Malcolm's story may be commenced, he was a happy, healthy and free eleven year old, albeit grubby, living in a humpy, and truant from a school made unattractive by racial prejudice and irrelevance to his life. He was taken away from his family by police, cut off from his family, whom he did not see again until he

was 19, and sent to Kempsey, over 1500 kilometres away on the coast, beyond the boundaries of their accessible world. When he finally rediscovered them at the age of 19, it was too late for him to start a normal life. The intervening eight years, mainly in despotic institutions of various kinds, had left him illiterate and innumerate, unskilled and without experience of normal society. He had been taught a model of human life based not on mutual respect, co-operation, responsibility, initiative, self-expression and

love but on dominance and subservience, rigid discipline and conformity, repression and dependance, humiliation and fear, with escape or defiance as the only room for initiative. He had experienced the law as a system which gave him no rights, no representation and no consideration, ignored the existence of his family and treated him as having no place outside an institution. Instead of being socialised into the family and kin network so important to Aboriginals, he had been 'socialised' to survive in institutional communities. The society which had deprived him of the opportunity to grow up in a family and learn to live in a free community offered him no assistance whatever in adjustment or rehabilitation, but visited his every lapse with penal sentences." Some people may say that this is all a matter for historical record and that the kind of things that happened to Malcolm as a child could not possibly happen to Aboriginal children today. Indeed it is true that many changes have taken place, not least amongst these is the rise in Aboriginal political consciousness and organisation, which has also meant a greater demand for the equal enjoyment of rights taken for granted by non-aboriginal Australians.

In spite of the advances we have made, there are still gaps and obstacles which continue to keep us and our children at the bottom of the pile in Australian society in the nineties.

It is my assertion that despite the changes to legislation particularly in the field of child welfare and the development of organisations like Aboriginal Child Care Agencies, Australia's child welfare and juvenile justice system continues to destroy young aboriginal lives like Malcolm's. What I am saying is that Aboriginal children still do not have rights and that the oppression of our people is reproduced through the lives of our children. In a racially oppressive society such as Australia, what place can an International Convention detailing the rights of children have? How and why should such a Convention change a situation and society when other equally important measures have done very little?

The Australian Constitution for instance empowers the Commonwealth Government with rights that enables them to make special laws for the benefit of Aboriginal people.

Let me say at the outset that we have no illusions about the ability of laws to afford us protection and guarantee our advancement. The history of European occupation of our land is littered with broken promises, empty phrases and ambiguous laws. Our problem is that in order to make laws work for us we have to wait for or stimulate changes in attitudes in society and its institutions. Despite our scepticism about 'white' laws we will nevertheless do our utmost to use whatever means are at our disposal to achieve changes for our benefit. It is in this context that we welcome the adoption of the

International Convention of the Rights of the Child by the General Assembly of the United Nations. It is also in this spirit that we yet again call on the Australian Government to ratify the Convention and take it's place alongside the other nations in the world who have accepted the challenge to meet certain minimum standards to protect the world's children. Of all the children in Australia today, once ratified, the International Convention of the Rights of the Child will have the greatest relevance for aboriginal children. I will outline these areas of concern which the Convention refers to in its articles particularly those which relate to the findings of our recently published report into Aboriginal Child Poverty.

This denial of our identity is a part of the racism that pervades all aspects of Australian society. It is in the education system where the curricula disregard Aboriginal history and achievements, indeed where the stereotypes live on and where European languages are offered and not Aboriginal ones. It is also in the juvenile justice system which sees an over-representation of aboriginal children.

In this report, the author, our research worker, Christine Choo, developed the following definition:

"The poverty of Aboriginal children must be considered in the context of the deprivation of the whole Aboriginal community. It includes the spiritual, psychological, emotional and cultural loss that has come with the failure to recognise the Aborigines' prior ownership of this land and the subsequent oppression of the Aboriginal People.

The breakdown of Aboriginal law, culture and traditions through the structural injustice of white oppression has created a 'culture of poverty', further entrenching the deprivation over the last 200 years.

In recent times, the structural injustice has been manifested and perpetuated through inequitable funding processes, which ignore self-determination principles and self-management from an Aboriginal perspective, further marginalising and handicapping the Aboriginal community.

Therefore when we speak of the poverty of Aboriginal children we refer first to poverty that is broader than material poverty, although it includes this material poverty. It is the deprivation that is the consequence of a loss of cultural continuity and identity as a result of dislocation from their spiritual and economic base – the land.

In terms of the material poverty that is secondary to the loss of culture and identity, Aboriginal children are the most disadvantaged in Australia. Many suffer absolute poverty, comparable with the poverty in some third world countries; poverty defined by the absence of the basic requirements of food, water, shelter, essential to the maintenance of a healthy life.

In addition to this material poverty is the relative poverty, which Aboriginal children share with many non-aboriginal children in this country. This poverty is described as the absence of a decent standard of diet, clothing, housing and health care, and in not being able to participate in employment, education recreation and the family and social activities and relationships that are commonly experienced or accepted by Australians."

This quote defines our view of the poverty of our children. It does not separate material poverty from its causes, it also underlines the importance of culture and our spiritual and indigenous relations with this land.

The convention refers specifically to indigenous children's rights in Article 30. It also recognises the rights and responsibilities of the 'extended family or community' in the rearing of children in Article 5. Article 7 & 8 concern the identity of the child. All these articles including Article 2 which establishes the right to the universal enjoyment of all the rights set out in the



convention, without discrimination, relate either directly or indirectly to the recognition of our children as Aboriginal children. In this society where the recognition of our indigenous identity and culture is still only grudgingly conceded, these articles will play a very important role.

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The Aboriginal Child Poverty Report called on the Commonwealth and State Governments to 'recognise that this racism in the Australian community is affecting the life chances of aboriginal children by preventing their access to education, employment, services and facilities and equity of participation in these activities, which constitute the fabric of contemporary life in Australia.

Article 6(2) which says that 'States Parties shall ensure to the maximum extent possible the survival and development of the child', extraordinary though it may seem will also be applicable to Australia because we really are talking about the survival of our children.

Surviving and developing means attaining certain standards of health. In Australia today our children are worst off even in this regard. I quote from 'Aboriginal Child Poverty' again:

"Mortality and morbidity rates among Aboriginal children are alarmingly high and relate directly to poverty and lifestyle factors among a range of communities; urban, fringe and bush. Too many aboriginal children are malnourished, and as a consequence, their learning and development are seriously affected. No child in Australia should suffer the malnutrition now experienced by these Aboriginal children. The current situation is a national disgrace. If respect is shown to the Aboriginal communities, concrete steps must be taken to address the loss of potential among the children who do survive, especially through the provision of improved access to nutritious food, to nutrition education, and to health care. The introduction of any programs must be culturally appropriate, determined and provided by the Aboriginal communities themselves.

Article 24 of the Convention will serve to strengthen our hand in pressuring the Government to implement the recommendations of our Report in relation to the health of our children. This Article may have been developed with third world children in mind, but it could not have been more relevant to the present condition of our children."

Article 16 deserves a special mention because it calls for the protection of children from unlawful attacks. Article 19 also calls for protection from all forms of violence, mental and physical. The level of violence in aboriginal communities was noted by the National Committee of Violence. Their Report stated that 'Aboriginal Australians face a much greater risk of becoming the victims of violence than do members of the general Australian population, possibly up to ten times greater in the case of homicide.'

The committee did not consider in any detail the kind of violence inflicted on Aboriginal people by society. The violence of poverty and oppression. Nor did it assess the role of state violence in the form of police violence, which the Human Rights Commission did in its report into the Police raid on Redfern on February 8th, 1990, or the violence of racist abuse and denigration. All these are forms of violence, which our children sadly, have to live with and are entitled to be protected from.

Article 27 recognises 'the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development'. Housing would be one aspect of any standard of living. 'The Burdekin Report into Homeless Children in 1989 said that homelessness affected many Aboriginal children and young people. Christine Choo, in 'Aboriginal Child Poverty' was more explicit:

"Aboriginal People are the most severely deprived group in the Australian population in relation to housing needs. In 1986 nearly 12,500 people (6% of Aboriginal households) lived in impoverished or temporary dwellings compared with 1.4% of all Australians. Children and youth suffer most from the long-term effects of inadequate housing and homelessness. Inadequate housing of Aboriginal people is a multi-faceted issue, for it contributes to the poverty of Aboriginal children, while it at the same time is the consequence of that poverty. Shelter is culturally defined not only in the use of living spaces, but also in the number of people living there and how they live there. Aboriginal children have been inadequately served by the Australian community wherever they suffer the consequences of overcrowding and homelessness."

In the cycle of oppression, disadvantage and poverty, most aboriginal children at some point in their childhood come up against the welfare or juvenile justice system. The Convention lists a number of articles which are relevant.

Firstly, in relation to child welfare matters there is Article 9 which states that, 'a child shall not be separated from his or her parents against their will, unless this is done by the appropriate authorities using appropriate legal avenues and after all concerned parties have had an opportunity to be heard'.

Article 12 gives the child him/herself the

right to be heard in any judicial or administrative proceedings'.

Article 19 provides protection for the child against all forms of abuse and violence whilst in the care of parents, legal guardians of any other persons. It also calls for support services and social programmes for the child.

Article 20 'establishes the rights to alternative care if a child cannot continue to live in its own family environment'. This article in clause 8 also ties in the child welfare provisions with the principle of the maintenance of identity in alternative care placements. "When considering solutions due regard shall be paid to the desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background". Our reading of the child welfare articles along with Article 4 of the Convention which says that 'State Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in this convention' suggests that our objective of National Legislation to regulate Aboriginal child welfare will be that much closer.

The over-representation of aboriginal children in the child welfare system, flows into the juvenile justice and corrections area.

Most of the data around the country about Aboriginal children and the juvenile justice system, held by State and Territory Governments is not of the highest standards, indeed some States still do not identify aboriginality. In spite of these drawbacks, whatever information is available is nevertheless a good indicator of the current situation.

In Western Australia the over-representation of Aboriginal youths in the juvenile justice system increases with the higher the level of the justice system that handles their cases.

Aboriginal children make up 12% of all children at the panel level; 29% of all children in court; 47% of those appearing before the courts more than 5 times; 64% of those appearing before the court more than 15 times and 76% of those placed in custody.

Information also shows that although the numbers of all children admitted to institutions has decreased, the ratio of Aboriginal to non-Aboriginal has actually increased. Of the 64 Aboriginal children in custody all of them were either unemployed or not attending school before admission into the institution.

In Queensland, figures for children under orders - a form of wardship shows that 1079 of 4346 children were Aboriginal, or almost 25% of all orders. In community corrections 567 young Aboriginal and Islander offenders were sentenced to Community Orders in 88/89 out of a total population of 4973, or 11% of the total. Of the children placed under custodial corrections 15% were Aboriginal and Torres Strait Islanders who are seven times more likely to be admitted to custody than non-Aboriginal children.

In the Northern Territory of all the 8424 cases heard in the Juvenile Courts since 1983, 3741 were Aboriginal. This figure represents almost 45% of the total. These figures may well be an underestimate however, because 2226 of the total was not classified for ethnicity. The general picture of over-representation is nevertheless clear enough.

New South Wales does not diverge from this trend. The Human Rights Commission Inquiry says that although Aborigines make up less than 1% of the State's population, 15% of all children in the care of the State are Aboriginal. This is confirmed by others.

The charge rates for Aboriginal youth are 6 times greater in Dubbo, 47 times greater in Wellington, 57 times greater in Brewarrina, 36 times greater in Bourke and 90 times greater in Walgett than those which exist for non-Aboriginal youth.

Kerry Carrington in her article in the *Journal for Social Justice Studies*, Volume 3, (1990) said, "In NSW, Aboriginal People comprise only 0.3% of the metropolitan population and 0.7% of the total population of NSW yet constitute about 25% of the inmates in the States' juvenile correctional institutions.

The South Australian juvenile justice system which has been closely studied by Gale and Wundersitz, showed that Aboriginal youth suffered disadvantage. They said that "given that Aborigines made up only 1.2% of all South Australian youths aged 10-17 years, the rate of Aboriginal detention was 26.5 times greater than expected". In their study they also showed that this over-representation and disadvantage increased

the higher up the juvenile justice scale Aboriginal children got.

"At the point of initial contact with police, they are more likely to be apprehended, and more likely to be apprehended by means of arrest. At the Screening Panel level, they are more likely to have their cases directed to the Children's Court rather than to the Children's Aid Panel. Finally at the disposition stage of a Children's Court hearing, they are more likely to receive a penalty of detention".

Finally in Victoria where Aboriginal children are only 0.6% of the population of all children they make up 3.8% of the numbers of children who are wards.

The convention's articles relating to juvenile justice and detention of children are Articles 12, 37 and 40. Taken together they will, if followed, establish higher standards in judicial proceedings particularly in ensuring Aboriginal children are represented in courts. Detention shall also be used as a measure of last resort according to Article 37 and Article 40 seeks alternative dispositions such as care guidance and supervision orders, counselling, probation, foster-care, education and vocational training programmes and other alternatives to institutional care".

The convention makes positive reference to education standards too, requiring governments to make secondary education available and accessible to every child. Article 29 calls for education that develops in the child a respect for his or her own cultural identity, language and values. Retention rates for Aboriginal children are

still appallingly low although they have improved in recent years. Nevertheless, 'lack of access to education, which is due to structural barriers, social and geographical distance, is a contributing factor to the inability of Aboriginal people to fully participate in the workforce'. This in turn leads to a lack of income which is presently half that of non-Aboriginal families. The vicious circle of poverty thus remains a closed one without any hope of breaking it.

Other articles of particular interest for Aboriginal children will be those that address the victims of policies and practices that have traumatised them. Article 39 says 'States Parties shall take all appropriate measures to promote physical and psychological recovery and social re-integration of a child victim of any form of neglect. Article 8(2) provides for appropriate assistance and protection with a view to speedily re-establishing a child's identity where he or she has been illegally deprived of his or her identity. For the thousands of children removed over the years who still search for their families such measures would be very welcome. For some like Russell Moore sitting in Death Row in Florida and Malcolm Charles Smith it is too late, but their lives nevertheless serve as a lesson and reminder to the world that the days of that form of barbarism are gone. The days of correcting them are here and hopefully with an International Convention soon to be ratified, that we shall never again return to the bad dark days when none of my people had any rights.

