

Senator BARTLETT—Those sorts of things are not enforceable in Australia under Australian law through our courts unless they are incorporated in our legislation, as I understand it, but are you aware of any efforts to approach international bodies to get findings with regard to breaches through those?

In July 2000 the Human Rights Committee considered Australia's implementation record over the past 12 years and made some recommendations, including in relation to the Stolen Generations. While there were no 'legal' findings of breaches, the Committee urged the government to find a remedy for the stolen generations.

Below is a summary produced by the Human Rights and Equal Opportunities Committee that covers the submissions, committee's responses and recommendations: http://www.hreoc.gov.au/human_rights/un_committee/index.html#stolen_generations

3. Stolen Generations

Article 2 of the Covenant requires Australia to ensure that the rights in the Covenant are effectively implemented and that there are remedies available in the event of breaches. Article 17 protects the sanctity of the family unit. It states:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Article 24 is concerned with the protection of children. It provides in paragraph 1:

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

Australia's report

Australia's third report mentions the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (paras 77-79). However, the Inquiry's report, *Bringing them home* (May 1997) had not been completed by the end of the reporting period (December 1995). Australia's fourth report (covering 1996) does not mention the inquiry.

HREOC's submission

"The report [*Bringing them home*] identified that:

1. Forcible removal policies saw the removal of between 1 in 3 and 1 in 10 Indigenous children in the period 1910 to 1970;
2. The effects of such removal were, for most victims, negative, multiple and profoundly disabling;

3. Removal laws were racially discriminatory, and genocidal in intent;
4. For many children removed there were breaches of fiduciary duty and duty of care, as well as criminal actions.

"The report adopted the van Boven principles for reparation for gross violations of human rights as the basis of recommendations for addressing the harm caused.

"The report also considered contemporary forms of separation, and recommended the introduction of national standards and framework legislation incorporating international human rights standards for the treatment of Indigenous children.

"The government responded to the report in 1997 with a \$43 million package. The government has rejected recommendations for compensation and other forms of reparation. In a recent submission, the government rejects further the basis for reparations and argues that the laws were not genocidal and did not amount to a gross violation of human rights."

ATSIC's submission

"Results from the 1995 National Aboriginal and Torres Strait Islander Survey show that 10% of Indigenous peoples aged 25 or over were taken away from the natural family. The Human Rights and Equal Opportunity Commission published its report into the practice of removing children from their families entitled *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families in 1997*. The Inquiry found [5] that from about 1946, laws and practices which, for the purpose of eliminating Indigenous cultures, promoted the removal of Indigenous children for rearing in non-Indigenous institutions and households were in breach of the international prohibition of genocide. The inquiry recommended formal recognition and apology, as well as reparation to people removed as children, their families and communities.

"Pursuant to Article 2 of the ICCPR, ATSIC believes that the Australian Government's response to the Stolen Generations Inquiry fails to provide effective remedy for the past practice of forced removal of Indigenous children from their families. The Government's refusal to consider an apology to members of the Stolen Generation and the provision of compensation to these people is in conflict with Australia's obligations "to ensure that any person whose rights or freedoms as herein recognized are violated should have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity."

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"Please give details on the extent of the phenomenon of removal of indigenous children from their families under past governmental policies. What is the present situation of these persons? What has the inquiry by the President of the Human Rights Equal [sic] Opportunity Commission and the Race Discrimination Commissioner, and the Aboriginal and Torres Strait Islander Social Justice Commissioner accomplished to redress this situation? In addition, what has been done to remedy the situation, and has compensation been paid to the victims?"

Australia's oral presentation

All Australian governments have responded to the Bringing them home report. The Commonwealth has committed a \$63 million package to the central finding that family reunion is the most urgent need. The package is for services to rebuild family and community ties. The Commonwealth does not believe compensation is the answer although compensation can be claimed in the courts.

Questions and responses

Martin Scheinin (Finland) stated that if it were true that removed children are

- more likely to experience arrest and imprisonment
- more likely to experience mental health problems and to report poor physical health
- less likely to form stable relationships
- more likely to have their children removed in turn

then that is "alarming proof of the total failure of the former assimilation policy" and means those people suffer "double marginalisation". "The wound is very deep and the State party needs to do more to heal that wound."

Eckart Klein (Germany) asked Australia "not to consider removals as a deplorable mass phenomenon but as occurrences that have hit individuals. Each and every case must be inquired into and remedied." The Australian delegation said that they were being treated as individuals.

Cecilia Medina Quiroga (Chile, Chair of the Committee) summed up the Committee's concern under this heading: that of "terrifying wrongs, especially forcible removals". These had violated the principle of equality - that all human beings are equal in dignity and rights. Australia's efforts more recently were "pretty commendable". However, because of the extent of past wrongs the inequality continues. Therefore, "the measures need to be extraordinary - of the order of magnitude of the harm that was done. Australia still has some way to go to remedy the harm done in the past and to avoid the persistence of inequality in the future."

Committee's conclusion and recommendation

"While noting the efforts of by [sic] the State party to address the tragedies resulting from the previous policy of removing indigenous children from their families, the Committee remains concerned about the continuing effects of this policy.

"The Committee recommends that the State party intensify these efforts so that the victims themselves and their families will consider that they have been afforded a proper remedy. (articles 2, 17 and 24)." (para 12)