

ANTI-SLAVERY SOCIETY
for the
PROTECTION OF HUMAN RIGHTS

REPORT TO THE WORKING GROUP ON INDIGENOUS POPULATIONS 1989
Australia - deaths in custody

"Frequent denials of existing rights and broken promises of new rights have brought about frustration mixed with anger, and lack of Aboriginal and Islander trust and faith in federal and state governments".

These are the words of Madame Dias, taken from the report of her visit to Australia in 1983. We quote them now because they highlight the conditions in which the current Royal Commission of inquiry into Black Deaths in Custody is operating. There are fears amongst Aborigines that the Commission may not be entirely impartial, and the Anti-Slavery Society is concerned that the removal of Mr Justice Mr Muirhead from the Commission may be an example, in effect if not in intent, of yet another "broken promise". His initial appointment, though perhaps not enthusiastically welcomed by all Aboriginal activists, was nevertheless broadly acceptable to the majority of Australia's First People. It will not be surprising if "trust and faith" in governmental actions and pronouncements are further and sadly eroded by a change in the Commission's chairmen. In the polarised society that Australia has become, the report that Western Australia's police thought the Commission to be "unfair and unbalanced"¹ has, for numerous Aborigines and ominous ring to it twelve months later. In open court in Perth, Western Australia, Mr Muirhead expressed his concern that the accusation apparently mirrored the views of the state government.

Western Australia is one of the two states with the highest number of black deaths in custody.

WGIP 89/OCÉ-AUS/6

The Royal Commission was set up in 1987 to look at the deaths of 44 Aborigines since 1980; now 110 deaths are being investigated. By as early as April 1988 the Committee to Defend Black Rights had given to the Commission a list of 28 major concerns regarding the conduct of the inquiry, and by December the Premier of Queensland greeted the Commission's interim recommendations with the words: "...we can't see how it is possible to screen police force applicants for racism".

Mr Gerry Hands, the Federal Minister for Aboriginal Affairs, singled out Western Australia and Queensland for their negative reactions to, in particular, the Commission's recommendations on rooting out racism in the police and the prison service.²

Queensland has the second highest numbers of deaths in custody.

The most tragic comment on the interim report came a few days after its release when 28-year-old Roderick Maher was found dead in a supposedly suicide-proof cell in Geraldton, Western Australia. His was the third death in that lock-up in twelve months.

Perhaps the most telling illustration of the whole complex problem of the relationship of Aborigines to European laws and law enforcement methods, is that the numbers of cases the Commission is investigating is now almost three times larger than when it started.

The polarisation of police and those policed is exemplified by the legal action taken earlier this year by the Western Australian police force and prison officers' unions "to have the Commission disbanded".³

The Anti-Slavery Society added its voice, in this forum two years ago, to those of Aborigines who had long been calling for an official investigation into deaths in custody. It was heartened at the announcement of the Royal Commission's formation and then, as now, it welcomes it.

However, its current position may be summed up in the words of Mr Galarrwuy Yunupingu, chairman of the northern Land Council, Northern Territory. When Mr Muirhead's appointment as Administrator of the Northern Territory was announced, Mr Yunupingu said:

It's a very welcome appointment. But we regret the fact that this means he will be leaving the Royal Commission into Aboriginal Deaths in Custody at such a crucial stage. His leaving after producing a considered and compassionate interim report - and at a time when the Royal Commission is under fire from conservatives - means the Federal Government will have to consider carefully the question of his replacement. I hope his successor shows the same tenacity and ability as Jim Muirhead.⁴

The Anti-Slavery Society wishes that successor, Mr Elliott Johnson, QC, well, and trusts he will adhere to the old maxim that justice must be seen to be done; that way lies the possibility of the restoration of Aboriginal "trust and faith" in federal processes. Such restoration is vital to racial harmony, and it may make the charge of "blaming the Aborigines"⁵ that earlier this year greeted the first findings in individual cases happily groundless in years to come. It may also contribute to healing the wounds caused by past official policies "which had amounted to genocide" according to the Royal Commission's report on the death in custody of Malcolm Smith.⁶

The Anti-Slavery Society also supports the positions of the National Aborigines and Islander Legal Service Secretariat which has condemned the introduction by the federal government of the 31 May 1989 cut-off date for cases to be referred to the Commission, and which has also called for a permanent, independent body to investigate black deaths in custody after the Commission has made its final report.

The Society welcomes the redirecting of the Commission's work into investigating why aborigines suffer such grossly disproportionate imprisonment rates.

Recommendations

The Anti-Slavery Society recommends that:

1. the Royal Commission's cut-off date be renegotiated with Aboriginal legal groups;
 2. a permanent investigating body be set up to continue the Commission's work;
 3. Aborigines be consulted as equals at all times.
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1. Sydney Morning Herald, 15 July 1988
2. The Weekend Australian, 1 January 1989
3. Daily Telegraph, Sydney, 2 May 1989
4. Land Rights News, January 1989
5. Newsletter, Anti-Slavery Society 1/1989
6. Sydney Morning Herald, 21 April 1989