Aboriginal people in Australia: the most imprisoned people on Earth

*Aboriginal incarceration rates are much higher than the general Australian population. Moreover, indigenous women represent 34% of the total number of inmates. As if this wasn’t enough, the legal and welfare systems are removing indigenous children from their families and culture, serving as a mechanism of forced assimilation.*

By Suzi Hutchings - April 1st, April

Dunghutti man David Dungay Jr died on December 29, 2015 aged 26 calling for breath in a cell in Sydney’s Long Bay prison as he was held face down by prison guards attempting to sedate him. The harrowing plea “I can’t breathe” recorded in the last moments of George Floyd’s life on 25 May 2020, as he struggled under the weight of a Florida police officer’s knee, remind all First Nations peoples in Australia of the tragic death of David Dungay, and the deaths of so many Aboriginal people while in custody.

In early June 2020, Black Lives Matter protests were held throughout Australia. These were organised in solidarity with protests around the globe condemning the death of George Floyd at the hands of law enforcement officers in Florida, USA. At these rallies we shouted the catch cry “Black Lives Matter” alongside “Always Was Always Will Be Aboriginal Land” combining our grief with our enduring pride as First Nations peoples.

For us, as First Nations peoples the appalling death of George Floyd in the USA has only served to further reinforce the reality of our on-going colonial oppression, and has been a spark to re-ignite our years long battles calling for a substantial review by Governments of the continuing disproportionate levels of Indigenous deaths in custody, and the persistent over-representation of Indigenous peoples in the criminal justice system. As Butchulla Hip-Hopper Birdz raps in his 2017 song ‘Black Lives Matter’. “Now we say black lives matter but shit, the fact of the matter is, we just black matter to them, this shit keep happening”.

Debates Indigenas
Recommendations that were never followed

2021 is a noteworthy year in this battle for change for how Indigenous peoples are treated by the legal and welfare systems in Australia. It marks the 30-year anniversary of the release of the recommendations from the 1991 Royal Commission into Aboriginal Deaths in Custody (RCIADIC). Tabled on 15 April 1991, the Final Report signified a landmark moment in the relationships between Indigenous peoples and the Australian State and Federal governments. Established by the Hawke Labor Government in 1987, the Commission examined 99 Indigenous deaths.

This Commission was set up as a direct result of concerted activism by First Nations organisations throughout the country, including Aboriginal legal services, in partnership with the families and supporters of those who had died in custody. The Commission reported that one of the most significant factors that brought Aboriginal people into contact with the criminal justice system is their social disadvantage and unequal position in wider Australian society. But the finding by the Commission that the deaths were due to police and prisons failing their duty of care, combined with the persistently high numbers of Indigenous people being arrested and incarcerated, came as no surprise to First Nations families fighting for justice for their loved ones. The Royal Commission’s recommendations called for major reforms to welfare, police and justice policies and practices that had historically supported the State’s surveillance of Indigenous lives.

Yet, despite its ground-breaking judgements, it has been widely reported by Indigenous activists, academics and the Australian media since, that remarkably few of the 339 recommendations have been implemented over the past 30 years. Indigenous incarceration rates remain dis-proportionately high compared to the general Australian population, and Indigenous deaths in custody continue. Indeed, the number of Aboriginal people taken into custody has actually increased markedly since the Final Report of the RCIADIC was handed down thirty years ago.

A generation of indigenous children removed from their mothers

Kuku Yalanji lawyer and activist Noel Pearson, claimed a damning statistic when he was invited to take part in a public forum on ‘Q&A’ hosted by the Australian Broadcasting Commission in 2017. Pearson argued that Indigenous Australians continue to face high incarceration rates in modern
Australia, making the now famous comment that Aboriginal Australians are in fact “the most incarcerated people on the planet Earth”. This is so, when considering incarceration rates of Indigenous peoples in this country compared to incarceration rates in countries listed by the World Prison Brief.

These persistent inequities between First Nations and Settler Australians are at their most blatant in the treatment of Aboriginal women by the criminal justice system in Australia. The number of Aboriginal women in custody has increased by 30 per cent over this intervening period since the Royal Commission. Aboriginal women make up approximately 34 percent of the total number of female prisoners in Australia, despite Aboriginal people constituting not more than 2 per cent of the total Australian population. Aboriginal and Torres Strait Islander Social Justice Commissioner June Oscar, in a report released by the Australian Human Rights Commission in March 2020, called the high number of Indigenous women in custody “one of the most challenging human rights issues facing Australia”.

Australian legal and welfare systems have historically targeted Aboriginal women since invasion over 200 years ago. As mothers, a great number of Aboriginal women have faced the removal of their children under Assimilation Policies practised in Australia across 40 years. These children are now known as the Stolen Generations, those who were taken from their Indigenous families and cultures during this period and institutionalised in church or government homes or adopted out to settler families. In order that their removal was recognized legally, and for these children to be made Wards of the State they were charged with the offence of neglect, legitimising government control over their lives. While at the same time, this criminal charge guaranteed they started their young lives with a criminal record, ensuring a perpetuation of involvement with welfare, police and legal authorities not only for themselves but for their children and generations to come.

This crisis of maltreatment by legal and welfare systems in Australia continues as many of the Stolen Generations have struggled to come to terms with the profound loss of family and cultural connection. The criminalisation of Aboriginal children under past Assimilation policies has
legitimated structural discrimination in Australian society perpetuating surveillance by welfare agents and by police of Aboriginal people and those of Aboriginal women in very particular ways.

**Between moving forward and resisting change**

On December 5, 2017 Yorta Yorta mother Tanya Day was reported to police by a V/Line train conductor for “unruly” drunken behaviour, and for not being able to find her ticket. She was removed by Victorian state police from the train and arrested under the archaic offence of being drunk in a public place. She was taken into police custody to ‘sober-up’. During her time in the cell she fell and went unnoticed by the police officers for many hours. Her fall resulted in Ms Day sustaining a traumatic brain injury. Police called an ambulance but it did not arrive for over an hour. Despite her admission to hospital Ms Day never regained consciousness. Her family mounted a tireless campaign calling for justice for Ms Day. In 2019, the family’s fight for justice was heard by the Victorian State government and a Coronial inquest was held into her death.

The Coroner made two significant initial findings. Firstly, that the Offence of Public Drunkenness under the Summary Offences Act (1966) should be decriminalised and secondly, the unprecedented finding that the Inquest would consider whether systematic racism had contributed to Ms Day’s death. In February 2021, over three years later, the Day family received victory and a significant level of justice that will positively impact Aboriginal people throughout Victoria, when the Victorian State Parliament passed legislation to decriminalise public drunkenness. This is a defining moment in the history of First Nations relations with the Settler Colonial state in Australia. It is a significant step forward, but much more needs to be done to ameliorate the conditions for First Nations people, and Aboriginal women in particular who are targeted by the legal and welfare systems in Australia.

The control of Aboriginal and Torres Strait Islander women’s lives by the colonial state continues in many other legislative forms and Indigenous children are still being removed at an alarming rate from their traditional families under modern Child Protection Policies in most states in Australia. The Family Matters Report, prepared by the Indigenous run Secretariat of National Aboriginal and Islander Child Care (SNAICC) that was released in late 2020, stated that “Aboriginal
and Torres Strait Islander children represent 37% of the total population of all children that have been removed from their parents – a staggering 20,077 children – but represent only 6% of the total population of children in Australia.”

The mothers of these children are still being identified by welfare agents as neglecting their children. This enables State justification for welfare intervention, leading to the removal of these children from their families. The cycle of colonial control continues, as these Aboriginal and Torres Strait Islander families become vulnerable to a life-time of government surveillance and potential criminalisation by the system.

Many, many Indigenous women and their families in Australia see and experience the Child Protection system as a re-invention of the past policies of Assimilation. This ‘protection’ system has led to a new and expanding generation of Stolen Indigenous children. And it is clear the system is ineffective and perpetuates further cycles of intergenerational disadvantage. For real levels of justice to be achieved in Australia, for substantive change to our relations with State welfare and our human rights, something has to give. There is a reluctance to change at the policy level. Public dialogue has not succeeded in building consensus. If Black lives matter, then make us equal. Give our children more than State ‘protection’.

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