



**Western Australia Government  
Legislative Council's Standing Committee on Environment and Public Affairs**

**INQUIRY INTO TRANSPORTATION OF DETAINED PERSONS**

**May 2010**

**Submission from**

**AMNESTY INTERNATIONAL AUSTRALIA**

## 1. SUMMARY

Amnesty International is concerned that the administration of the criminal justice system in Western Australia falls short of internationally recognised human rights standards. These failings expose prisoners to the risk of abuse and, in the most extreme cases, lead to preventable deaths in custody such as the tragic death of Mr Ward.

Failure to provide sufficient culturally and geographically accessible diversionary and rehabilitation programs for Indigenous offenders, particularly in remote areas, together with mandatory sentencing for repeated minor offences, both contribute to the extreme over-representation of Indigenous peoples in arrest and imprisonment statistics in Western Australia.

Ensuring that human rights standards are woven into the fabric of law, policy and administration is the best way to protect the most vulnerable – including those whose liberty is held in forfeit by the criminal justice system. The circumstances leading to Mr Ward's death included inaction in the face of repeated warnings that the prisoner transport vans presented a serious risk to the health of prisoners on long journeys. They also included failure to implement proper procedures in relation to bail, a failure that resulted in his remaining unnecessarily in custody. The use of video link to enable court hearings to take place without the need for long distance transport could also have been used to avoid Mr Ward's transport over a long distance in a prison van that was not equipped to ensure either his safety or his comfort.

As Chief Justice Martin has pointed out, the criminal justice system in Western Australia is not cost effective in performing its social function of deterring crime and rehabilitating offenders. It is particularly ineffective in rehabilitating Indigenous offenders. The provision of diversionary and culturally tailored programs for Indigenous offenders in remote areas would help reduce imprisonment rates and improve rehabilitation. Justice Martin also noted that the factors that underlie rates of offending, including poverty, housing stress and low education levels, need to be addressed – longer term but urgently needed measures.

The policy of “justice reinvestment” described in the 2009 Social Justice Report advocates allocation of a proportion of the funds that would otherwise be spent on incarceration to the task of addressing the underlying causes of crime in the most needy communities, whilst retaining imprisonment for dangerous and serious offenders.

Finally, implementation of the recommendations of the Royal Commission into Aboriginal Deaths in custody would have affected the decision to charge Mr Ward, the decision not to grant bail, the decision to transport Mr Ward over a long distance away from his home and family, and also policy concerning how best to engage Indigenous participation in developing and implementing policy to improve their standards of living. Outstanding recommendations of the Royal Commission should be implemented without further delay.

## 2. ABOUT AMNESTY INTERNATIONAL

Amnesty International is a worldwide movement of more than 2.8 million people across 150 countries, including over 100,000 in Australia. Its supporters work to promote the observance of all human rights enshrined in the Universal Declaration of Human Rights and other international standards. In pursuit of these goals, Amnesty International undertakes research and action focused on preventing grave abuses of human rights including rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination.

Amnesty International is independent of any government, political ideology, economic interest or religion. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect. It is concerned solely with the impartial protection of human rights.

Amnesty International has been at the forefront of work on the development and fulfilment of human rights standards for more than 45 years. In addition to its work on specific abuses of human rights, Amnesty International urges all governments to ratify and implement human rights standards and works to create a human rights culture throughout society.

### **3. BRIEF COMMENTS ON TERMS OF REFERENCE**

#### **1. Progress in relation to the implementation of the Coroner's findings in relation to the death of Mr Ward**

We are not in a position to say what progress the Government has made in honouring its undertakings. However, we note the importance of transparency in ensuring that policy and practice prevents a repetition of the abuses evident in this case. We note too that human rights obligations lie at the heart of many of the Coroner's recommendations. Section 5 below considers these issues.

#### **2. The feasibility of air transport or video conferencing instead of long haul vehicle transport.**

There are strong human rights arguments for providing video conferencing which is widely practised in other Australian jurisdictions as a technique to protect the vulnerable. The fact that transporting Indigenous prisoners to places of detention far away from "country" and family increases their vulnerability, provides justification for the widest possible use of video-conferencing or other technology to enable hearings to be held remotely. These issues are further discussed in Section 4 below.

#### **3. The scope and efficacy of government action to reduce Indigenous incarceration and recidivism rate to prevent further indigenous deaths in custody.**

Amnesty International has reported to United Nations human rights bodies its concerns about the human rights violations that result in extreme over-representation of Australia's Indigenous peoples in arrests, imprisonment, and deaths in custody. These international human rights bodies have repeatedly requested Australia to address these concerns. Section 5 below discusses the relevant human rights standards.

#### **4. Whether the Coroner's Act 1996 (WA) should be amended to require the Government to respond to coronial recommendations within a set time frame.**

The Coronial system is designed to reveal the truth about the cause of death and possible culpability in cases of unnatural death. If a coronial inquiry reveals systemic problems that could lead to further unnatural deaths, the government should be held to account for acting promptly in response to recommendations that would reduce the likelihood of further abuse.

#### **5. Any other relevant matter.**

By ensuring that human rights considerations form an integral part of law, policy and practice in Western Australia the government would be best placed to address the causes of crime, through meeting social and economic needs, and also to ensure that the criminal justice system performs its twin roles of deterrence and rehabilitation most effectively. The humane treatment of prisoners would be a priority in such a system, with adequate resourcing, stronger training and better decision-making following from that. Section 5 below addresses these issues.

## 4. VIDEO CONFERENCING AND PRISONER TRANSPORT

On 27 January 2008 Mr. Ward was placed in the back section of a van and transported from Laverton to Kalgoorlie – approximately 360 kilometres. According to the Coroners report the van was in a “disgraceful condition” having had repairs “45 times in the two and half year period prior to the death; an average of once every three weeks.”<sup>1</sup> During the almost 4 hour drive on an extremely hot day without a functioning air conditioner, Mr. Ward collapsed and fell on the steel floor of the van, subsequently dying of heatstroke because of the extreme heat in the back of the vehicle.

The Coroner describes the death of Mr. Ward as “wholly unnecessary and avoidable” and recognised a total lack of concern for the prisoner’s wellbeing.<sup>2</sup> Where a 360 kilometre drive could only be taken in conditions that pose such a severe threat to the health of a prisoner, other possibilities for conducting a court hearing should have been investigated and used. In fact, in other cases where the prisoner is unable to undertake long trips, other ways of appearing in court are recommended and have been used in the past. There is no reason for why Mr. Ward, a respected Aboriginal elder, should have been subject to such a strenuous process for a minor offence.

Alternative court sessions by the use of Video Links and Electronic trials have been available in Western Australian Courts for at least 6 years.<sup>3</sup> Electronic trials make it possible for all parties in the trial to access all necessary documents via a database. The hearing can then be conducted only by using electronic technology.<sup>4</sup> Another possibility available in most Western Australian courts is video-conferencing. Video-Link technology provides remote court users with interactive and real-time video and audio between remote sites.<sup>5</sup> Both of these options should have been made available for Mr. Ward as alternatives to undertaking a 360 kilometres trip.

As indicated above, this technology has been available in Western Australian courts for several years before the death of Mr. Ward. During the last decade, the Western Australian Government has on several occasions highlighted the need to expand video-conferencing facilities and electronic trial documentation<sup>6</sup>. This has resulted in the installation of video-conferencing systems in most of the courtrooms throughout Western Australia to “improve services to remote court users.”<sup>7</sup> According to the Department of the Attorney General, “Video-links reduce the security risks associated with prisoner transfers to court and reduce costs associated with prisoner transportation in regional locations.”<sup>8</sup>

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<sup>1</sup> *Record of investigation into death*, Ref No: 9/09, Alistair Neil Hope, 2009:27, at [http://www.safetyandquality.health.wa.gov.au/docs/mortality\\_review/inquest\\_finding/Ward\\_finding.pdf](http://www.safetyandquality.health.wa.gov.au/docs/mortality_review/inquest_finding/Ward_finding.pdf) (accessed 12/05/10)

<sup>2</sup> Op. cit. p.5

<sup>3</sup> See application form for *Electronic Communication Information Kit* dated April 2004, WA Attorney General’s Department, available at [http://www.familycourt.wa.gov.au/V/video\\_links.aspx?uid=1035-1798-1181-6561](http://www.familycourt.wa.gov.au/V/video_links.aspx?uid=1035-1798-1181-6561) (accessed 12/05/10)

<sup>4</sup> See Electronic Trials, Department of the Attorney General, at [http://www.courts.dotag.wa.gov.au/E/electronic\\_trials.aspx?uid=1138-1352-1365-6968](http://www.courts.dotag.wa.gov.au/E/electronic_trials.aspx?uid=1138-1352-1365-6968) (accessed 12/05/10)

<sup>5</sup> See Department of the Attorney General, Video Link at [http://www.courts.dotag.wa.gov.au/V/video\\_link.aspx?uid=3226-3984-5962-8567](http://www.courts.dotag.wa.gov.au/V/video_link.aspx?uid=3226-3984-5962-8567) (accessed 12/05/10)

<sup>6</sup> See “Attorney General launches Coalition’s ‘Victims First’ policy” dated 25/01/2010 available at <http://www.mediastatements.wa.gov.au/ArchivedStatements/Pages/CourtCoalitionGovernmentSearch.aspx?ItemId=109445&minister=Foss&admin=Court> (accessed 12/05/10)

<sup>7</sup> DEaprtment of the Attorney General, Court and Tribunal Services, st [http://www.courts.dotag.wa.gov.au/V/video\\_link.aspx?uid=3226-3984-5962-8567](http://www.courts.dotag.wa.gov.au/V/video_link.aspx?uid=3226-3984-5962-8567) (accessed 12/05/10)

<sup>8</sup> Ibid



The use of Video Link and CCTV Services are already well imbedded in the Western Australian court system for children and other vulnerable people.<sup>9</sup> In 2008 the WA Office of The Inspector of Custodial Services released a report on its inspection standards for Aboriginal prisoners. The report and its recommendations had been prepared on the basis of eight years' inspection experience. The Inspector noted that the great size of Western Australia meant challenges and dangers for the transportation of prisoners over extremely long distances. He recommended:

The transport of Aboriginal prisoners out of their country should only be undertaken where absolutely necessary and after making provision for the high level of stress that such journeys generally cause.<sup>10</sup>

He also noted the importance of country for Aboriginal prisoners and the negative effect being removed from it, recommending that:

"Prisons that regularly relocate Aboriginal remand prisoners or prisoners that hold relocated remand prisoners should ensure that there are effective service links to courts to prevent any unnecessary imprisonment and ensure that the transportation to and from court (especially where this involves a long-haul journey) is minimised."<sup>11</sup>

This view was echoed in the Coroner's recommendation number 7:

that the Department of the Attorney General review present procedures to extend the availability of video conferencing and, in the absence of available video conferencing, give consideration to increased use of telephone conferencing so that decisions, particularly those relating to the liberty of the subject, can be wherever made possible by qualified magistrates."

The death of Mr. Ward has in many ways highlighted the major failures of the prisoner transport system in Western Australia, which according to the Inspector of Custodial Services, Richard Harding, has been in a "parlous" state since 2001.<sup>12</sup> The Inspector has also noted the unbalanced percentage of Aboriginal prisoners being transported from the North and Northwest of the State down south and from the Eastern Goldfields and the Lands. A total of 95% of the prisoners transported on these extremely long journeys were Aboriginal. The Inspector also raised the question of national tolerance if the tables were to be turned – if the passengers on these trips were 95% non-Aboriginal.<sup>13</sup> "If the long transports in these conditions predominantly involved non-Aboriginal prisoners, it would long ago, I believe, have been changed."<sup>14</sup>

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<sup>9</sup> Children's Court of Western Australia, Video Link and CCTV Services, at [http://www.childrenscourt.wa.gov.au/V/video\\_link\\_cctv\\_services.aspx?uid=2181-3094-7740-8907](http://www.childrenscourt.wa.gov.au/V/video_link_cctv_services.aspx?uid=2181-3094-7740-8907) (accessed 12/05/10)

<sup>10</sup> See New Inspection Standards for Aboriginal Prisoners, July 2008, p.6 available at: <http://www.custodialinspector.wa.gov.au/go/publications-and-resources/inspection-standards> (accessed 12/05/10)

<sup>11</sup> Op. cit. p.7

<sup>12</sup> [Media Statement - Prisoner Transport \(PDF\)](#) 1 February 2008 by Inspector of Custodial Services.

<sup>13</sup> Ibid.

<sup>14</sup> WA Today: "Scant respect for Aboriginal elder's high standing" by Stanley, W. June 20, 2009 available at <http://www.watoday.com.au/wa-news/scant-respect-for-aboriginal-elders-high-standing-20090619-cnha.html> (accessed 12/05/10)



The high percentage of Aboriginal prisoners transported on long and dangerous journeys reflect the high number of Aboriginals in custody. The extreme over-representation of Indigenous people in custody remains of serious concern<sup>15</sup> as do, more generally, accounts of deaths in custody that appear to have been preventable, given adequate training and commitment to working within a rights based policy framework".<sup>16</sup>

Amnesty International urges the Western Australian Government to not only continue its expansion and use of court technology, but also fully exploit its potential to uphold Australia's international obligations for both the wellbeing and the human rights of prisoners. Owing to the very special connection between country and Indigenous peoples, the use of Video Link and CCTV Services should be available for every Indigenous prisoner on country and prisoners should be informed about access to video technology as an alternative to transport.

## 5. INTERNATIONAL HUMAN RIGHTS STANDARDS

### 5.1 *International human rights standards on the treatment of prisoners*

Amnesty International takes this opportunity to draw to the attention of the Committee to Australia's obligations under human rights treaties and other internationally accepted norms, compliance with which would have prevented the systemic failings that resulted in Mr Ward's death.

The circumstances in which Mr Ward died involved a *prima facie* violation of Article 16 of the Convention Against Torture<sup>17</sup>, which requires states parties, *inter alia*, to prevent:

other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture [...] when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

Had the intense suffering undoubtedly endured by Mr Ward before he died been **intentionally** inflicted by the guards responsible for transporting him in the prison van – note that the Coroner did NOT make such a finding – then the guards' actions would have constituted "torture" within the meaning of Article 1 of that Convention:

the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation

<sup>15</sup> The ratio of Indigenous to non-Indigenous people imprisoned in Australia is assessed at 12.9:1 after adjusting for differences in age structures of the populations, age Steering Committee for the Review of Government Service Provision Overcoming Indigenous Disadvantage Key Indicators 2007 Report Productivity Commission, Canberra p. 243, available at [http://www.pc.gov.au/\\_data/assets/pdf\\_file/0004/64750/keyindicators2007.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0004/64750/keyindicators2007.pdf) (accessed 12/05/10)

<sup>16</sup> Up-date to briefing for the Committee against Torture, 16 April 2008 p.8, available at <http://www2.ohchr.org/english/bodies/cat/docs/ngos/AmnestyupdateApril2008.pdf>

<sup>17</sup> The Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment Amnesty International May 2010



of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Torture and other forms of cruel, inhuman or degrading treatment or punishment are also prohibited under Article 7 of the International Convention on civil and Political Rights. In international law they belong to the set of human rights violations that can never be sanctioned, even in times of national emergency.

Amnesty International registered its concerns about possible human rights violations involved in the death of Mr Ward in its March 2008 submission <sup>18</sup> to the United Nations (UN) Committee Against Torture, the body responsible for monitoring compliance with treaty responsibilities by states parties to the Convention Against Torture, including Australia. In its 2008 Concluding Observations on Australia<sup>19</sup>, the Committee recommended, *inter alia*, that the Australian Government:

- Ensure that acts of torture are defined and criminalised in all its jurisdictions and introduce a specific offence covering other acts of cruel inhuman or degrading treatment or punishment.
- Ensure that allegations of acts by law enforcement officials contrary to the Convention are investigated and prosecuted where necessary and that victims of misconduct are able to exercise their right to fair and adequate compensation.
- Meet a number of concerns about conditions for persons in custody, the disproportionate incarceration of Indigenous Australians and the incidence of deaths in custody, through:
  - Reducing overcrowding, particularly by considering non-custodial forms of detention
  - Abolition of mandatory detention - Western Australia is the only jurisdiction where this is still practised;
  - Seek to prevent death in custody and to ensure prompt investigation of any instances; and
  - Continue implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody .

We note that the Federal Attorney General is still undertaking consultations with state and territory governments on implementation of the Optional Protocol to the Convention Against Torture. This will involve the use of national and international mechanisms of Independent inspection of all places of detention to help protect prisoners from treatment that would violate Convention standards. Amnesty International urges the WA Government to be proactive in introducing arrangements to ensure that prisoners are treated humanely.

The Standard Minimum Rules for the Treatment of Prisoners (the Standard Minimum Rules), approved by the UN Economic and Social Council in 1957 and again in 1977, represent current international norms for protecting those held in detention by the state from abuse. These rules specifically prohibit "transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship" (Rule 45 (2)).

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<sup>18</sup> Amnesty International: Australia, Update to Briefing for the Committee Against Torture, 16 April 2008, pp 9-10 at <http://www2.ohchr.org/english/bodies/cat/docs/ngos/AmnestyupdateApril2008.pdf> (accessed 7 May 2010)

<sup>19</sup> Committee Against Torture, Concluding Observations on Australia, 15 May 2008, Advanced Unedited Version, CAT/C/AUS/CO/1 at <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT-C-AUS-CO1.pdf> (accessed 7 May 2010)



Australia's obligations concerning the treatment of persons in custody apply are not deflected by the contracting out of particular custodial services to a private company, such as the one responsible for transporting Mr Ward. Rule 46 expresses the need for careful selection and training of custodial staff, and advocates their employment in the public sector – an important consideration given that Mr Ward died in the custody of staff employed by a private firm. Custodial staff must not only be capable of fulfilling a duty of care, but of contributing to the social goals of the correctional system. The widespread and growing privatisation of custodial services needs to be examined critically to see whether it is capable of achieving the objective of rehabilitation as well as that of containment.

Amnesty International asks the Committee to recommend that the government adopt these standards, as standards designed to protect the health, welfare and rehabilitation of those in custody.

### **5.2 *Implementing recommendations of the Royal Commission***

Amongst the many recommendations of the 1991 Royal Commission into Aboriginal Deaths in Custody whose timely implementation might have prevented the death of Mr Ward are those designed to:

- address the economic and social factors that underpin the extreme over-representation of Indigenous Australians in custody (many recommendations throughout);
- rectify systemic bias in the criminal justice system that makes it more likely that an Indigenous Australian who comes into contact with the criminal justice system will spend time in custody compared with a non-Indigenous Australian (in particular Recs.89-91 concerning bail, and Rec. 92 prescribing the use of imprisonment as a sanction of last resort).
- improve standards of continuous monitoring to ensure the health and well-being of Indigenous prisoners (Recs 122-167, in particular Rec 139(a) which expresses the need for in-person inspections at regular intervals).
- place Indigenous prisoners in institutions as close as possible to their families and provide a right of appeal against transfer to more remote locations (Rec 168), and
- ensure that all deaths in custody are investigated as homicides, which would have entailed separate questioning of the two guards in this instance (Rec.35)

Amnesty International recommends that the Committee makes a strong recommendation that the government give priority to implementing outstanding recommendations from the Royal Commission.

### **5.3 *Addressing the factors underlying high imprisonment rates of Indigenous peoples in Australia***

To address the economic and social factors underpinning high contact with the criminal justice system and disproportionate incarceration rates, it would be necessary to enable Indigenous peoples of Australia to enjoy the full range of human rights – economic, social and cultural, as well as civil and political – on a basis of substantive equality with their non-Indigenous counterparts. This is in effect what WA Chief Justice Wayne Martin told the WA Department of Corrective Services last year when talking about the high cost and low effectiveness of the current approach to crime prevention as it affects Indigenous offenders:

The causes of Aboriginal crime are as many and varied as the many and varied circumstances of Aboriginal offenders. But there are some common themes which will be obvious to this audience. They include all those aspects of the 'gap' between the living conditions of Aboriginal people and those of non-Aboriginal people in our community. They include the lower standards of health enjoyed by the Aboriginal peoples, lower and often inadequate standards of



accommodation, poor participation rates in education and employment, social and family dysfunction, cultural dislocation, dispossession, substance abuse, despair and high levels of mental illness. Unless and until these massive and multi-faceted issues are addressed and resolved, the over-representation of Aboriginal people within the criminal justice system of Western Australia is likely to continue. And obviously there is a limit to which agencies like courts and corrective services can address these deep seated issue, which have defied resolution for many years now. But that is no excuse for not trying.

This is not to deny that the criminal justice system has components which structurally discriminate against Aboriginal people at virtually every step within the system. In the juvenile area, Aboriginal children are less likely to be diverted from court than non-Aboriginal children and more likely to be remanded in custody or given a sentence of detention. This is not because of racial discrimination by police or the courts, but because the family circumstances and prior record of young Aboriginal offenders commonly count against the exercise of discretion in their favour. Similarly in the adult justice system, Aboriginal offenders are more likely to have adverse prior records, unstable residential and employment histories, and substance abuse issues, with the consequence that they are more likely to be refused bail, and more likely to be given a custodial sentence when convicted.<sup>20</sup>

Justice Martin made a number of suggestions relevant to the reducing incarceration and re-incarceration rates:

- Change the current policy under which, as claimed by General John Sanderson, about half of the money spent on Indigenous peoples in WA is spent on criminal justice and corrective services, with a significant proportion of that spent on incarceration;
- Change the policy whereby resourcing for rehabilitation in WA is low in comparison to other jurisdictions in Australia;
- Address the marked dearth of culturally appropriate services for Indigenous offenders in the criminal justice system in WA;
- Redress the severe imbalance between the rehabilitation and diversionary services available in remote and non-remote areas;
- Divert some of the considerable expenditure on prisoner transport, most recently estimated at \$30 million just for contracting, ie excluding the cost of the fleet, to provide much needed services in remote areas;
- Implement the recommendations of the Wyatt Committee report of 2007, in order to reduce the contribution of driving and licence related offences to the excess Indigenous incarceration rates; and
- Make wider use of non-custodial alternatives such as work camps located on or near prisoners' country, as they seem to offer rehabilitative potential, particularly through enabling acquisition of vocational skills.<sup>21</sup>

Amnesty International hopes that the Committee will add its weight to Justice Martin's recommendations. They address both issues of equity in the administration of the criminal justice system and the cost effectiveness of the substantial resources directed to it.

A related approach is the use of "justice reinvestment". This policy, described in the 2009 Social Justice Report<sup>22</sup>, advocates diversion of a proportion of the funds that would otherwise be spent on incarceration to measures that

<sup>20</sup> 'Corrective Services for Indigenous Offenders - Stopping the Revolving Door' Presentation to Joint Development Day - Department of Corrective Services, The Hon Wayne Martin, Chief Justice of Western Australia, 17 September 2009, at [http://www.supremecourt.wa.gov.au/publications/pdf/Joint\\_Development\\_Day\\_DCS.pdf](http://www.supremecourt.wa.gov.au/publications/pdf/Joint_Development_Day_DCS.pdf) (accessed 7 May 2010)

<sup>21</sup> Ibid.



address the underlying causes of offending and recidivism crime in the most needy communities, whilst retaining for dangerous or serious offenders.

Justice reinvestment is a localised criminal justice policy approach that diverts a portion of the funds spent on imprisonment to local communities where there is a high concentration of offenders. The money that would have been spent on imprisonment is reinvested in programs and services in communities where these issues are most acute in order to address the underlying causes of crime in those communities.

Justice reinvestment still retains prison as a measure for dangerous and serious offenders but actively shifts the culture away from imprisonment and starts providing community wide services that prevent offending. Justice reinvestment is not just about reforming the criminal justice system but trying to prevent people from getting there in the first place.

Justice reinvestment is a model that has as much in common with economics as social policy. Justice reinvestment asks the question: is imprisonment good value for money? The simple answer is that it is not. We are spending ever increasing amounts on imprisonment while at the same time, prisoners are not being rehabilitated, recidivism rates are high and return to prison rates are creating overcrowded prisons.<sup>23</sup>

Research from the United States and the United Kingdom indicates that justice reinvestment has the potential to reduce offending and re-offending with substantial savings to government.<sup>24</sup>

Amnesty International asks the Committee to consider the benefits to be gained from a justice reinvestment policy and to recommend its adoption in Western Australia as a way of strengthening community control and halting the escalation of offending and imprisonment rates.

## 6. RECOMMENDATIONS

Amnesty International urges the Committee to make the following recommendation:

That the West Australian Government ensure that, in the interests of equity and better administration, the criminal justice system of Western Australia be made human rights compliant through:

- Abolishing legislative provisions such as mandatory sentencing that discriminate directly or indirectly against Indigenous Australians including mandatory sentencing;
- Ensuring that prison is used as a last resort and that culturally appropriate and geographically accessible alternatives to custodial sentences are available for Indigenous offenders and that adequate resources are

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<sup>22</sup> 2009 Social Justice Report Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Human Rights Commission, at [http://www.hreoc.gov.au/social\\_justice/sj\\_report/sjreport09/pdf/sjr\\_2009\\_web.pdf](http://www.hreoc.gov.au/social_justice/sj_report/sjreport09/pdf/sjr_2009_web.pdf) (accessed 12/05/10)

<sup>23</sup> Op.cit. p 20

<sup>24</sup> Op. cit. Chapter 2.



provided for culturally appropriate rehabilitation services for them. Adopting a justice reinvestment strategy would improve the cost effectiveness of the criminal justice system and strengthen communities;

- Using modern technology as widely as possible to avoid long haul prisoner transport and to avoid removing Indigenous prisoners far from country ;
- Providing comprehensive human rights training to all police, prison guards, and contractors employed by the criminal justice system;
- Implementing outstanding recommendations of the Royal Commission into Aboriginal Deaths in Custody both as a way of protecting the health and well-being of Indigenous Australians taken into custody, but also as a systematic way of tackling the factors that underlie offending and recidivism.