The courts in Aboriginal communities

By Chief Magistrate Hugh Bradley CM.

In the May circuit to Nguiu the court list contained a total of 98 charges. Of these, 55 charges (56 percent) related to violence, weapons or alcohol and other drugs. In addition, 15 of the 28 defendants were charged with violent offences and there were 8 files where Domestic Violence Orders were being sought. All this for a community of only 1400 people. The seriousness of the problem is not limited to any single Aboriginal community and occurrence rates tend to vary from time to time.

It needs to be said that violence, and particularly family violence, is not limited to Aboriginal communities as the court lists in Darwin reveal. Given the statistics, it is clear that the Magistrates Court has a role to play in resolving community unrest. It is pointless, however, to think that the police, the DPP, the Courts and Correctional services can offer a solution to a problem, the genesis of which lies in social deprivation, a lack of education and alcohol and drug abuse. The lifestyle expectations of many must seem hopeless and the men in particular have little opportunity to establish any sort of self-respect.

When sober and before the Court the perpetrators of violence appear, for the most part, to be decent people with no means of extracting themselves from a life empty of challenge or rewards.

I believe every aspect pertinent to a properly functioning community will need to be addressed if this problem is to be overcome. Enforcement of law and order is but one of those aspects. Other important aspects include ensuring there is universal capacity for literacy and numeracy (so people are not sentenced in effect to a lifetime in one small community), meaningful employment and encouragement to participate in sporting and recreation activities.

The necessary changes to lifestyle and community facilities are the responsibility of all including the Aboriginal people. There are however some things which courts can and do do to bring home the need for change. In serious cases of repeated assaults the court must consider significant sentences of imprisonment to punish, deter and secure the safety of the weaker members of the Northern Territory community – see *R v Inness Warramurra* [1999] NTSCCA 45, particularly at paragraphs 36, 37 and 44.

Apart from such deterrent and protective sentences, there is an opportunity for the court to play a role and assist in the restoration of family relations and providing opportunities for individuals to change their ways. Some of those opportunities include:

* The involvement of family and community leaders in the court sentencing process. This has been shown in recent times to more effectively engage a defendant in the sentencing process with a hope for an outcome of lower rates of recidivism.
* Ordering participation in appropriate family and/or alcohol and other drug counselling programs where they are available. In particular, I have found that a Domestic Violence Program run by local people in the Tiwi Islands has been most successful.

The Domestic Violence Program was originally planned as a resource for sentencing offenders found guilty of violent offences. In fact, what happened was that defendants charged but not yet found guilty were prepared to participate in the program as part of their bail conditions. Parties to Domestic Violence applications also have volunteered to participate. Many women attend with their partners to gain an insight into what helps to make a successful and happy relationship. Feedback from community members suggests the program is a real success.

The courts can only respond to individual offences. If one is to look at pro-active measures to prevent what is clearly a major, and perhaps escalating, problem then one is in the political and not legal arena and I should not go there.