
Aborigines and the criminal justice system

Women and children first!

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The Royal Commission into Aboriginal Deaths in Custody has made very little difference to institutionalised discrimination against Aboriginal Australians especially women and children

The Royal Commission into Aboriginal Deaths in Custody

The three-year Royal Commission into Aboriginal Deaths in Custody (RCIADIC) was established in 1987. It investigated 99 Aboriginal deaths in police and prison custody during the period of 1980-1989, of which 11 were women. Generally speaking, the RCIADIC did not include specific references to problems faced by women.¹ Many of those deaths investigated by the RCIADIC were of people who had been institutionalised as children under paternalistic assimilationist policies. These policies have overtly and covertly maintained the colonial attempt at cultural genocide. The RCIADIC was only established after a four-year campaign by the National Committee to Defend Black Rights (NCDDBR) and supporters. The NCDDBR wanted to expose the racist attacks on our people and focus attention on the underlying causes for the deaths. The Government wanted to keep the lid on a shocking reality of racist violence and neglect.

During the time of the RCIADIC, Aboriginal people were 20 times more likely to be arrested than non-Aboriginal people. The first recommendation of the *Interim Report*, released in December 1988, stated that: 'Government . . . [should] enforce the principle that imprisonment should be utilised only as a sanction of last resort'. This recommendation was repeated in the final *National Report* of the RCIADIC. To stop Aboriginal deaths in custody, there needs to be a reduction in the massive number of our people being imprisoned.

Imprisonment of Aboriginal people

The 1987 national prison census shows that Aboriginal people are overall ten times more likely to be imprisoned than non-Aboriginal people. In some areas where the Aboriginal population is high, the figure is as high as 90 times. In August 1988, 29% of the 28,566 people held in police custody throughout Australia were Aboriginal, although our people comprise only 1.5% of the national population.²

The number of Aboriginal people imprisoned during the four-year period of the RCIADIC (30 June 1987 – 30 June 1991) has increased overall by 25%. In New South Wales, Western Australia and Victoria there have been dramatic increases in the number of Aboriginal prisoners, that is, 80%, 75% and 24% respectively.³ These increases occurred during a period when authorities recognised that the over-representation of Aboriginal people in custody was a contributing factor to our deaths in custody.

Overall, the imprisonment of Aboriginal people has far outstripped general increases in imprisonment. For example, non-Aboriginal people in custody in New South Wales increased by 54%, while Aboriginal people in custody increased by 80%. In Victoria, non-Aboriginal people in custody increased by 17%, while Aboriginal people in custody increased by 75%.

In the 26 months following the cut-off date set by the Royal Commission for investigations, at least 27 Aboriginal and Torres Strait Islander people died in custody. Aboriginal people are still dying in custody at the rate of one per month! Over 40 have died in custody since the end of the Royal Commission, including a 16-year-old youth shot dead in Tasmania in early August 1993. If the non-Aboriginal population were dying in custody at the same rate as Aboriginal people, there would have

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been 66 non-Aboriginal people found dead in custody every month for the last eight years or an appalling total of 6336 people.

Over-policing and over-sentencing

The ratio of police to civilians has increased substantially in Australia, particularly over the last decade. In New South Wales, the estimated ratio of police to civilians was 1:766 in 1945 and 1:432 in 1990. A report compiled by the International Commission of Jurists stresses that this ratio is more concentrated in areas with Aboriginal communities; for example, Bourke (1:120); Wilcannia (1:77) and Brewarrina (1:100). This is sharply contrasted with Chatswood (1:926), a northern suburb of Sydney.⁴ Aboriginal people question why money is not redirected from paying for our over-policing into community services and culturally appropriate Aboriginal services, for example, alcohol rehabilitation programs, jobs, housing, health, education, etc.

The RCIADIC recommends the utilisation of non-custodial community-based options for punishment, particularly as many offences charged against Aboriginal people are of a minor nature. The increase in charges laid against Aboriginal people for minor offences has been stimulated by the reintroduction of the *Summary Offences Act 1988* (NSW) which gives the police powers to impose imprisonment for public order charges, for example, offensive language and offensive behaviour.

Commonly, Aboriginal people will find themselves behind white bars for swearing and public drunkenness and resisting arrest.⁵ We also find that our sentences are harsher and longer than those for non-Aboriginal people. In fact, the RCIADIC Research Paper 8 states that minor offences of drunkenness and against 'good order' make up 63% of the total offences Aboriginal people have been charged with. They are under-represented in the more serious offences such as homicide, sexual offences, robbery, fraud and drug offences. When our people are in court facing charges there are never Aboriginal people present on the jury.

Police target Aboriginal families and communities concentrated in low income, high unemployment and welfare-dependent situations. The continued over-policing of our people illustrates that the RCIADIC appears to have had little effect on the direction of law and order and public policy. The numbers of Aboriginal people being placed in custody has increased in direct contradiction to recommendations of the Royal Commission inquiry.

Response to the RCIADIC

The NCDBR and the Aboriginal community believe that the Royal Commission's findings failed to bring to justice those responsible for the deaths. Questions remain about the deaths of John Pat, Eddie Murray, Kingsley Dixon, Robert Walker, Barbara Yarrrie, Bruce Leslie, and dozens of others. Further, the Commonwealth and State/Territory Governments have still not fully implemented the urgent recommendations from the Muirhead Interim Report that were released four years ago. This illustrates the tokenistic attitude of the Australian Government and its bandaid solution to human rights abuses against its indigenous population.

Since the Final Report of the Royal Commission has been tabled, NCDBR has campaigned to question why the Commission failed to recommend that charges be laid against

any of those responsible for these deaths; to require the State Governments to work out how they will implement the recommendations; to urge that the families themselves have proper funding and support to consider the recommendations and to make their own assessment of their relevance; and to draw attention to continuing deaths in custody.

The position of Aboriginal girls and women

Outside the prison walls

Much has been written about the impact of the Australian criminal justice system on Aboriginal men. Few people have considered its impact on Aboriginal women. What is happening to Aboriginal women is an untold story in Australia and the situation is alarming. The situation of Aboriginal women and children needs to be heard. Aboriginal women have survived 200 years of violent colonial dispossession, alienation, poverty, rape, assault and murder. Aboriginal customary law was overthrown by the colonial, racist and patriarchal judicial system, based on a false legal framework (*terra nullius/empty land*) in 1788.

Conservative estimates show that today our death rate is four times higher than the rest of the community, life expectancy is up to 22 years shorter, infant mortality rates are up to three times higher and hospitalisation rates three to five times greater. Every indicator of social and economic status shows that our people continue to suffer a colonised existence in poverty. In Australia it is very clear that the state legitimates violence against women. It has never been able to provide indigenous women and children with basic human rights. It has not provided us with the standards of health, housing, education, employment, etc. that it has for non-Aboriginal Australians.

Aboriginal women have no faith in the criminal justice system; as clearly expressed by a Cape York woman:

If a white woman gets bashed or raped here, the police do something. When it's us they just laugh. The fellow keeps walking around, everybody knows but nothing is done.⁶

An Aboriginal woman living in an urban area said:

How can we call the police in? They come with their guns drawn and an innocent person gets killed.

Aboriginal women are often ashamed to report rapes and be subjected to the sneering interrogation of young white male policemen with their sexist and racist questions. And if Aboriginal women take their cases to the judicial system they have to listen to sexist and racist arguments being condoned by the courts. Rape and assault of Aboriginal women is not seen to be as serious as rape of non-Aboriginal women. The following statement was in a report to the Queensland Office of Aboriginal Women:

I have found that the majority of sexual/physical assaults against Aboriginal women are not reported. Most women are terrified of the police interrogation where anything from a woman's sexual history to whether she is a fit mother or not is brought out into the open. Reporting an assault sometimes seems to be just as traumatic as the actual assault.

Many Aboriginal women experience violence. The Equal Opportunity Commission (WA) Report 1990 states: 'It was claimed that police were slow and unwilling to attend violent situations, often refusing to acknowledge their seriousness'. During the 1989 National Aboriginal Day celebrations in Sydney, shots were fired while police were chasing a suspect through a crowd of Aboriginal people largely consisting of



Aboriginal girls, Coranderrk. Photo: N.J. Caire. La Trobe Collection, State Library of Victoria

women and children. This incident, like the others above, illustrates that Aboriginal women experience very little justice in their lives.

Inside the prison walls

The prison system has itself been shown to be more dangerous and violent than the outside society. Aboriginal women make up a disproportionately large number of the prison population. In 1989, Aboriginal women comprised almost 50% of all women in custodial care although Aboriginal women represent less than 1.5% of the national female population.⁷

The number of Aboriginal women in prison in all Australian jurisdictions rose from 78 in the 1987 prison census to 127 in the 1991 census. This represents a 63% increase in the imprisonment of Aboriginal women during the period of the RCIADIC.⁸ The rate of imprisonment of Aboriginal women in New South Wales rose by 168% and in Western Australia by 54%. The total number of Aboriginal people imprisoned in New South Wales rose from 369 to 664 and in Western Australia from 503 to 624. An emphasis on law and order policies clearly victimises those who need the most relief in the community – Aboriginal people in general and Aboriginal women in particular.

The ratio of Aboriginal women going to prison compared to non-Aboriginal women is increasing. The ratio of Aboriginal female prisoners to female prisoners (16.3%) generally was greater than that for males (14.1%).⁹ The recidivism rate for Aboriginal women is 75% compared to 29% for non-Aboriginal women. This is within an environment where authorities are tending to favour non-custodial sanctions for low-risk offenders (the majority of women prisoners). Thus we conclude that non-custodial sanctions are being used for non-Aboriginal low risk offenders, while we are being recharged and reincarcerated.¹⁰

The most frequent offences committed by Aboriginal women involve non-payment of fines, drunkenness and social security fraud. This is not surprising when Aboriginal women are the least employed and the least economically secure group in Australia. Over-policing of minor public order offences, that is, racist practices in Australia are locking up and terrorising our sisters, mothers and daughters.

Evidence was presented to the Inquiry into Racist Violence (1991) which indicated that Aboriginal and Islander women and girls have been sexually threatened and abused by police officers. The following incidents provide some examples:

In Mossman (Northern Queensland) an Aboriginal woman alleged that she had been raped by a police officer whilst in custody. There were also complaints from Alice Springs that Aboriginal teenage girls had been assaulted and raped by police officers and other white males. One woman who gave evidence said police in Townsville had threatened to rape her and issues of sexual harassment of Aboriginal women were raised in Redfern, Sydney. A youth worker in Adelaide told the Inquiry about an incident of an alleged rape of a fifteen-year-old girl by police officers. According to the youth worker the girl was too terrified and ashamed to lodge a formal complaint. An Aboriginal welfare worker told of a serious police assault on her daughter who was pregnant and miscarried as a result of the violence. Besides being assaulted the girl was allegedly raped by police officers whilst in custody. According to her mother, the young woman was too traumatised by the event to lodge a formal complaint. Aboriginal girls have been referred to as 'black molls' and 'black sluts' by the authorities.¹¹

These acts of violence are being perpetrated against Aboriginal girls and women by the upholders of law and order!

Aboriginal women are confronted by the dual barriers of racism and sexism. We are confronted by a police force that was racist historically and is so today. Experiences of Aboriginal women in custody, and experiences of Aboriginal women using the law as their right to justice, clearly demonstrate the oppression and social control our people face daily. We deserve a justice system which provides care and protec-

tion. However, the colonial state legitimates acts of violence and police have been given the 'licence' to kill, rape and assault Aboriginal women and children in Australia because they are not held accountable for their actions.

Our children

Aboriginal women as mothers have also been placed in a disturbing position within Australian society. We are afraid of the consequences the current 'law and order' regimes in Australia are going to have on our children and future generations.

A South Australian study found that while the number of all children admitted to institutions has decreased, the ratio of Aboriginal to non-Aboriginal children has increased. In some States the level of over-representation for Aboriginal girls in juvenile institutions is far greater than for adults.¹² A recent report released by the South Australian Office of Crime Statistics states that more than half the young Aboriginals in South Australia have appeared before the justice system: seven out of ten Aboriginal boys and four out of ten Aboriginal girls have been in trouble with the law.¹³ In 1989, the Human Rights and Equal Opportunity Commission reported that in one State 77% of the inmates in maximum security institutions for juvenile girls were Aboriginal.¹⁴

A large number of charges are for public order offences (hanging around the street) and offences against the police (not co-operating with the police). The visibility of Aboriginal girls on the street makes them obvious targets for police keen to make arrests. Many girls complain of sexual intimidation, ranging from snide remarks and innuendos to name calling and physical harassment by police. Such harassment allegedly includes strip searching as a regular feature of police practice.¹⁵

The *Summary Offences Act 1988* (NSW), the *Sentencing Act 1989* (NSW) and the *Juvenile Crimes Sentencing Act 1992* (WA) directly contradict the thrust of the recommendations of the RCIADIC. For example, the new *Sentencing Act 1989* (NSW) has increased the average length of juvenile detention sentences by 42%, increasing the number of Aboriginal people detained in corrective institutions and the likelihood of them being transferred to prison because of overcrowding. The *Summary Offences Act 1988* (NSW) introduced new offences, such as 'offensive behaviour' and 'offensive language' which provide the police with wider avenues for policing of Aboriginal communities.

The Western Australian Government's response to the recent spate of tragic crimes involving juveniles was to introduce the *Crimes (Serious and Repeat Offenders) Sentencing Act 1992*. In effect, juvenile repeat offenders will face mandatory prison sentences. This legislation breaches Australia's commitment to the United Nations Convention on the Rights of the Child. It is directly targeting the Aboriginal community and will result in mass juvenile Aboriginal imprisonment. Of

all juveniles in detention in Western Australia, 75% are Aboriginal – the highest rate in the country and this legislation will send even more Nyoongars to gaol.¹⁶ It is in complete contradiction to the recommendations of the RCIADIC which says imprisonment should be used as a last resort.

The effects of dispossession have fallen most heavily on Aboriginal women because we are often dependent on the State and have lost our traditional status. Aboriginal women face human rights abuses against ourselves and deal with the consequences of discrimination against our children, husbands and sisters. There is a clear lack of custodial care and protection when we come into direct contact with the justice system. On the other side of the coin, we do not use the system because we do not want to send our own people to gaol, a racist institution, which could mean a death sentence. Aboriginal women live in a society which offers them no legal care and protection, a basic human right as well as a right of citizenship.

The social impact of the increased powers of the police needs urgent attention as they are inherently opposed to RCIADIC recommendations on policing Aboriginal communities. We fear the long-term effects of 'white law and order' on our children, next generations and our culture.

Final comments

Aboriginal women come into contact with the police, judiciary and prisons as individuals and as wives, mothers and sisters.

The findings of the Royal Commission into Aboriginal Deaths in Custody (1991) and the Inquiry into Racist Violence (1991) clearly indicate that police attitudes towards Aboriginal people have not improved. In fact, the evidence shows that they have deteriorated.

Police violence based on race remains a major area of concern and should be a priority on the

political agenda. To date, no police officer has been charged in connection with any of the Aboriginal deaths in custody examined by the RCIADIC.

Aboriginal deaths in custody are a breach of the United Nations International Covenant on Civil and Political Rights to which Australia is a signatory and thus obliged to observe. Federal and State Governments have shown themselves to lack commitment in addressing the issue of Aboriginal deaths in custody. Under this covenant, they are required to promote, protect and restore human rights at national, regional and international levels. By not actively opposing racism they are condoning it.

Traditionally, women in Aboriginal culture have a status comparable with and equal to men. We have our own ceremonies and sacred knowledge, as well as being custodians of family laws and secrets. Today, Aboriginal women are portrayed as passive victims of non-Aboriginal and Aboriginal men and of colonial assimilationist policies (for example,

Deaths In Custody

by Joan Baker

Deaths in custody, today we ask ourselves
 Why they all die in these terrible ways
 With our boys in government cells
 No-one around to hear their cries and pains of hell
 Who's for the coppers to murder and brag
 To take a one man's good heart
 We're fighting for justice here today
 For deaths in custody
 We can have our say
 For justice to be done
 If we all pull together for each other
 As Australians Number One
 We will fight until the bitter end
 To win our justice in the end
 For deaths in custody.

(This poem was written at the 3rd CDBR National Family Conference. Joan's brother is Bruce Leslie who died in custody.)

institutionalised and forced adoption of Aboriginal children). The effect of colonisation and patriarchy has been to undermine the status of Aboriginal women. It has led to our disempowerment, to downgrading of our role in society and to attempts to silence our cultural voice.

Solutions do exist yet they have to come from the Aboriginal community. Aboriginal women need to be involved in the process of redefining and articulating customary law; that is, mechanisms of social organisation and social control which allowed Aboriginal society to function before invasion.

We can run and police our own lives in our own communities on our own lands using our resources and with compensation for the invasion of our nations. Aboriginal women have been significantly overlooked in the provision of services to assist with problems arising from alcoholism, domestic violence and lack of respite care. When the ideology of the welfare system retreats to residualism, marginalised groups are often invisible to service providers.

One of the Royal Commissioners, Elliot Johnston, highlighted the unsatisfactory welfare service delivery to Aboriginal communities. The Government is reducing services for women and there is a strong trend towards privatisation; the state is attempting to restructure its services towards more indirect forms of intervention. There is a low uptake of services provided by white professionals and bureaucrats, for both cultural reasons and experiences of racism. Clearly services to Aboriginal people need to be self-managed and self-determined.

Aboriginal sovereignty, land rights and a strong economic base incorporating Aboriginal community organisations (legal, medical/health, art and craft co-operatives, housing companies, education agencies, employment programs, sporting bodies, etc.) need to be supported and encouraged. Community development and social justice options offer the best chance for Aboriginal self-determination.

Aboriginal run 'safe houses', women trained and employed to investigate sexual offences, police aides trained not with an enforcement mentality but with implementing crime prevention programs, dispute resolution, crisis intervention, detoxification units are all alternative solutions to the enormous amount of money poured into policing Aboriginal communities and locking us up.

Any government commitment to implementing the recommendations of the RCIADIC will be shallow rhetoric if the overall thrust of the criminal justice policy is based on locking-up an ever increasing number of Aboriginal people.¹⁷

Aboriginal women are clearly saying we are tired of the institutionalised violence and community violence we face every day. We are tired of government and public apathy towards our efforts to stop the human rights abuses of Aboriginal women and our communities.

Aboriginal women need to be systematically included in decision making. Currently, all too often, only Aboriginal men are being consulted and this dispossesses Aboriginal women of their place in society, causing attitudes which promote social disruption and violence. Women need to be included in decision-making processes otherwise further subjugation and dispossession of Aboriginal women and communities will continue.

The increase in Aboriginal imprisonment is not the result of increasing criminal offences. Government policy has promoted the increase of imprisonment and this has had a horrible effect on Aboriginal people.

There is little information available specifically on Aboriginal women and the law. It is important that we conduct research and speak at national and international forums to expose what is happening to our people under the State/Territory and Federal Governments.

International pressure has been successful in putting miscarriages of justice on the political agenda in Australia. This article has illustrated that the level of human rights abuses in Australia is not improving. We demand our sovereignty, our rights to lands and compensation, and an end to racism and violence.

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THE AIMS OF THE NATIONAL COMMITTEE TO DEFEND BLACK RIGHTS

The NCDDB aims to:

- Draw attention through public education and other campaigns to racism and injustice;
- Develop national networks of Aboriginal families who have had a relative die in custody;
- Draw attention to abuses of human rights of Aboriginal and Torres Strait Islander people;
- Organise and promote assemblies (regional and State) of Aboriginal families at which their views may be expressed;
- Raise the awareness of non-Aboriginal people of the human rights situation of Aboriginal people to promote inter-cultural understanding and racial harmony;
- Participate in radio, television and print media coverage of our issues to counter racism and bias in the media within Australia;
- Network within Australia to make other Aboriginal organisations and communities aware of the opportunities for using international meetings as a platform and as a learning place;
- Link with other indigenous and oppressed minority groups throughout the world;
- Research international declarations on human rights and participate in examining the applicability of those instruments to Aboriginal families;
- Campaign for such international instruments to benefit Aboriginal families.