

Alcohol, violence and customary law in Central Australia

It is arraignment day – the last Supreme Court sittings of the year. On the court list we have three clients charged with murder. The other 14 Central Australian Aboriginal Legal Aid Service (CAALAS) clients on the list are all charged with some sort of assault including four alleging grievous harm and three alleging sexual assaults. Only two of the defendants are women (charged with lesser assaults). The three men charged with murder are accused of killing, respectively, a brother, a girlfriend and a grandmother.

None of the homicides will resolve in these sittings and all will go over to February 2004. As usual CAALAS had a number of clients charged with murder this year. Of those cases that have been completed, one client was convicted by jury of killing his wife with an axe, knife and nulla nulla. Two men were discharged in relation to their matters. The others all pleaded to lesser alternative charges. Two men killed their wives by beatings with sticks or rocks. One man killed his brother in a fight using a nulla nulla. Another man killed his uncle in a fight over the disciplining of his children. Two men stabbed another man in an ongoing inter-family feud. A husband, wife and daughter were involved in an argument with a woman, which led to her stabbing and death. Only one of our clients (a male) killed a stranger, another Aboriginal man unlucky enough to be in the wrong place at the wrong time. Alcohol was involved in every case. Often both perpetrator and victim were grossly intoxicated. Perpetrators were generally very angry at the time of the incidents and the acts lacked premeditation or planning.

Five of the defendants have already received 'payback'. Traditional Aboriginal people like justice swift and delivered while passions are still hot. Justice delayed is justice denied and often leads to further trouble. When customary Aboriginal law is thwarted frustration and tension can lead to continuing violence. This has occurred in at least two of the above mentioned cases.

When a defendant has been subject to customary law that is satisfactory to the families concerned, a subsequent sentence imposed by the

court often becomes irrelevant. In those cases the matter is over in the minds of the parties, but the convicted family member is languishing in gaol.

Despite many of our clients being subject to both customary and Northern Territory law, violence continues unabated. The response of Northern Territory courts has been to impose longer sentences. The concepts of general and specific deterrence are espoused. Resultant increasing incarceration rates seem to be having no effect on rates of serious violence.

Customary law may involve the use of corporal punishment, unacceptable under Northern Territory law. Northern Territory courts will receive evidence of traditional punishment and, supposedly, mitigate penalty. However, courts refuse bail to those wishing to restore harmony by receiving punishment. Police on communities will turn a blind-eye to the infliction of corporal punishment done under traditional law when it is perceived necessary to prevent further violence.

There needs to be a serious effort to reconcile the two laws. Respect for both customary law and Northern Territory law needs to be engendered. Communities need to be involved in dispute resolution. This must be a give and take process where Northern Territory laws are changed where they impact harshly and unfairly on Aboriginal people.

We must not put too much reliance on criminal law to solve problems when it clearly does not work. The alcohol problem has to be tackled head-on with all the resources that can be brought to bear. In Alice

Springs there is still no long-term residential rehabilitation program. There is no half-way house for people released from gaol. There are no extensive community-based programs in the bush communities. There is a shortage of surveillance officers for home detention orders. There are no facilities for petrol sniffers in Alice Springs and all but one of the bush communities.

This week a man was brought in from a remote community for allegedly killing his wife. It is alleged they were arguing over the mix of petroleum they were sniffing. On the same day a long-term petrol sniffer was brought before the court for an alleged sexual assault on a six-month-old baby. There is no acceptable excuse for not tackling these problems before the tragic results.

The current government has made a start but there needs to be a search for radical solutions. We need to accept that present approaches are not working. Aboriginal men, in particular, need to be engaged in finding solutions.

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