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L. Domnich,
*ML, Professor's assistant of Humanitarian
Training Chair of the Institute of
Criminal-Executive Service*

INDIGENOUS INCARCERATION IN AUSTRALIA: CAUSES AND CONSEQUENCES

The article is concerned with the identification of causes and consequences of the high crime rate and the relevant raising of the prison population and convicts' level among Australian indigenous. The experience in working about a crime prevention of the Australian Penitentiary System has been studied due to the differences of culture and customs, the possibility of its usage in Ukraine has been analyzed.

Keywords: *Indigenous; incarceration; justice system; prison population; prisoners; violence.*

Статья посвящена выявлению причин и последствий высокого уровня преступности и соответствующего увеличения уровня численности заключенных и осужденных среди коренного населения Австралии. Исследован опыт работы пенитенциарной системы Австралии по предотвращению совершения преступлений в связи с отличием культуры и обычаев, проанализированы возможности его использования в Украине.

Ключевые слова: *коренное население, заключение, система правосудия, тюрьма, заключенные, насилие.*

Formulation of the problem.

The rates at which Aboriginal and Torres Strait Islander people are experiencing violence and being put in prison has reached a crisis point. These issues are some of the most pressing social justice challenges facing Australia.

Aboriginal and Torres Strait Islander peoples occupy a unique and important place in Australia's society and culture. They are the original inhabitants of the Australian continent and nearby Torres Strait Islands, and their cultures are amongst the oldest in the world. Aboriginal communities in Australia are diverse, with many cultures, customs and languages. Torres

Strait Islander peoples also have their own distinct identity and culture.

Statement of the problem. As an ongoing consequence of Indigenous people's experiences of colonization, and the social impacts that followed, Indigenous people are the most disadvantaged group in Australia. It is important to acknowledge and understand these effects, and how they continue to impact Indigenous people.

The disproportionate rates of Indigenous incarceration in Australia is not a new phenomenon. However, the degree to which Indigenous Australians are over-represented has increased over time.

On any given day, there are around 10,000 Indigenous adults in prison (including roughly 1,000 women), 500 Indigenous youth in detention and many more Indigenous people in custody in police cells.

The main content. The high numbers of Indigenous people in prison has consequences for virtually all Indigenous people. It impacts the individuals who are incarcerated, as well as their families and communities. Children with a parent in prison are particularly vulnerable, increasing their risk of contact with the justice system later in life.

Investing in a range of initiatives will reduce the rate of incarceration; this alone will not close the gap. Action is required across a broader range of areas.

Reducing the rates at which Indigenous children, young people, men and women are imprisoned in Australia is a complex challenge. It is known that there are no simple or straightforward solutions, and the issue requires a multi-pronged approach.

An accessible review of native literature does not make it possible to single out the substantive research of the causes of high indices of the indigenous incarceration in Australia, because it is not shown in Ukrainian publications. Indigenous incarceration in Australia has been the subject of many thorough and well evidenced reports and reviews over the past three decades in Australia including the information of Royal Commission into Aboriginal Deaths in Custody.

This research highlights a significant issue in Australia that cannot be ignored. Indigenous incarceration is a complex issue. The human impact is immeasurable and the economic impact staggering. It will be useful to contrib-

ute to the existing knowledge base and increase awareness of Indigenous incarceration in such ways:

1. Evaluation the current and projected economic costs of Indigenous incarceration rates.

2. Detailed research to identify effective ways to reduce Indigenous incarceration rates.

3. Modeling the impact of implementing a range of initiatives would have on the costs of Indigenous incarceration.

Indigenous Australians are dramatically over-represented in the criminal justice system, in each state and territory. While Indigenous people represent only 3 % of Australia's total population, they make up more than 27 % of our prison population and 55 % of the youth detention population.

The disproportionate rates are observed across a range of demographics, whether across states and territories, by gender, or in adults and young people.

Despite Indigenous young people representing less than 6 % of Australia's 10 to 17 year old population,¹³ Indigenous children and young people were estimated to account for 55 % of children and young people in detention in 2015–2017. This exposure substantially increases the likelihood of a young person being involved in crime as an adult.

It is important to note that Indigenous people are also more likely to come into contact with the justice system as a victim of crime. Victimization rates are higher for Indigenous people compared to non-Indigenous people for a number of offences. Based on jurisdictions where data is reported (New South Wales (NSW), Queensland (Qld), South Australia (SA) and the Northern Territory

(NT)), Indigenous victimisation rates are higher for assault (except in Qld), sexual assault, homicide and kidnapping (except in the NT).

In 2017, Indigenous men were 11 times as likely to be incarcerated as non-Indigenous men (4,136 per 100,000 compared to 367 per 100,000). This disparity has remained relatively constant since 2000 when Indigenous men were 12 times as likely to be incarcerated when compared to non-Indigenous men.

While representing only 2 % of Australian women, Indigenous women comprise 34 % of the female prison population within Australia. In 2017, the imprisonment rate for Indigenous women was 443 per 100,000 compared to 30 per 100,000 of non-Indigenous women, meaning Indigenous women were 15 times as likely to be incarcerated as non-Indigenous women.

Prior detention or imprisonment increases the likelihood of future offending and contact with the justice system. Indigenous male prisoners are 1.5 times as likely to have previously been incarcerated as non-Indigenous prisoners. The disparity in reoffending is just as evident in women, with 67 % of Indigenous women having previously served time in prison compared to 36 % of non-Indigenous women.

So, the key drivers that lead to, or increase the likelihood of, Indigenous incarceration can be separated into either underlying causes or additional factors related to the justice system:

Education:

- Lack of educational access and attainment is linked to likelihood of poor behavior, crime, and imprisonment.

- Indigenous Australians are half as likely to finish Year 12 as non-

Indigenous counterparts, and perform poorer on measures of educational performance.

- Indigenous people who complete school are 14 times less likely to be imprisoned than those that do not.

Health:

- 73 % of Indigenous men and 86 % of Indigenous women in prison had a diagnosed mental illness vs 20 % of the general population.

- Indigenous youth in detention are more likely to have mental health problems than non-Indigenous youth (81 % vs 75 %).

- Access to health and community services for Indigenous people may be limited due to remoteness and cultural appropriateness.

Prisoners are at greater risk of poor mental health, drug and alcohol abuse, physical and sexual violence, blood-borne virus infection, and isolation and marginalisation. However, there is a lack of suitable and culturally aware and responsive services and programs that exist for Indigenous people to access treatment and rehabilitation while in custody. Limited access to post-release Indigenous-specific programs and services has also been noted. The delivery of culturally aware and responsive programs has been found to be inconsistent and intermittent, with many prisons not delivering any, while others offer them only sporadically.

A study found that Indigenous men who have completed a sentence had higher mortality rates compared to non-Indigenous prisoners. People who have completed a sentence also had higher levels of psychiatric mortality and morbidity than the general community. Indigenous women leaving prison were more likely to die after release from prison compared to their

non-Indigenous counterparts. The risk of mortality was highest soon after release. Deaths due to injury or poisoning, or acute and chronic effects of alcohol or drug addiction, accounted for over 60 % of all deaths.

Disability:

- Indigenous people are 1.7 times as likely to be living with a disability than non-Indigenous Australians.

- Individuals with cognitive impairment (eg intellectual disability and acquired brain injury) are at greater risk of entering the criminal justice system.

- Substandard and inadequate housing can lead to poor health, which is also an underlying cause of incarceration.

- Key contributors to cognitive disability are Foetal Alcohol Syndrome Disorders (FASD).

FASD incidence is estimated to be at least 4 times greater among Indigenous Australians than non-Indigenous Australians Housing.

In 2017 25 % of Australian prison entrants were homeless prior to imprisonment, with Indigenous prison entrants more likely to be homeless than non-Indigenous prison entrants (27 % vs 24 %).

Family violence and sexual abuse:

- An estimated 87 % of all women in custody have been a victim of abuse either as a child or adult.

- Indigenous women are 34 times as likely to be admitted to hospital as a result of family violence than non-Indigenous women.

- Children exposed to family violence are at increased risk of becoming perpetrators themselves.

Social exclusion and racism:

- Australian Reconciliation Barometer findings show that in the

6 months prior to the survey, 46 % of Indigenous Australians, experienced racial prejudice.

- Material poverty, or limited access to basic social needs and services (e.g. education, healthcare, employment, and housing) can all lead to increased rates of incarceration.

Social exclusion post-release can impact recidivism, with remote communities having limited access to appropriate community support programs and rehabilitation services.

Employment:

- Half of first time offenders (2 of 3 who re-offend) are unemployed at time of arrest.

- Indigenous prisoners are 1.5 times as likely to be unemployed in the 30 days prior to imprisonment as non-Indigenous prisoners.

- 21 % of Indigenous people 15+ years were unemployed in 2015-2017 vs 6 % nationally.

- Employed Indigenous people are 20 times less likely to be imprisoned than those who are unemployed.

Child protection:

- Youth subject to care and protection orders and youth in out-of-home care are both 23 times as likely to be under supervision (detention or community-based) during the same year.

- 14-16 % of Indigenous young people experience supervision at some time between the ages 10-17 vs 1 % non-Indigenous.

- National rates of child protection substantiations (child has been, is being or is likely to be, abused, neglected or otherwise harmed) are 7 times higher for Indigenous children than for non-Indigenous children (43.6 per 1,000 vs 6.4 per 1,000).

- Rates of out-of-home care are 10 times higher for Indigenous children

than non-Indigenous children (56.6 per 1,000 vs to 5.8 per 1,000).

Bringing them home report found Indigenous children are more likely than non-Indigenous children to be removed on the ground of «neglect» rather than «abuse», with “Indigenous parenting styles wrongly seen as the cause”. It has been suggested that risk assessment frameworks used by child protection authorities in Australia “are biased against Indigenous Australians as risk is understood in mainstream, white people terms, not in the context of Indigenous culture, where sharing of child minding commonly occurs.”

Intergenerational trauma:

- Bringing them home reported that “high levels of unemployment, poverty, ill health, homelessness, and poor educational outcomes arise from the intergenerational effects of earlier assimilationist policies, as well as being the direct outcome of dispossession and marginalisation. The devastating experiences of Aboriginal parents and their families brought on by the removal of their children, the loss of control over their own lives, powerlessness, prejudice, and hopelessness have left many problems to be dealt with today.” The inquiry found that many children who were forcibly removed from their families and communities suffered physical and sexual abuses.

Bringing Them Home was initiated to generate recognition among the general public of the impact of forcible removal on the needs of victims and their families. The report traced past laws, practices and policies which resulted in the separation of Indigenous children from their families, the subsequent effects, and examined the adequacy of current laws, practices and policies in relation to those who were affected by

separation, and with respect to any future placement and care of Indigenous children. The report found that most families had been affected by the removal of children with between 1 in 3 and 1 in 10 Indigenous children forcibly removed from their families and communities between 1910 and 1970.

- Children are three times as likely to be removed from their families if a parent is, or has been incarcerated. One study found that almost half (48 %) of boys aged 0–10 years old who had been separated from their families due to incarceration were themselves convicted as an adult compared to 25 % of boys who were separated for other reasons.

- It was estimated that 20 % of Indigenous children have at least one parent in prison at any time.

The key underlying causes, as identified in the literature, are the level of disadvantage, poverty (with associations between education, health, employment and substance abuse, and risk of incarceration the strongest), social exclusion, racism, and experiences of trauma.

So, additional factors of Indigenous incarceration related to the justice system:

Previous contact with the justice system:

- High rates of Indigenous incarceration mean that a life spent in contact with the justice system may have become «normalised» and the prospect of imprisonment no longer serves as a deterrent, but a fact of life or rite of passage.

Contact with the juvenile justice system:

- Contact with the juvenile justice system is a strong predictor of incarceration as an adult.

86 % of Indigenous juvenile offenders have contact with the justice system as adults vs 75 % non-Indigenous. 65 % Indigenous juvenile offenders go on to serve prison terms vs 41 % non-Indigenous.

Access to legal assistance:

- Indigenous people who have offended can often have complex legal needs, requiring culturally appropriate legal support and interpreter services.

An Australia-wide survey on access to legal assistance found that Indigenous Australians have particularly high levels of unmet legal need. The result of under-resourced Indigenous community controlled legal services, and the underfunding of the legal assistance sector more broadly, is that when problems arise, they may go unresolved or be dealt with inadequately.

Police:

- Indigenous youth offenders are less likely to receive a police caution vs non-Indigenous youth offenders.

- Language barriers and lack of access to interpreter services impacts Indigenous people's interactions with police.

- Lack of cultural awareness and community engagement training for police has also been found to impact relationships and interactions with police.

Recidivism:

- Recidivism contributes to the disproportionately high rates of Indigenous incarceration.

75 % of Indigenous offenders have a previous conviction vs 42 % non-Indigenous offenders. 22 % of Indigenous offenders have 5+ prior convictions vs 5 % non-Indigenous offenders.

Access to Accommodation:

- In 2017, 38 % of Indigenous prisoners being released expected to be

homeless compared to 28 % of non-Indigenous prisoners being released.

Accessing safe, stable and affordable accommodation is critical to successful reintegration into the community with unstable housing or homelessness a key risk factor for recidivism.

- Poor tenant history, substance or alcohol abuse, gambling, violence, racism and poor payment history contribute to poor housing arrangements of people who have completed their sentence. Indigenous people who cannot source appropriate housing are often found living on the streets, which increases their likelihood of coming into contact with the criminal justice system.

- Indigenous women face greater challenges in sourcing suitable accommodation upon release and are likely to experience higher levels of debt, depression, isolation, poor mental health and social exclusion compared to Indigenous men who have offended.

There are currently a lack of suitable post-release support programs and services to address these risks.

Social exclusion:

- Indigenous prisoners returning to the community, particularly remote communities, face many practical challenges upon release from prison. To begin with, many Indigenous prisoners require repatriation back to their communities. However, the level of support provided for repatriation differs between jurisdictions.

- For those who are unable to return to their communities, they may be at greater risk of homelessness, and therefore reoffending. Once individuals return to their communities, relationships that may be strained or broken need to be re-built for successful reintegration.

- Supportive social networks for Indigenous people such as access to family and similar ethnic groups is critical for a successful transition back into the community. A Canadian study found that Indigenous people who had offended who successfully reintegrated into their communities identified family members, friends and elders as playing a key role.

- In the absence of adequate support, individuals may experience social exclusion caused by stigma, limited access to education, training and employment opportunities, and limited access to substance abuse treatment programs.

- In addition to existing exclusion factors such as racism, the delivery of rehabilitation programs to assist Indigenous offenders returning to the community can be made more difficult due to the fact that Indigenous people who have offended are more likely than non-Indigenous people who have offended to be incarcerated for less than 12 months, or to be held on remand.

Intergenerational impact of Indigenous incarceration:

- The effects of Indigenous incarceration are often intergenerational. Incarceration can break down family and community connections that guide people away from participating in crim-

inal activity, removing parents who could otherwise provide parental guidance for their children. Incarceration can also disrupt an Indigenous person's connection to culture and land, which are significant influencers of Indigenous identity and individual wellbeing.

Communities and families become less capable of managing social order through family or community groups and crime rates continue to rise. It impacts a family's strength and stability and can often result in the loss of employment or income, intensify debt issues and potentially result in the loss of housing and family connections.

Conclusions. Indigenous families and communities of Australia have endured gross violations of their human rights. These violations continue to affect Indigenous people's daily lives.

Mainstream services need to be culturally aware and responsive to increase access to, and the effectiveness of, services to reduce the rates of Indigenous incarceration.

For those who are imprisoned, there needs to be greater opportunities to access and participate in programs and initiatives that improve the ability of individuals to re-integrate into the community and contribute meaningfully. These need to be tailored specifically for Indigenous people.

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*Домніч Л. М.,
магістр права,
викладач кафедри гуманітарної
підготовки Інституту
кримінально-виконавчої служби*

УВ'ЯЗНЕННЯ КОРИННОГО НАСЕЛЕННЯ В АВСТРАЛІЇ: ПРИЧИНИ ТА НАСЛІДКИ

Статтю присвячено виявленню причин і наслідків високого рівня злочинності та відповідного збільшення рівня чисельності ув'язнених і засуджених серед корінного населення Австралії. Досліджено досвід роботи пенітенціарної системи штатів Австралії щодо запобігання скоєнню злочинів у зв'язку з відмінністю культури та звичаїв, проаналізовано можливість її використання в Україні.

Подано результати статистичного дослідження й аналізу високого рівня злочинності серед корінного населення Австралії, який різниться в залежності від віку та статі. Так, в осіб, які закінчували школу, спостерігається менший відсоток схильності до скоєння злочинів. Відображено провал ініціативи щодо вилучення дітей – корінних жителів з їхніх сімей задля нівелювання впливу культури аборигенів, що призвело до ще більшого зростання рівня злочинності серед аборигенів.

Дослідження досвіду Австралії у сфері виконання та відбування покарань буде корисним для організації роботи Державної кримінально-виконавчої служби України в межах формування необхідного інструментарію задля подолання ескалації показників рівня ув'язнення серед певної категорії правопорушників, зокрема етнічних меншин. Такі заходи дадуть змогу створити цільові програми, інструктивні матеріали та рекомендації, методичні розробки для персоналу органів пробації й установ виконання покарань для роботи з відповідними категоріями засуджених. Очікуваним результатом таких дій буде зменшення рівня злочинності серед етнічних та національних меншин України.

Ключові слова: *корінне населення; ув'язнення; система правосуддя; в'язниця; в'язні; насильство.*

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