DEATHS IN CUSTODY AND INEQUALITY FOR INDIGENOUS AUSTRALIANS INCREASES

In 1992 the Royal Commission into Aboriginal Deaths in Custody (RCADC) report went beyond the investigation of the 99 deaths (1980-1989), to look at the underlying issues which highlighted the reasons why Aboriginal and Islander people experienced higher rates of imprisonment than the rest of society.

Many recommendations detailed specific changes to procedures, legislation and other general disadvantages. Other recommendations were aimed at promoting long term change in aspects of Aboriginal and Torres Strait Islander experience in the wider Australian society: expanding economic opportunities, acknowledging and addressing land ownership needs, improving health, increasing self-management and self-determination, and promoting reconciliation within Australian society.

The unique status of Aboriginal and Islander people as the original inhabitants of the country, and the right to retain their cultures and identities were accepted by the Royal Commission, and the principle of self-determination was seen as both an expression and guarantee of that right.

The factors contributing to the high level ofDeaths In Custody were identified. They ranged from the central issue of the denial of self determination to poor health, education and employment status, seriously flawed relations between Aboriginal and Islander people and the wider society including the criminal justice system, and lack of economic opportunity (Implementation of Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody: First Annual Report, 1992: 3-73-75).

CAUSES OF IMPRISONMENT

The root cause of the disproportionate rate of Aboriginal imprisonment was their extremely disadvantaged position on every socio-economic measure in Australian society. The most significant contributing factor to their over-representation in custody was directly related to the inequality and disadvantage faced by Aboriginal and Islander people which the report argued was the product of a history of domination by non-Aboriginal interests, and enforced dependency on and neglect by the wider society.

The report stresses that to address and eliminate disadvantage it requires an end to domination, and the empowerment of Aboriginal and Islander people so that control of their lives of their communities must be returned to Aboriginal hands.

PROPOSED SOLUTIONS

The Commission stressed that the material assistance necessary to tackle Aboriginal and Islander disadvantage and to address past deprivation must be provided in ways which increased the empowerment of Aboriginal and Torres Strait Islander societies and lessened the sense and perception of dependency. At all times, the broader society, particularly through governments, must approach relationships with Aboriginal and Islander societies on the basis of the principle of self determination.

This disadvantage can be effectively addressed only if the Commonwealth, State and Territory governments allocate their resources equitably. This means that main stream programs in all jurisdictions must aim to deliver social justice to Aboriginal and Torres Strait Islander people. The overall budget for addressing Aboriginal and Torres Strait Islander disadvantage is estimated to be $3.5 billion dollars which is administered through State and Commonwealth Government services including the Aboriginal and Torres Strait Islander Commission (ATSIC).

When one compares the amount of resources that are being allocated to address Aboriginal and Islander needs there is something going diabolically wrong!! The inequality gap is increasing rather than decreasing. Furthermore the Council for Aboriginal Reconciliation reported that "no conditions or accountability and acquisitive procedures are imposed to ensure that appropriate levels of funds are addressing the disadvantage of each state or Territory's Indigenous citizens" (Council for Aboriginal Reconciliation Submission to the Commonwealth Government on Social Justice Measures for the First Australians, 1995: 64-65).

The role and importance of Aboriginal and Islander Community Organisations in empowering Indigenous people was recognised by the Royal Commission. The principles of self determination and autonomy underpinned the Commission's recommendations concerning the relationship between these organisations and government. These Organisations were given preference in the delivery of programs and services (Implementation of
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RISE IN BLACK DEATHS 1989-95

Since the Royal Commission concluded its investigation in 1989 and produced its report and recommendations in 1992, there have been another 99 deaths in custoday 1989-1995 - i.e. over 6 years. The Aboriginal Deaths In Custody Watch Committee reported that "despite numerous inquiries and a Royal Commission the rate of imprisonment and deaths in custody continue" (Koori Mail, 17 May 1995:5; 12 July 1995:5).

FURTHER DEATHS AUGUST 1995

Further to this report the Institute of Criminology August 1995, has found that the number of deaths have soared to almost three times their level during the period covered by the Commission. The report found that 10 deaths took place last year while another 10 have died so far this year as of the 17 August 95. Adding these deaths to those already mentioned it means there have been more deaths in custody in the space of 6 years than those recorded by the Commission between 1980-89. Aborigines are in prison 14 times the rate of non Aborigines and there has been a 50% increase in the number of Aboriginal people in prison over the last six years. In New South Wales the increase has been 95%, the causes of which are related to poverty factors, and people being sent to prison for not being able to pay fines and for other minor offences (Age 17 August 1995 Rise in Black Prison Deaths; Social Justice Commissioner interview on Speaking Out : Koori Radio Program ABC, 19 August 1995).

AMNESTY INTERNATIONAL

Amnesty International have taken the issue up in their 1995 Annual report in which they questioned Australia's Human Rights record and expressed alarm at the increased number of imprisonments which had not decreased despite the huge amount of resources ($35.5 million) and the number of recommendations made to address this appalling situation (Koori Mail 12 July 1995).

By focusing on these major findings of the Royal Commission, one can gain a rather appalling account of the current situation of Aboriginal and Islander people and their position in present day Australian society. Their gross inequality and disadvantage can be translated to other areas of disadvantage which are the reality of Aboriginal and Islander people today. No doubt these problems are still directly linked to the legacy of "terra nullius" and the forced removal from indigenous lands. The attempts to break up the Aboriginal family by removing the children and the impact of colonisation are the traumas that Aboriginal society are still trying to overcome.

The underlying issues identified by the Royal Commission such as poor health, education, employment, lack of opportunity and the extremely disadvantaged position of Koori and Islander people are third world characteristics. They are factors which are very difficult to reconcile when one considers the enormous wealth that has emanated particularly from the land that Aboriginal people owned and enjoyed since time immemorial. Furthermore they are saying that something is profoundly wrong in the thinking, the degree of compassion and the great Australian tradition of a "fair go" to have one group within such a wealthy country dominated to the extent of inequality and disadvantage that the RCADC has revealed. It also questions and indeed challenges the basis of the Reconciliation process in terms of working towards an acceptable solution to this major human dilemma.

If we translate these factors to the broader goals of equality, social justice and self determination as aspired to by Governments and authorities such as the ATSIC, it is blatantly obvious that under these arrangements there is no equality. We are not dealing with each other on the basis of equality as such but from a position of inequality and disadvantage. The remedy for this is that policies need to be applied to overcome the imbalance that exists and then once Koori and Islander people have been empowered to a position of equality it is only then that we can deal with each other on equal terms. Once this is corrected then we'll have a basis to discuss and negotiate a resolution as equals and we'll be in a better position to more effectively address the question of Reconciliation. It must be said however that given the predicament that Aboriginal and Islander people are placed in, largely because of European domination, the principle of reconciliation will be more feasible when that domination is removed and a more equitable relationship is established.

The Chairperson of the Council For Aboriginal Reconciliation Patrick Dodson hammered this home when he addressed the reality of the Position Of Indigenous People at the Canberra Conference in June 1993. He said:
"A moment of truth has arrived. The deeds of the past and present require those who have benefited most to take steps towards those who have suffered most in the last 204 years. They must reconcile themselves with a new reality and then find the path of restitution that will lead to reconciliation."

(Dodson, P. The Position of Indigenous People in National Constitutions Conference, Canberra, 4-5 June 1993:2).

EQUALITY GAP WIDENING

The situation is even more disturbing when one sees the social and economic indicators repeating those findings of the RCADDC to a point now where the equality gap is widening.

The Council for Aboriginal Reconciliation submission to the Commonwealth Government on Social Justice measures for Indigenous Australians reports that on every social indicator such as rates of unemployment, rates of custody, rates of infant mortality, life expectancy, household income and other indicators, Aboriginal and Torres Strait individuals and communities are now, and have been in the past, at a serious disadvantage. This disadvantage and inequality arises because of long term failures by Commonwealth, State, Territory of local governments to ensure that indigenous individuals and communities have access to their citizenship rights. Governments have maintained the process of subordination through their policies and strategies in responding to Aboriginal and Torres Strait Islander people's call for justice and greater control over their lives (Council for Aboriginal Reconciliation, 1995:26-27).

ATSIC's report on Social Justice highlights the continuing disadvantage and inequality experienced in the daily lives of Aboriginal and Islander people. The reasons for which the report argues is a "manifestation of the impact of two centuries of dispossession, dispersal, and discrimination involving the denial of fundamental of Aboriginal and Islander people (ATSIC Report to Government on Native Title Social Justice Measures, 1995:3).

There are numerous other reports listed below that support these findings and further indicate that there has been no advancement of Aboriginal and Islander peoples socio-economic status over the last two decades - a national shame and disgrace on those Government authorities responsible for Aboriginal and Islander Affairs.

SOCIAL INDICATORS 1975-1995

Henderson Inquiry into Poverty 1975.
Handbook on Aboriginal Social Indicators, Department of Aboriginal Affairs, 1984.
Report by Dr Ring on Aboriginal Health, 1995.
The latest report on "Aboriginal Deaths In Custody" for 93-94 which highlight a significant increase in Deaths in Custody and continuing disadvantage.
Aboriginal and Torres Strait Islander Social Justice Commissioner Native Title Report: January-June 1994.

THE RIGHT TO EQUALITY

Equality of all people is an established human rights principle. The right of equality of all persons, irrespective of race, sex, colour or ethnic origin is a one of the fundamental principles of the United Nations Charter in Articles (1) (3) and Article (7) of the Universal declaration of Human Rights, and Article (6) of the International Covenant of Civil and Political Rights. Australia is a signatory to the ICCPR and the accompanying First Optional Protocol on Civil and Political Rights which provides access to International Human Rights Committees on the denial of fundamental Human Rights such as equality.

The basic principle which underpins the issue of equality is the rule of "non discrimination". That is the prescription against any forms of distinction or differentiation based on the grounds of race, sex, or colour. Non discrimination expresses itself through international and domestic norms prohibiting religious, sexual and racial discrimination.

The most important standard setting instrument in the field of racial discrimination is the Convention on the Elimination of all Forms of Racial Discrimination (CERD) which entered into force in 1969. Australia became a party to the CERD in 1975 after implementing the Racial Discrimination Act (1975).

Article 1 (1) of the CERD defines racial discrimination as:

"any distinction, exclusion, restriction or preference based on race, colour, descent, or national of ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

Article 1 (4) allows states to adopt special measures for the sole purpose of securing adequate advancement or certain racial or ethnic groups (so called
“affirmative action”) programs as long as these don’t amount to separate rights after the objectives have been achieved. This article expressly provides that such measures are themselves not deemed to be racial discrimination.

In addition, Article 2(2) obliges states to take concrete measures in certain circumstances, including in the cultural, economic and social fields, to ensure adequate development and protection of certain racial groups or individuals in order to guarantee them full and equal enjoyment of human rights and fundamental freedoms. These measures are subject to the proviso that they do not lead to the maintenance of unequal or separate rights for these groups after the objectives for which these measures were originally put in place have been met (Human Rights Manual, Department of Foreign Affairs and Trade, 1993: 111-112).

Australia has both the legal and political means to correct the deplorable situation of Aboriginal and Islander people as highlighted in the Commission findings. It can enhance Aboriginal equality through its representative body ATSIC, and by special measures under the Convention on the Elimination of all Forms of Racial Discrimination. ATSIC can provide the necessary stepping stones towards the longer term goal of self determination, by empowering Aboriginal Organisations to take control of their own affairs. The first essential step is what Koori people refer to as “handing over the reins” so that Aboriginal people have an opportunity to run their own affairs at their own pace and direction. This process is the first step in a longer process towards real equality, which needs to be further complimented by those special considerations as expressed in international and domestic laws.

BARRIERS TO EQUALITY

Those provisos to attaining equality should not be seen or used as a barrier to achieving the same level of equality as that enjoyed and often taken for granted by the majority of Australian society. Special measures are necessary and essential in order to provide the means of correcting the imbalance of inequality that has existed since the European Invasion. They are the first steps towards achieving what is a basic right that all human beings are entitled to regardless of racial background, and one that can no longer be denied to Aboriginal and Islander people under International and Australian law. In other words Aboriginal and Islander people have yet to get past first base in the equality stakes, let alone be in a position to even contemplate the idea of separate rights. Special measures in this context are therefore a necessity rather than a right.

For too long the adversaries of Aboriginal advancement have used these arguments as convenient shields to protect their own interests or to maintain the existing status quo which the Royal Commission highlighted as one of “dominance enforced dependency, and neglect by the wider society.” From my experience particularly with government and academic institutions no real and genuine consideration is given to the level of disadvantage and inequality that Aboriginal and Islander people are working from. When programs are being discussed whether it be education, employment, health, land, culture and social welfare, the discussions are always based on the assumption that we are working on equal terms.

As I’ve already indicated this is a false assumption and one that has been used, particularly by those who are either ill informed, or racist, to deny Koori and Islander advancement to equality and justice.

The same picture could apply to those Aboriginal organisations and communities who face these problems on a day to day basis. The Anglo institutions we are dealing with are still working on the assumption that the playing field is level and we’re dealing with each other on equal terms, when the reality is quite the opposite. Until the imbalance is corrected through the implementation of those legal and political mechanisms that exist and Koori people are empowered as first essential steps towards equality, the causes of inequality and disadvantage identified by the Royal Commission will continue. The interim steps towards achieving equality and self determination as the Commission found requires first an end to the domination by non-Aboriginal interests, and the return of control of our own affairs.

Fine sentiments as many Koori would say but until it happens in real terms and the words are matched with the political will and the powers required to make it really happen, the major findings of the causes of the Aboriginal predicament will perpetuate themselves. In the meantime Koori and Islander people will continue to operate in the shadow between the idea and the reality.

(A Review of Australia's Efforts to Promote and Protect Human Rights, 1994).

Other References:
Koori Mail, 17 May; 12 July; 23 August 1995
Age 2 November 1995; 4 July 1995; 17 August 1995