

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Inquiry into crime in the community: victims, offenders, and fear of crime

I would like to thank the Committee for giving me the (ATSIC North Zone Commissioner) the opportunity to address you today.

I would like to take this opportunity to talk to you today about Crime from an Indigenous perspective.

Indigenous Over-representation

- Aboriginal and Torres Strait Islander people comprise around 2.4% of Australia's population, but constitute 20% of its prison population.
- Indigenous people in the Northern Territory are among the most incarcerated people in the world. They comprise 29% of the NT's population but account for 75% (540) of the daily average prison population out of a total of 721 prisoners in the Northern Territory. Twenty one (21) of the 24 juvenile detainees are Indigenous. While this is in itself alarming and a cause for immediate action, this is coupled with a rapidly increasing population of Indigenous youth in the Northern Territory.
- Evidence shows that the more exposure juveniles have to the criminal justice system the more they become involved by learning from other detainees how to commit crimes.
- Over-representation of Indigenous women in the prison system is even more pronounced both nationally and in the Northern Territory. In 2002 Aboriginal and Torres Strait Islander women in Australia were nearly 21 times more likely to be in prison than were non-Indigenous women, and in the NT they were nearly five times more likely to be in prison than their non-Indigenous counterparts.

Why are our people Over-represented?

- These figures show that the vision is enormously ambitious. Aboriginal and Torres Strait people come into contact with the criminal justice system far more frequently than other Australians. The causes are deeply rooted in many different facets of Indigenous peoples' social, political and cultural lives, and are shaped by many underlying aspects of our existence.
- Factors like: lower life expectancy, poorer education, Indigenous unemployment, substance abuse, sexual abuse, family violence, youth suicide and inadequate housing are all factors contributing to frequent contact with police, the courts and often incarceration. As an Indigenous child you can expect to come into extensive adverse contact with the juvenile justice system and criminal justice system, a situation which is exacerbated in places like Western Australia, whose mandatory sentencing regime captures a vastly disproportionate number of young Indigenous people.

- Indigenous people are over-represented in charging, arrests or detainment by Police and in all court and court-related matters such as court appearances, bail applications, pre-trial conferences, and custodial (prison, youth detention centres) and community-based correctional programs¹.
 - Indigenous people were more likely to be proceeded against by way of arrest than summons than non-Indigenous people.
 - Indigenous comprise 55% of adult court appearances and 64% of juvenile appearances.
 - Indigenous people living in major centres were nearly four times as likely to appear in court as those in remote areas.
 - Indigenous people were more likely to receive a sentence (80.7% of adult imprisonment sentences and 77.5% of juvenile detention orders), irrespective of the offending history;
 - Indigenous people are 16 times more likely; where non-Indigenous people are only three times more likely to be imprisoned than receive a home detention order.
- Over representation can be explained when exploring the interplay between; offending patterns; the impact of policing; legal factors; judicial decision-making; cultural differences; socio-economic factors; marginalisation; resistance; and the impact of colonisation.

Crime Prevention

- The key to Indigenous justice, and the future if Indigenous people, lies in PREVENTION, in addressing the underlying causes of the issues facing Indigenous people and their communities. Dealing with one aspect of the problem, such as the provision of substance abuse programs or employment schemes, is important, but insufficient in itself. It needs to be supplemented with initiatives to improve education, to reduce exposure to violence, and to divert potential offenders away from the criminal justice system.
- ATSIC is very active in reinforcing preventative initiatives to strive for justice for Indigenous people. Although many Commonwealth and State initiatives have constituted a big step forward for Indigenous people and communities, unfortunately these initiatives are not universal, and in some cases recent initiatives are unsympathetic towards crime prevention for Indigenous people. Like the recent revival of 'zero tolerance' approach to policing, which promotes a culture of prosecution for minor public order offences, has had vast, disproportionate impact on the Itinerant population in the Northern Territory.
- In July 2000, the Commonwealth and Northern Territory Governments formally entered into an agreement to divert juveniles from the criminal justice system and to jointly fund an Aboriginal interpreter service in the Northern Territory.

¹ ATSIC Northern Territory Law and Justice Issues Discussion Paper 2002.

- The diversionary programs aim to divert people from contact with the criminal justice system and rehabilitation programs aim to address a person's social and emotional well being. Programs that incorporate both of these elements and provide a holistic approach result in empowerment rather than dependency. ATSIC encourages the extension of these programs outside of the four-year Agreement which is due to expire in August 2004.

Customary Law

- ATSIC strongly recommends the development of Customary Law into a legislative framework and wishes to work in active partnership with the Northern Territory Government in the negotiation of its application to law and justice, heritage protection and on issues of its wider application. ATSIC proposes to work together with the Territory in effective consultation with traditional custodians and Aboriginal Territorians.
- ATSIC strongly supports exploration of Customary Law in the context of the 1991 Royal Commission into Aboriginal Deaths in Custody (RCIADIC) findings and recommendations; especially the principle of incarceration as a last resort option and the emphasis on the underlying causes of crime and strategies for prevention and diversion.
- Importantly, sufficient consultation with Aboriginal communities in the development of local justice mechanisms must occur to embody community needs and aspirations for justice and crime prevention. Local Aboriginal communities must be enabled to contribute to the design of community justice structures and participate within that framework to ensure their cultural values are maintained.

Indigenous Justice Agreement

- ATSIC NT is currently negotiating an Indigenous Justice Agreement with the NT Government. The agreement is expected to be finalised in December 2003. The Justice Agreement aims to reduce the number of Indigenous people in the criminal justice system by;
 - Improving service delivery by better co-ordination amongst agencies;
 - Actively engaging Aboriginal participation in developing, monitoring and reviewing justice policies, programs and services.

Recommendation 1

That the NT Government operates in partnership with ATSIC to establish workable, culturally appropriate crime prevention programs and to ensure Indigenous participation in the development, implementation and administration of such programs.

Recommendation 2

Actively engage Indigenous people in the decision making processes in developing and designing community justice mechanisms to successfully address Indigenous disadvantage, the development of local agreements and community justice plans are

encouraged as a means of actively involving the Indigenous communities to work with Government to develop local solutions for local problems.

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Commissioner Hill
ATSIC Northern Zone

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