

were refugees by reason of being members of a particular social group ((1994) 127 ALR 383) but was withdrawn after the Full Federal Court reversed the decision ((1995) 57 FCR 309). The Bill sought to ensure that the fertility control policies of the government of a foreign country would be disregarded in determining whether a person was a member of a particular social group within the meaning of the Convention.

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References

1. The Han people are the majority ethnic group in China. The one child policy appears to be applied less strictly by the Chinese Government to members of certain ethnic minorities.
2. Goodwin-Gill, *The Refugee in International Law*, 2nd edn, 1996, p.46.

DOMESTIC VIOLENCE

Bush women confront male violence

NANETTE ROGERS discusses the experiences of Aboriginal women with domestic violence in remote communities with an introduction by **SHIRLEY BRAUN**.

My name is Shirley Braun. I am a 47-year-old Aboriginal woman born and raised in Alice Springs. While my parents were at work my older brother, myself, my younger sister and brother were cared for by my grandparents, Sid and Alice Ross. Sid Ross was a traditional owner for Alice Springs. He died when I was 29 years old. In all those years he never once beat my grandmother; it was not part of his culture, and I believe because of this my parents themselves did not abuse each other. We grew up in a happy, caring and sharing house.

I have worked at the Central Australian Aboriginal Legal Aid Service (CAALAS) since 1981 in various positions but nearly always in the field. During this time there has only been one legal education workshop series specifically for Aboriginal women in remote communities, and that was in 1995. As there was only a limited amount of money not all of the communities in the CAALAS area were revisited (CAALAS covers approximately two-thirds of the NT). Nanette Rogers and I decided to visit ten of the larger communities. We wrote to the person in charge of the Women's Centres and asked that they discuss any legal

aspect with the women that they wanted workshopped. All of the Women's Centres that were functioning wrote back stating that they wanted to workshop domestic violence.

When we arrived at the Communities we found the women crying out for information and resources to deal with domestic violence. The women were concerned about the lack of respect shown in Aboriginal law towards them from their men and decided to turn to white man's law for protection. They were concerned about the treatment grandmothers, mothers and young girls were getting, and because the men control the Councils, the lack of help they were receiving from officials. Even at some of the Women's Centres the white woman in charge would turn a blind eye. The Women's Centres play a very important role on remote communities. The women are taught how to look after their homes, how to cook nutritious meals, to sew and how to fine tune their natural talents in painting and craft-making. There are also washing machines and showers at the Centres for women to resource. As there are no 'safe houses' on the communities, with ATSIC cutting the funding to the Women's Centres the women will no longer be able to escape there, even for the day.

Shirley Braun

Shirley Braun has worked at CAALAS since 1981 in a variety of positions, including Deputy Director.

Audrey Bolger¹ reported that Aboriginal women were grossly over-represented in the number of murders, attempted murders and sexual assaults committed against them in the years 1987 and 1988. Bolger noted that studies such as those conducted by Jocelyn Scutt in Australia and Jill Radford in the UK have shown that women are often reluctant to report violent incidents to the police.² There is no reason to assume this under-reporting by women of violence inflicted on them differs between Aboriginal and non-Aboriginal women. Bolger estimated that the equivalent to one-third of the NT Aboriginal female population is assaulted in one year.³ The massive prevalence of violence perpetrated on Aboriginal women by their partners is well known locally. Over the last two years Aboriginal women, despite constituting only 24% of the total female population of the Northern Territory,⁴ have comprised 70% of the clients of the Alice Springs Domestic Violence Service.⁵ A significant proportion of these women were from bush communities.

What women talked about

At the workshops, older women tended to be articulate in the company of other women about the problems of male violence they were experiencing in their own communities. Younger women tended to be quiet in such a group but nevertheless were unreserved when they were given the opportunity to speak privately about their problems. Some of the older women spoke publicly about the violence within their own marriages, a number of which had lasted for decades.

These older women also spoke of the violence of their sons-in-law towards their wives and to themselves. Some mothers-in-law were assaulted by their son-in-law if they attempted to intervene when he was assaulting his wife.

A number of women, particularly older women, differentiated violence between men on men, women on women, women on men and men on women. The first three categories tend to occur in *public* places and a lot of people in the community are made aware of it first hand. The fourth category, on the other hand, can happen behind closed doors (like lots of domestic violence in the broader white community) or out bush away from the local community and other people — that is, it tends to occur in *private*.

All the women seemed to have experienced male violence first-hand. Concern was expressed about the large number of Aboriginal women killed by their husbands in the NT. An examination of all NT Supreme Court cases in Alice Springs for the period January 1986 to December 1995 shows that of 60 cases of Aborigines convicted of a homicide offence, 20 involved a husband killing his wife. A number of the older women had experienced domestic violence in their own marriage, and then saw it occurring in the marriages of their offspring. Some women had not been in a violent relationship with their husband, but their sisters or granddaughters were. All of the women were concerned about the prevalence of domestic violence, how often it occurred and the inability of Aboriginal law to cope with it.

Aboriginal law

Aboriginal law is a vibrant feature of life in many bush communities in Central Australia. But it is not codified. In general, it has not been able to deal successfully with problems such as grog, domestic violence and petrol-sniffing. This is despite innovative schemes such as night patrols which operate in some Central Australian communities.

Women deplored what they saw as the breakdown of their traditional culture. For example, they said that drunks did not respect 'sorry business' camps, some men did not stay in their community for any significant time caring for country and family but went to town often to drink, and some men did not observe the rules of behaviour in regard to kin, particularly senior people. The women were concerned about these aspects of their community's life. They wanted their law and culture to remain strong but they also wanted the *choice* of invoking the white law if they or female members of their family were in violent situations.

Restraining orders in the NT

Women of all ages in these communities were eager for information about the white law and restraining orders. They were interested in the court processes — most had never been to court although they had heard of the many experiences with the criminal law of their menfolk. They were curious about the different types of restraining orders that can be made by courts in the NT. For example, an order can be made in terms of the husband not being allowed to assault or threaten his wife, or that he not approach her or her camp if he has been drinking alcohol. Such orders enable the parties to cohabit as long as he observes the conditions of the orders. There is flexibility in such orders and magistrates in Central Australia, in my experience, have been granting orders like these since 1990.⁶

A number of Aboriginal women using the Alice Springs Domestic Violence Service initially do not want to 'finish up' with their husband when they first take out a restraining order, but simply want some protection from his violence. Down the track however, when the violence hasn't ceased many such women seek a 'no contact' order.

What women wanted

The outcomes that women wanted were:

- to live in safety in their communities;
- to have a safe place to go to in their community if they were being assaulted or threatened by their husband;
- to invoke the assistance of the police quickly if it was necessary;
- to obtain legal advice to get restraining orders in the bush courts if women wanted them;
- to get the families of both the wife and the husband to take responsibility for her safety and his violence;
- a broad community approach through the community government council to the problem of domestic violence.

Women also identified other features of community life which they believed did not assist them. Many local community government councils are dominated by Aboriginal men, as are ATSIC Regional Councils. Women wanted to see more of their own elected to these positions so that they had a voice which could be heard on a whole range of social, economic and political issues and to obtain more resources in areas of importance as identified by the women.

There were several positive outcomes of the legal workshops. There was a follow-up meeting organised by Aboriginal women themselves at one community, the designation of one women's centre as a 'safe' house, and the confirmation of the appointment of an Aboriginal police auxiliary to one community which previously had no police presence.

Conclusions

Women's centres

The importance of these centres for women in remote communities cannot be over-emphasised. For communities where there is no women's centre or not one which is operational, information is difficult to disseminate to women and they have little in the way of resources. When women's centres are functional, they can provide not only resources and activities, but can also serve as a meeting place and a respite centre from demands made on women by violent husbands. It is the only place some Aboriginal wives are allowed to go to by themselves as husbands see it as harmless because of its sex segregation.

However, some co-ordinators of women's centres are more proactive than others in addressing domestic violence issues directly, such as through the provision of information and direct referrals to appropriate agencies.

Restraining orders

Some women were very clear that domestic violence needs to be addressed by themselves, their families, their community and the white legal system if it is invoked by a woman. At present, bush courts sit every two months for one day at only certain bush communities. For most women it is not a realistic option to travel to a larger centre such as Alice Springs, where the court sits daily. A CAALAS lawyer attends the bush court sittings, but they only act for criminal

defendants (usually male). The Alice Springs Domestic Violence Service lawyer has attended the Tennant Creek and Yulara court circuits for the past 18 months and has provided valuable assistance to a number of women there, but no lawyers currently attend bush courts to assist women who are seeking restraining orders. NT police are empowered to seek telephone interim orders, but this rarely occurs in remote communities where there is a police presence.

This is not to say that restraining orders are the answer for all Aboriginal women in remote locations. Enormous difficulties exist for women trying to separate themselves from marital violence in a bush community of 300-400 people. The communities are geographically isolated, families are inter-related, the husband may have a violent reputation generally and thus others in the community are fearful of him. There are additional problems if the woman is from different country and living in her husband's country — his violence towards her is often ignored by his family and she has none of her own kin to call on for assistance.

Assuming that women experiencing marital violence can get a restraining order issued by a court, it still may not afford them much protection. The success or otherwise of such orders greatly depends on the presence of police in the immediate area to respond to requests for help, how helpful or otherwise other agencies and their personnel in the community might be (such as health clinics, schools, community councils, stores), and how supportive the families of the women concerned are.

Aboriginal women in bush communities are talking about domestic violence as an important issue which needs to be dealt with so that they, their daughters, sisters, granddaughters and grandmothers can live in safety. It is a very significant problem across the language groups and geographical locations in Central Australia. There needs to be a recognition of it as such at all levels by legal, social, and political bodies. For example, organisations like CAALAS should not be seen as primarily a service for Aboriginal men charged with criminal offences. Bush community councils and ATSIC Regional Councils must have more elected women members so that their concerns are reflected in economic and political strategies and plans. Aboriginal women are important and their lives should be valued.

Nanette Rogers has worked as a solicitor with Aboriginal women in Central Australia since 1990.

References

1. Bolger, Audrey, 'Aboriginal Women and Violence', North Australia Research Unit, Australian National University, Darwin, 1991, p.11.
2. 'Scutt found that only a little over half her sample had sought police assistance while Radford put the figure as low as 25% [citations omitted]'. Bolger, above, p.11.
3. Bolger, above, p.12.
4. Census Characteristics of the NT, 1991 Census, Australian Bureau of Statistics p.11.
5. Personal communication 9 August 1996 with Joanne Fleer, solicitor at Alice Springs DVS
6. I have been made aware of magistrates in courts in WA particularly on the Ngaanyatjarra lands, refusing to make orders in similar terms, apparently saying that women must have a 'no contact' order or nothing at all. Attitudes like these are not responsive to the needs of Aboriginal women in remote locations grappling with domestic violence.

ALCOHOL ABUSE

Curtin Springs Roadhouse

RUTH MORLEY reports how one Aboriginal group is dealing with the problem of excessive drinking by members of its community.

Attempts to address excessive alcohol consumption by the Aboriginal population of the Northern Territory have intensified over the last three years. Territory towns including Tennant Creek, Katherine, Jabiru, Curtin Springs, Alice Springs, and Halls Creek in the Kimberley (WA) have all sought, and some obtained, restrictions on alcohol sales.

Initiatives for the restrictions have predominantly come from Aboriginal communities and have involved extensive negotiations with publicans, town councils, and citizens. The restrictions usually include no trading on pension days, and limiting take away sales.

In all cases, agreement has been reached by negotiation facilitated by the Northern Territory Liquor Commission at the demand of Aboriginal organisations. However, with Curtin Springs, negotiation was not possible until the Human Rights and Equal Opportunity Commission was brought in and a Coronial Inquest begun. Before this, the Ngaanyatjarra, Pitjantjatjara and Yankunytjatjara (NPY) Women's Council had fought for 15 years to restrict sales of alcohol at Curtin Springs. Contrary to the publican's claim in the *Australian* recently that he had attempted to sit down and talk the matter over with Anangu (Pitjantjatjara word for themselves), it was not until legal action was threatened and taken that he was prepared to listen. Once the formalities of the Application for a Special Measures Certificate were done, the legal representative of the NPY Women's Council left the scene willingly and voluntarily. Anangu representatives and the co-ordinator of the Council continued negotiations.

The Curtin Springs negotiations are unique as they were conducted as a result of an application for a Special Measures Certificate under the *Racial Discrimination Act 1975* (Cth). The following is an account of the application.

A Special Measures Certificate is available under s.8(1) of the *Racial Discrimination Act*. Part 2 of the Act states exceptions to the rule that racial discrimination is prohibited. Section 8(1) says:

This part does not apply to, or in relation to the application of, special measures to which paragraph 4 of article 1 of the Convention applies except measures in relation to which subsection 10(1) applies by virtue of subsection 10(3).

Article 1, Part 4 of the International Convention On the Elimination of all Forms of Racial Discrimination (ICEFRD) says:

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided however, that such measures do not as a consequence lead to the maintenance of