

Incarceration of Indigenous and non-Indigenous adults: 1991 – 2001: trends and differentials

Gaminiratne Wijsekere
Office of Evaluation and Audit
Aboriginal and Torres Strait Islander Commission*

Paper prepared for presentation at the 11th Biennial Conference of the Australian Population Association, 2-4 October 2001 University of New South Wales, Sydney

** Views expressed in this paper are of the author and do not necessarily represent the views of the Aboriginal and Torres Strait Islander Commission*

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By

Gaminiratne Wijsekere

Abstract

This paper examines trends in incarceration of Indigenous and non-Indigenous adults in Australia during the 11-year period from when the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) handed down its report in 1991. The data for the analysis are drawn from the annual prisoner census conducted by the ABS. To calculate incarceration rates Estimated Resident Population (ERP) and the relevant Experimental Indigenous Resident Population Estimates of the ABS are used. Age-standardised incarceration rates are used for comparison to take account of different age-profiles among comparison groups. This paper finds that, despite implementation of several measures recommended by the RCIADIC, incarceration rates for Indigenous adults have been increasing at a faster rate than for the non-Indigenous population. A part of the increase in the rates could be due to the increasing tendency for self-identification among persons of Indigenous origin. The absence of reliable estimates of the Indigenous population for post-Censal years is also a factor affecting comparability of rates across time and across population sub-groups. The paper discusses some policy implications of observed trends.

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Introduction

The Royal Commission appointed by the Federal Government to inquire into Aboriginal Deaths in Custody released its comprehensive report in 1991. The Commission was of the view that the high level of Indigenous deaths in custody was a result of over-representation of Indigenous people at all stages of the Criminal Justice System, rather than of any foul play (Commonwealth of Australia, 1991). As a means of minimising deaths in custody and enhancing the general well-being of Indigenous people, the Commission made over 340 recommendations. It specifically suggested that imprisonment should be a last resort for Indigenous people and asked State and Territory governments to consider introducing laws to that effect. Many of the recommendations of the Commission were accepted in full or in part, and several others were accepted in principle, by Commonwealth, state and territory governments. Accordingly, the period of the early to mid-90s saw amendments to existing legislation to give effect to the Commission's recommendations.

More than a decade has now passed since the release of the Royal Commission report. The monitoring of deaths in custody by the Australian Institute of Criminology shows that Indigenous deaths in custody, relative to non-Indigenous custody-deaths, have not increased from the level found in the pre-Royal Commission decade to post-Royal Commission decade – but nor have they declined (Williams, 2001). Both the numbers and the rates (expressed as per 100,000 adults) of Indigenous adults' incarceration have been rising, relative to the non-Indigenous population, despite the implementation of the Royal Commission's recommendations (Biles and McDonald, 1992). This paper examines levels and trends in Indigenous incarceration during the post-Royal Commission decade, from 1991 to 2001, and compares incarceration rates of Indigenous adults with those of non-Indigenous adults. Some factors that may influence the high Indigenous incarceration rates are also discussed, including an analysis of the potential impact of Indigenous population figures on observed rates. The paper further examines age, gender and geographic variations in incarceration rates, and discusses policy implications of observed trends.

The data

The data for this analysis are drawn from the ABS Estimated Resident Population (ERP) and the Experimental Resident Population Estimates for the Indigenous population, and from the annual prison census conducted by the ABS through the state and territory corrective services departments. From 1991 to 1995 prison census data are drawn from annual publications of the Australian Institute of Criminology. ERP estimates for Australia as a whole and for the states and territories are compiled by the ABS, taking into account the census population counts adjusted for the net enumeration errors, net migration flows, and the natural increase of the population. Due to the absence of reliable estimates of Indigenous fertility, mortality and the actual size and age-sex distribution of the Indigenous population, the ABS uses methodologies quite different to those applied to ERP estimates (ABS, xxx).

Population censuses carried out since the referendum of 1967 have so far failed to produce consistent Indigenous population counts; that is, counts within reasonable expectations based on the estimated natural increase of the population (Gray and Tesfaghiorghis, 1993). All, except the 1976 census which produced a lower population count than the previous census, showed an intercensal increase of Indigenous population which was difficult to explain by natural increase alone. Explanations put forward for the apparently excessive rise in the population counts include coverage improvements and, notably the progressive increases among persons of Indigenous origin for self-identification, the phenomenon known as 'category movement' (ABS, 1997; 1999).

The magnitude of the increases in Indigenous population due to 'category movement' is difficult to estimate precisely because of the lack of reliable data on Indigenous births and deaths. Consequently, the ABS projected Indigenous population figures for the post-Censal years frequently do not agree with the census counts carried out subsequently. For example, the Experimental Projections of Indigenous population based on the results of the 1991 Census, required revision when the 1996 census figures were released (ABS, 1988a). Similarly, experimental projections of the ABS for 2001 differed

¹ Due to funding shortages, ABS did not process all census schedules from the 1976 Census. The census results were based on a 50% sample of census schedules. Only in the NT were all census schedules processed. See Choi and Gray, 1985),

from the preliminary mid-year population estimated by ABS based on the 2001 Census for that year. The revision of the detailed mid-year estimates by age and sex for the Indigenous population based on the 2001 Census results should be completed by ABS by December this year. Following this, back-projections of the 1996-2001 population is also expected. In order to compute incarceration rates, therefore, this paper, uses the Indigenous population projections currently available from the ABS, which are based on the 1996 Census. For the period from 1996 to 2006, two sets of projections are available from ABS: low series (and high series (ABS, 1988a). This report uses the high series of the projection to allow for any possible effect of the 'category movement'.

Now the non-Indigenous population by sex, is estimated by subtracting the Indigenous population in each age group from the corresponding ERP estimates. Thus, any substantial change in the Indigenous population should have an impact on incarceration rates of both Indigenous and non-Indigenous populations. While the ERP estimates and Experimental Projections form the denominator for computation of relevant rates (per 100,000 adult population), the data for the numerator for calculating rates are derived from the annual censuses of prisoners. Although it is called a census, the information is collected from the administrative records of the respective corrective-services institutions. Detailed data are published for adult prisoners as a whole, (defined as 17 years and over), and separately for the Indigenous people. In all jurisdictions, the corrective services staff checks the Indigenous status — as they identify themselves — on their arrival in gaols.

This information is recorded on forms maintained by corrective services. As the Indigenous status recorded on prison records is based on self-identification, it is possible that the information on the Indigenous prison population is also affected by a propensity to self-identify, observed in census enumerations. Although, the prison census data represent only those adults in gaols at a particular time (30th June), and the number of prisoners in gaols can also be affected by other factors such as sentencing practices, these form the best criminal justice indicators presently available in Australia (Clifford, 1982; Aboriginal and Torres Strait Islander Commission, 2002).

Incarceration of Indigenous Australians

In 1991 there were 2,140 Indigenous adult prisoners in Australian prisons. This number increased to 4,445 in 2001, showing an increase of over 107 per cent during a period of 11 years. During the same period, the number for the non-Indigenous prison population also increased, from 12,881 to 18,013, but its percentage increase was only 40 per cent. The age-standardised incarceration rate for the Indigenous adult population increased from 782 prisoners per 100,000 adults in 1991 to 1,254 in 2001, representing an increase of 60 per cent. This contrasts with the corresponding rate for the non-Indigenous population, which increased by only 32 per cent. For both Indigenous and non-Indigenous groups the incarceration rates rose consistently over the 11-year period, with the exception of the year 2000 when the number of Indigenous incarcerations declined by 8.8 per cent from 1999.

A detailed examination of incarceration rates revealed that this decrease largely occurred in Queensland and in the Northern Territory. The decreases in the Northern Territory appear to have coincided with the introduction of mandatory sentencing. The immediate aftermath of the legislation resulted in noticeable reductions in some types of crimes by persons particularly those with a history of criminal offences. This appeared to be a short-term effect as the number of persons incarcerated rose in the following year². The drop in incarceration registered in Queensland is somewhat puzzling, and requires further examination, before any conclusions are made.

By contrast, the number of non-Indigenous adults incarcerated continued to rise: from 17,215 in 1999 to 17,615 in 2000 (see Table 1). In the following year the Indigenous incarceration rate rose by 9 per cent from 4,095 persons in 2000 to 4,445, with the corresponding standardised rate rising by 6 per cent.

Over the 11-year period the overall Indigenous incarceration rate grew 5.7 per cent per year, at a rate nearly twice as high as that recorded for the non-Indigenous population (2.8 per cent)³. The faster growth of the rate of

² In the Northern Territory, the number of Indigenous incarcerations declined from 1,207 in 1999 to 1,018 in 2000 and then rose to 1,146 in 2001. The non-Indigenous incarcerations however continued to decline: 4,482 in 1999; 4,176 in 2000 and 3,371 in 2001. For a summary view and comment on mandatory sentencing and its impact on crimes see Roche, (1999).

³ Annual growth rates were derived by fitting a log-linear model to the 11-year data series. Annual growth rate for both Indigenous and non-Indigenous were significant at the 1% level.

Indigenous incarceration compared to the non-Indigenous rate, may suggest that Indigenous people are more likely than others to be imprisoned; or in fact it may reflect the effect of increased identification of prisoners as of Indigenous origin discussed above.

Table 1: Indigenous and non-Indigenous adult prisoners: number and rate per 100,000 adult population aged 17 years and over, 1991-2000

| Year | Indigenous incarceration rate | | | Non-Indigenous incarceration rate | | | Ratio* |
|------|-------------------------------|--------------|--------|-----------------------------------|--------------|--------|--------|
| | Observed | Standardised | Number | Observed | Standardised | Number | |
| 1991 | 1,107 | 782 | 2,140 | 104 | 101 | 12,881 | 7.7 |
| 1992 | 1,126 | 794 | 2,224 | 105 | 104 | 13,335 | 7.7 |
| 1993 | 1,196 | 851 | 2,414 | 105 | 103 | 13,452 | 8.3 |
| 1994 | 1,358 | 974 | 2,800 | 109 | 108 | 14,144 | 9.0 |
| 1995 | 1,417 | 1,030 | 2,985 | 110 | 109 | 14,443 | 9.4 |
| 1996 | 1,512 | 1,117 | 3,273 | 112 | 111 | 14,920 | 10.1 |
| 1997 | 1,566 | 1,166 | 3,580 | 114 | 115 | 15,502 | 10.1 |
| 1998 | 1,560 | 1,176 | 3,750 | 118 | 119 | 16,156 | 9.4 |
| 1999 | 1,681 | 1,293 | 4,307 | 124 | 126 | 17,229 | 10.4 |
| 2000 | 1,526 | 1,179 | 4,095 | 125 | 128 | 17,615 | 9.2 |
| 2001 | 1,567 | 1,254 | 4,445 | 123 | 133 | 18,013 | 9.4 |

* Over-representation ratio (Ratio of standardised rates: Non-Indigenous/Indigenous).

If the number of Indigenous people is increasing, in the population as well as in gaols, then this phenomenon may affect the comparability of incarceration rates across time, space and sub-groups. However, the impact of any such phenomenon on Indigenous incarceration rates is difficult to assess.

Still another factor that may be relevant to the comparison of incarceration rates between the two population groups should be mentioned. Over three-decades have passed since the referendum of 1967, and since the first census of 1971, that collected Indigenous information as part of the Australian population, but to date there is no reliable estimate of the number and the age-sex distribution of the Indigenous population.

Table 2: Indigenous and non-Indigenous age-standardised incarceration rates and estimated over-representation ratios derived based on three base populations, 2001

| Base population | Indigenous | Non-Indigenous | Over-representation ratio |
|--------------------|------------|----------------|---------------------------|
| Low series | 1,472 | 135 | 10.9 |
| Mid-year estimates | 1,389 | 123 | 11.3 |
| High series | 1,254 | 123 | 10.2 |

According to the high series the Indigenous population 17 years of age and over for the year 2001 was 283,671. This was about 9 per cent higher than the preliminary mid-year estimates for the Indigenous population for 2001, and 17 per cent higher than the low series for that year. Obviously, the type of population base used for calculation of incarceration will yield different levels of incarceration rates. Although the levels of incarceration could be different depending on the base populations used to derive rates, the Indigenous disadvantage in incarceration remains high as has been illustrated for 2001 in Table 2.

Indigenous over-representation

The faster rate of growth in incarceration rates among the Indigenous population compared to the non-Indigenous population, observed in the period from 1991 to 2001, has also resulted in the high Indigenous over-representation in Australian gaols. For example, in 1991 the Indigenous population accounted for less than 2.0 per cent of the total Australian population, but in that year 14 per cent of all adult prisoners were identified as of Indigenous origin. By 2001, this proportion had risen to 19.9 per cent, while the Indigenous percentage of the total population had risen to just 2.4 per cent. This clearly demonstrates an over-representation of Indigenous people in Australian gaols.

Not only are Indigenous people over-represented in gaols, their over-representation has been increasing and remains higher than at the start of the period, 1991. This is demonstrated clearly by comparing the age-standardised incarceration rates for Indigenous and non-Indigenous persons shown in Table 1 above. In 1991, Indigenous people had an over-representation ratio of about 8 (non-Indigenous age-standardised incarceration rate divided by Indigenous rate), suggesting that they were 8 times more likely than non-Indigenous people to be imprisoned. The over-representation ratio has increased each year since 1991 and reached 10.1 in 1997. From 1998 to 2001 this ratio began to fluctuate around 9.6, which was still higher than that recorded in 1991.

Repeat prisoners

The majority of prisoners are repeat prisoners. However, the percentage of repeat prisoners is much higher among Indigenous people. The average percentage of

prisoners over the 11-year period with a prior adult imprisonment was 75 per cent for the Indigenous prisoners compared to only 54 per cent for the non-Indigenous (Table 3). It is difficult to establish from the data just why Indigenous ex-prisoners are so frequently returning to gaols, but the policing and sentencing practices of different jurisdictions could be expected to play a role. Furthermore, persons with a prior prison record are more likely than first time offenders to go to gaol, irrespective of the seriousness of offence committed subsequently. The fact that the bulk of Indigenous prisoners had prior adult conviction in prisons is a serious policy concern, which must raise some doubts about the success of preventative strategies adopted in various jurisdictions.

Table 3: Number of Indigenous and non-Indigenous adult prisoners by known previous imprisonment, Australia, 1991-2000

| Year | Indigenous Prisoners | | Non-Indigenous prisoners | |
|------|----------------------|--------------------|--------------------------|--------------------|
| | Previous | Per cent previous* | Previous | Per cent previous* |
| 1991 | 1667 | 77.9 | 6879 | 53.4 |
| 1992 | 1686 | 75.8 | 7367 | 55.2 |
| 1993 | 1819 | 75.3 | 7150 | 53.2 |
| 1994 | 2202 | 79.0 | 8046 | 56.9 |
| 1995 | 2182 | 76.7 | 7628 | 53.1 |
| 1996 | 2414 | 76.8 | 8033 | 53.9 |
| 1997 | 2727 | 76.9 | 8313 | 53.7 |
| 1998 | 2895 | 77.2 | 9474 | 58.6 |
| 1999 | 3208 | 75.1 | 9258 | 54.1 |
| 2000 | 3122 | 76.8 | 9121 | 51.8 |
| 2001 | 3393 | 76.3 | 9714 | 53.9 |

Note: Because of the 'previous imprisonment status not known' category, the total number of prisoners without a previous imprisonment cannot be estimated by subtracting the 'per cent previous' from 100.

Source: Prisoners in Australia, Australian Institute of Criminology and Australian Bureau of Statistics respective years.

Variations by jurisdiction

The incarceration rates of Indigenous and non-Indigenous populations are compared using the data for 2001, the latest year for which detailed data are available. To enable comparison, age-standardised incarceration rates have also been computed. Table 4 presents details for the number of persons incarcerated, incarceration rates, both observed and standardised, for Indigenous and non-Indigenous population groups, together with the Indigenous over-representation ratios.

Table 4: State and Territory variation in incarceration rates, Prison Census 2001

| | NSW | Vic | Qld | SA | WA | Tas | NT | ACT* | All |
|--|------|------|------|------|------|------|------|------|-------|
| Number of prisoners | | | | | | | | | |
| Indigenous | 1331 | 150 | 1146 | 230 | 1072 | 40 | 456 | 20 | 4445 |
| Non-Indigenous | 7398 | 3241 | 3371 | 1159 | 2098 | 306 | 261 | 191 | 18013 |
| % cent Indigenous | 15.2 | 4.4 | 25.3 | 16.6 | 33.8 | 11.6 | 63.6 | 51.2 | 19.8 |
| Rate per 100,000 persons 17 years of age and over | | | | | | | | | |
| <i>Observed rate</i> | | | | | | | | | |
| Indigenous** | 1511 | 934 | 1460 | 1478 | 2735 | 289 | 1300 | 674 | 1567 |
| Non-Indigenous | 149 | 87 | 126 | 100 | 148 | 89 | 247 | 80 | 123 |
| <i>Age-standardised rate</i> | | | | | | | | | |
| Indigenous | 1249 | 764 | 1170 | 1202 | 2202 | 230 | 1066 | 657 | 1254 |
| Non-Indigenous | 163 | 93 | 135 | 117 | 156 | 104 | 237 | 81 | 133 |
| Over-representation ratio (Non-Indigenous standardised rate/Indigenous rate) | 7.7 | 8.2 | 8.7 | 10.3 | 14.1 | 2.2 | 4.5 | 8.1 | 9.4 |

*ACT figures include all ACT prisoners held in NSW prisons and NSW figures exclude prisoners from ACT held in NSW prisons.

** Indigenous rates are based on the high series of the experimental projection of ABS Source: ABS (1998)

State and territory variations are wide across jurisdictions and between Indigenous and non-Indigenous population groups. Non-Indigenous incarceration rates were highest in the Northern Territory and lowest in the ACT. WA and NSW showed higher age-standardised incarceration rates that exceed the national average rate. Standardised Indigenous incarceration rates for 2001 ranged from 230 persons per 100,000 adult populations in Tasmania to 1,202 in Western Australia (Table 4). NSW, which had the highest concentration of Indigenous Australians, had the second highest Indigenous incarceration rates, followed by South Australia and Queensland.

In all jurisdictions the percentages of Indigenous people in gaols in each jurisdiction, except for Victoria, far exceeded the share of Indigenous population in those jurisdictions. In 2001, 4 per cent of the Victorian population 17 years of age and over was Indigenous, but the Indigenous prisoners accounted for 4.4 per cent of the total population in Victorian gaols. Approximately about 64 percent of all prisoners in the Northern Territory were Indigenous, but the proportion of Indigenous people in the Territory

was only 25 per cent. These clearly demonstrate how the Indigenous population is over-represented in all jurisdictions. Among jurisdictions WA and South Australia recorded, in 2001, the highest ratios of Indigenous over-representation.

It is hard to find, without detailed information, any correlation between crime rates in each jurisdiction and their imprisonment rates. The explanations for the geographic variations may include several factors such as social isolation, punitive demands of the community, judicial attitudes, parole and remission procedures, non-custodial alternatives, the numbers and age-sex composition of the Indigenous population in the community and in the prison system in each of the jurisdictions. An analysis of trends across geographic areas could also be affected by the propensity for identification as Indigenous, which may vary between jurisdictions.

Variations by age and sex

Age patterns of the prison population could be affected by several factors including the type of offence committed and the sentence policies applicable to offences in jurisdictions. For both Indigenous and non-Indigenous groups the prison population is younger than the average age of the total adult population (17 years of age and over). For example, in 2001 the median age of an adult Indigenous person (age which 50 per cent of prisoners fall below) was estimated to be 31 years, while the median age of an Indigenous prisoner was 26 years. For non-Indigenous people these median ages were 40 years and 29 years respectively. Similarly, Indigenous prisoners are on average about three years younger than non-Indigenous prisoners.

Table 5: Indigenous and non-Indigenous adult incarceration rates by age 2001

| Age group | Indigenous | Non-Indigenous | Over-representation ratio |
|-------------|------------|----------------|---------------------------|
| 17-19 | 849 | 90 | 9.4 |
| 20-24 | 2508 | 268 | 9.4 |
| 25-29 | 2643 | 266 | 9.9 |
| 30-34 | 2194 | 221 | 9.9 |
| 35-39 | 1660 | 163 | 10.2 |
| 40-44 | 1082 | 114 | 9.5 |
| 45-49 | 684 | 81 | 8.4 |
| 50-54 | 356 | 61 | 6.1 |
| 55 and over | 140 | 23 | 6.1 |
| All ages | 1567 | 123 | 12.8 |

Persons in the age groups 20-24 to 30-34 years were at an higher risk of incarceration than those in the other age groups (Table 5). These age groups accounted for approximately 70 per cent of the total Indigenous prisoners in 2001. Although age-specific incarcerations in these age groups are also high among the non-Indigenous prison population, the percentage of prisoners in the 20-24 to 30-34 age groups was lower: 58 per cent in 2001.

For each age group, considerably more Indigenous persons are incarcerated than non-Indigenous persons. The ratio of Indigenous over-representation rises gradually from 9.4 at age group 17-19 to over 10 in the age group 35-39, then begins to decline. Even at age groups above 50-54, the Indigenous Incarceration rates were, in 2001, about 6 times higher than for non-Indigenous people.

Table 6: Indigenous and non-Indigenous incarceration rates (per 100,000 adults) by age group and sex, 2001

| Age group | Male | | | Female | | |
|-------------|------------|----------------|--------|------------|----------------|--------|
| | Indigenous | Non-Indigenous | Ratio* | Indigenous | Non-Indigenous | Ratio* |
| 17-19 | 1438 | 167 | 8.6 | 143 | 9 | 15.9 |
| 20-24 | 4504 | 485 | 9.3 | 497 | 39 | 12.7 |
| 25-29 | 4920 | 494 | 10.0 | 457 | 33 | 13.8 |
| 30-34 | 4306 | 416 | 10.4 | 291 | 26 | 11.2 |
| 35-39 | 3282 | 303 | 10.8 | 219 | 23 | 9.5 |
| 40-44 | 2090 | 214 | 9.8 | 179 | 14 | 12.8 |
| 45-49 | 1337 | 149 | 9.0 | 97 | 12 | 8.1 |
| 50-54 | 671 | 115 | 5.8 | 7 | 5 | 1.4 |
| 55 and over | 253 | 48 | 5.3 | 0 | 1 | - |
| All | 2895 | 234 | 12.4 | 259 | 16 | 16.2 |

* Over-representation ratio of Indigenous adults.

Indigenous people in all age groups, irrespective of gender, exhibited extremely high incarceration rates compared to their non-Indigenous counterparts. For instance, at age groups 20-24 and 40-44, Indigenous males had incarceration rates over 11 times higher than their non-Indigenous counterparts. The corresponding risk is even higher for Indigenous females, at 12 times. Comparison of incarceration rates by gender reveals that the overall over-representation in gaols was slightly higher for females. The age-standardised incarceration rate for Indigenous females was 12 times higher than that recorded for the non-Indigenous females (Table 6).

Discussion and policy implications

This report briefly analysed the data from the annual prison censuses for the period 1991-2001, and drew attention to the fact that despite implementation of many RCIADIC recommendations by State and Territory Governments and relevant Commonwealth agencies, the Indigenous incarceration rates have been rising faster than those of the non-Indigenous population. Although increases in the prison population were common for both Indigenous and non-Indigenous populations, Indigenous adults consistently showed disproportionately high incarceration rates. Consequently, the Indigenous over-representation in prisons has remained high. A part of this increase in the number and rate of Indigenous incarcerations could reflect the so-called 'category movement' stemming from the increased willingness on the part of Indigenous people for self-identification as such. The exact impact of this phenomenon on the increase in Indigenous incarceration rates is difficult to estimate.

The analysis also drew attention to the potential impact on rates of the existing sets of base populations available from the ABS on the Indigenous population. While uncertainties in the base population and unknown effect of 'category movement' could affect the magnitude and tempo of Indigenous incarceration rates, these cannot solely account for the high incarceration rates of Indigenous people observed during the 11-year period. Although Indigenous adult persons were at a high risk of being incarcerated, one disturbing aspect of the trend was the increasing over-representation of Indigenous adult females in the prison system. The present analysis has not taken into account the young offenders of aged less than 17 years who were in juvenile prisons or other custodial institutions. When one considers the total number of persons in custodial situations, the magnitude of Indigenous disadvantage would likely to be much higher than shown in the data.

Following the RCIADIC recommendations, the need to reduce the Indigenous over-representation in the Criminal Justice System (CJS) in general, and prisons in particular, has been recognised by the Commonwealth and State and Territory Governments. To reduce Indigenous over-representation the RCIADIC made more than 340 recommendations covering a wide range of interventions at different stages of the CJS from incidence of crimes, crime reporting, investigations, charging, the courts system, and corrective services.

To monitor the progress of the implementation of the RCIADIC and to measure their impact there should be a sound reporting system that properly identifies Indigenous people at all stages of the CJS. To date, such a system has not been established at the national level (for a discussion on existing data sources and their limitations see ATSIC, 2000).

State and territory governments implemented many of the key recommendations of the RCIADIC during the first half of the 11-year period under reference. Cunneen and McDonald (1997) are confident that room for further improvements exists through more effective implementation of the RCIADIC recommendations in different stages of the CJS, which could bring about reductions in Indigenous incarceration.

Some argue that since the vast majority of matters instituted in criminal courts end with a guilty plea, 'the sentencing hearing is crucial to the attitude adopted by the court towards the Indigenous offender in ultimately imposing sentence' (Hinton, 1997:65)— an important stage to focus on the reductions in Indigenous incarceration. For any strategy to reduce the over-representation one should also look into the sentencing process. This involves, according to Hinton (1997), concentration on the role of the judiciary and the legal profession.

While most states and territories implemented reforms to effect several of the RCIADIC recommendations almost all jurisdictions, probably due to electoral pressures, have introduced or amended sentencing laws to allow harsh punishments for some forms of crimes or to minimise the use of parole or remissions. In WA and in the NT, mandatory-sentencing laws were introduced restricting powers of judicial discretion in imposing sentences, for some type of crimes. It may, perhaps, be necessary to investigate these aspects fully, which was not adequately covered by the RCIADIC.

Now, a large proportion of Indigenous persons in some jurisdictions appear to be in gaol due to not having proper legal representation. Some evidence for such failures is identified in an unpublished survey conducted by the Office of Evaluation and Audit (OEA) of the Aboriginal and Torres Strait Islander Commission in the Goldfields prison in Kalgoorlie. Of the total Indigenous prisoners (some 47) interviewed by OEA staff in, October, 2001, approximately half had pleaded guilty to the charge and did not have any legal representation at the time of hearing. Most of these prisoners were

sentenced by the circuit courts. Most remote regions in WA do not have any legal service outlets to help the disadvantaged and less literate population, either administered by the Legal Aid Commission or by the Aboriginal and Torres Strait Islander Legal Services.

Although RCIADIC has provided a host of factors that may be relevant to Indigenous Incarcerations and leading to deaths in custody, there is a general lack research developed to examine specific causes for Indigenous over-representation in all phases of the CJS. Such research is needed to develop and implement sound policies to reduce Indigenous over-representation.

In most instances Indigenous people are charged for minor offences such as disorderly behaviour or petty thefts, but when charged the consequences of such acts are heavy, with most persons ending up in gaols, either directly or later for not paying fines, or for violating parole or bail conditions. The Indigenous prisoners were young and the great majority had a history of adult imprisonment, suggesting that a substantial number of prisoners are returning to gaol within a short period of time. More resources are, therefore, needed to improve prevention, diversion and rehabilitation strategies for high-risk groups.

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