

Truth and Reconciliation Commission: Recommendation #30

“We call upon federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal Peoples in custody over the next decade”¹

The Need for Truth and Reconciliation

- The Truth and Reconciliation Commission (TRC) spent six years travelling to all parts of Canada to hear from the Aboriginal Peoples who had been taken from their families as children, too often forcibly, and placed for much of their childhoods in residential schools.
- In 2011, approximately 1,400,685 Aboriginal Peoples represented 4.3% of the general population in Canada.²
- 63% of all incarcerated women in Canada are Indigenous.³ Amongst those serving two years or more, the numbers increased by 85.7% over the past decade.⁴
- The over-incarceration and over-victimization of Aboriginal Peoples is rooted in systemic discrimination from forced removal from their lands, to the outlawing of cultural and spiritual laws, practices and ceremonies, to residential schools and child-welfare approaches that result in physical and cultural dislocation, and expose too many to physical, emotional, psychological and sexual abuse.⁵
- “The disproportionate apprehension of Aboriginal children by child-welfare agencies and the disproportionate imprisonment and victimization of Aboriginal Peoples can be explained in part as a result or legacy of the way that Aboriginal children were treated in residential schools and were denied an environment of positive parenting, worthy community leaders, and a positive sense of identity and self-worth.”⁶
- This over-representation of Aboriginal Peoples exemplifies Canada’s racist legacy of colonization.⁷

Residential Schools

¹ Truth and Reconciliation Canada, *Calls to Action*. 2015.

<www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf>.

² Statistics Canada, *Aboriginal People in Canada: First Nations People, Métis, and Inuit* (Ottawa, ON: Statistics Canada, 2011), online: Statistics Canada <<http://www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-011-x/99-011-x2011001-eng.cfm>>.

³ Canadian Human Rights Commission, *Report on Equality Rights of Aboriginal People* (Ottawa: Minister of Public Works and Government Services Canada, 2013) at page 54, online: Canadian Human Rights Commission <http://www.chrc-ccdp.gc.ca/sites/default/files/equality_aboriginal_report.pdf>.

⁴ The Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: Minister of Public Works and Government Services Canada, 2012) at page 11, online: The Correctional Investigator of Canada <<http://oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>>; Ed Buller, *Aboriginal People*, online: Smart Justice Network of Canada <<http://smartjustice.ca/smart-justice/aboriginal-people/>>.

⁵ Truth and Reconciliation Canada, *Honouring the Truth, Reconciling for the Future*. 2015. <http://nctr.ca/assets/reports/Final%20Reports/Executive_Summary_English_Web.pdf>.

⁶ *ibid.*

⁷ Native Women’s Association of Canada, *Aboriginal women and restorative justice*, Ottawa: Native Women’s Association of Canada, 2007, online: Native Women’s Association of Canada <<http://www.laa.gov.nl.ca/laa/news/pdf/nwac-justice.pdf>>.

- “Residential schools were created for the purpose of separating Aboriginal children from their families, in order to minimize and weaken family ties and cultural linkages, and to indoctrinate children into a new culture - the culture of the legally dominant Euro-Christian Canadian society.”⁸
- The mission of residential schools was the assimilation of Aboriginal children.⁹
- In 1966, residential schools in Saskatchewan were spending between \$694 and \$1,193 a year per student. During the same time period, child welfare institutions in Canada were spending between \$3,300 and \$9,855 a year.¹⁰
- Residential schools degraded Aboriginal culture and subjected students to humiliating discipline and therefore must bear a portion of responsibility for the current gap between the educational success of Aboriginal and non-Aboriginal Canadians.¹¹

Child-Welfare Crisis

- Subsequent child-welfare policy that removed Aboriginal children from their homes and placed them with non-Aboriginal families is referred to as the “Sixties Scoop”.¹²
- Aboriginal children from the 1960’s onwards were in some measure simply a transferring of children from one form of institution, the residential school, to another, the child-welfare agency.¹³
- In 2011, Statistics Canada found that 14,225 or 3.6% of all First Nations children age fourteen and under were in foster care, compared with 15,345 or 0.3% of non-Aboriginal children.¹⁴
- 78% of the children who died in foster care in Alberta, between 1999 and mid 2013, were Aboriginal.¹⁵
- Funding for child welfare services on reserves is 22% lower than the funding provided by provinces and territories for similar services off reserve.¹⁶
- In 2012, the United Nations Committee on the Rights of the Child expressed to Canada its concern about the frequent removal of children in Canada from families as a “first resort” in case of neglect, financial hardship, or disability.¹⁷
- In its report, “the committee singled out the frequency with which Aboriginal children are placed outside their communities. Noting that Canada had failed to act on its own auditor general’s findings of inequitable child-welfare funding, the

⁸ Truth and Reconciliation Canada, *Honouring the Truth, Reconciling for the Future*. 2015. <http://nctr.ca/assets/reports/Final%20Reports/Executive_Summary_English_Web.pdf>.

⁹ *ibid.*

¹⁰ *ibid.*

¹¹ *ibid.*

¹² *ibid.*

¹³ Truth and Reconciliation Canada, *Honouring the Truth, Reconciling for the Future*. 2015.

<http://nctr.ca/assets/reports/Final%20Reports/Executive_Summary_English_Web.pdf>.

¹⁴ *ibid.*

¹⁵ *ibid.*

¹⁶ Canadian Human Rights Commission, *CHRC Applauds Historic Decision First Nations Child Welfare Case*, online:

<<http://www.chrc-ccdp.gc.ca/eng/content/22012016-chrc-applauds-historic-decision-first-nations-child-welfare-case>>.

¹⁷ *ibid.*

- committee concluded that “urgent measures” were needed to address the discriminatory overrepresentation of Aboriginal children in out-of-home care.”¹⁸
- On January 26, 2016, the Canadian Human Rights Tribunal ruled that Canada discriminated against Aboriginal children by underfunding welfare services on reserves.¹⁹

Under-Protected but Over-Policed

- Many Indigenous women and girls experience verbal racist and sexist abuse, physical and sexual abuse, including from police.²⁰
- Police failure to respond to and protect Indigenous women and girls remains a concern. Vis-à-vis missing and murdered women, police often fail to take reports seriously, delay investigations,²¹ mishandle, or neglect to coordinate with other policing bodies.²²
- “The victimization of federally sentenced Aboriginal women prisoners includes sexual and physical assault, [as well as] emotional and physical abuse prior to their imprisonment. There are numerous historical abuses suffered as a result of residential and mission schools, foster care and adoption, the lack of equal access to training and employment, not to mention the societal oppression experienced generationally, which results in internalized oppression.”²³
- 85% of federally sentenced women overall, and 90% of Indigenous women, have histories of physical abuse and/or sexual abuse.²⁴

Criminalization and Over-Incarceration

- Between 2003-2013, the incarceration rate for women increased by over 60% whereas the rate for men went up by 15% during the same period. Most troubling is that the federal incarceration rate for Indigenous women increased by 84% during this period. In Manitoba alone, the provincial rate of incarceration grew 233% from 2002 to 2012.
- In 2011, 47.9% of federally sentenced women were incarcerated and approximately 52% were serving sentences in the community.²⁵ For Indigenous women, 63% were incarcerated and approximately 37% were serving sentences in

¹⁸ *ibid.*

¹⁹ Hopkins, Andrea. "Canada Discriminated against Aboriginal Children: Tribunal." | Canada | Reuters. 2016. Accessed January 26, 2016. <<http://ca.reuters.com/article/domesticNews/idCAKCN0V41QK?pageNumber=1>>.

²⁰ Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failure in Protection of Indigenous Women and Girls in Northern British Columbia*, at 20, online: Human Rights Watch <http://www.hrw.org/sites/default/files/reports/canada0213webwcover_0.pdf>.

²¹ Canadian Feminist Alliance for International Action (FAFIA), *Murders and Disappearances of Aboriginal Women and Girls in Canada*, at 22, online: FAFIA <<http://www.fafia-afai.org/wp-content/uploads/2014/09/6-2013IACHRBriefingPaperMarch-5.pdf>>.

²² Parliament, Standing Committee on the Status of Women, “Call Into the Night: An Overview of Violence against Aboriginal Women” in *Reports and Government Responses*, No. 14 (25 March 2011), at 17, online: Parliament of Canada

²³ Statistics Canada, *Women in Canada: A gender-based statistical report* (Ottawa: Minister of Industry Canada, 2006) at page 195, online: Statistics Canada <<http://www.statcan.gc.ca/pub/89-503-x/89-503-x2010001-eng.htm>>.

²⁴ Canadian Human Rights Commission, *Protecting Their Rights: A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women* (Ottawa: Minister of Public Works and Government Services Canada, 2003) at 7, online: CHRC <<http://www.chrc-ccdp.ca/eng/content/protecting-their-rights-systemic-review-human-rights-correctional-services-federally>>.

²⁵ Public Safety Canada, *Corrections and Conditional Release Statistical Overview 2012* (Ottawa: Public Works and Government Services Canada, 2012) at 55, online: Public Safety Canada <<http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2012-cers/indexeng.aspx>>.

- the community.²⁶ This statistic reflects the reality that Indigenous women serve longer and more restrictive sentences than non-Aboriginal women.
- Almost 90% of federally sentenced Indigenous women are precluded from accessing the Okimaw Ohci Healing Lodge because they are designated as maximum security prisoners.²⁷ Many are confined in segregated maximum security units in the regional prisons for women, while a small number still remained confined in the segregated maximum security unit at the Regional Psychiatric Centre in Saskatoon.
 - Indigenous prisoners do not receive timely access to programming that prepares them for release.²⁸ As such, the Correctional Service of Canada does not meet its statutory obligation to ensure the rights of Indigenous prisoners to effective assistance in reintegrating into their communities.²⁹

Indigenous Women in Prison

- According to the Correctional Service of Canada, the average Indigenous woman in prison is young (27 years old) with limited education and few employment opportunities. She is often unemployed or underemployed at the time of her arrest, and the sole support of two or three children. Often, she has left home at a young age to escape violence. She may be forced to sell her body because she needs money and is unable to obtain a job. She is likely subjected to ongoing racism, stereotyping, and discrimination because of her race and colour. She is also likely to be involved in an abusive relationship, from which children are born. The abuse she escaped from at home continues in the form of physical, sexual, and emotional violence. Her social and economic struggle likewise continues.³⁰
- First Nations, Inuit and Métis women are routinely classified as higher security risks than non-Indigenous women in prison.³¹ Nearly 50% of women classified as maximum-security prisoners are [I]ndigenous.³² High security classifications result in program ineligibility and reduced opportunity for successful release into the community.³³

²⁶ Public Safety Canada, *Corrections and Conditional Release Statistical Overview 2012* (Ottawa: Public Works and Government Services Canada, 2012) at 55, online: Public Safety Canada <<http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2012-ccrs/indexeng.aspx>>.

²⁷ The Correctional Investigator of Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: Minister of Public Works and Government Services Canada, 2012) at 3, online: The Correctional Investigator of Canada <<http://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>>.

²⁸ Native Women's Association of Canada, *Arrest the Legacy: From Residential Schools to Prisons*, online: Native Women's Association of Canada <http://www.nwac.ca/sites/default/files/imce/WEBSITES/201104/insert1_final%20web%20-english.pdf>.

²⁹ The Correctional Investigator Canada, *Annual Report of the Office of the Correctional Investigator 2011-2012* (Ottawa: Minister of Public Works and Government Services Canada, 2012) at page 35, online: The Correctional Investigator of Canada <<http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20122013-eng.pdf>>.

³⁰ Norma Greene, *Profile of an Aboriginal Woman Serving Time in a Federal Institution* (2013), online: Correctional Service Canada <<http://www.csc-scc.gc.ca/aboriginal/002003-1009-eng.shtml>>.

³¹ The Correctional Investigator Canada, *Annual Report of the Office of the Correctional Investigator 2005-2006* (Ottawa: Minister of Public Works and Government Services Canada, 2006) at page 11, online: The Correctional Investigator of Canada <<http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20052006-eng.pdf>>.

³² The Correctional Investigator Canada, *Annual Report of the Office of the Correctional Investigator 2009-2010* (Ottawa: Minister of Public Works and Government Services Canada, 2010) at page 45, online: The Correctional Investigator of Canada <<http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20092010-eng.pdf>>.

³³ Canadian Human Rights Commission, *Protecting Their Rights: A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women* (Ottawa: Minister of Public Works and Government Services Canada, 2003) at page 28, online: Canadian

- Indigenous women are more likely than non-Indigenous women to be denied parole, and serve a longer portion of their sentence in custody once granted parole.³⁴ They are also more likely to have their parole revoked for technical reasons.³⁵

Thinking Outside the Bars

- Punitive legislative changes has resulted in a swelling prison population, overcrowded conditions in the federal, provincial, territorial systems.
- A key element of thinking outside the bars is bearing witness to the harsh realities of imprisonment, the experience of imprisoned people and the violence of incarceration.
- We must develop non-carceral options and decarceration strategies, while also insisting on judicial oversight and accountability of prisons, jails, and lock-ups.

Human Rights Commission <<http://www.chrc-ccdp.ca/eng/content/protecting-their-rights-systemic-review-human-rights-correctional-services-federally>>.

³⁴ Canadian Human Rights Commission, *Report on Equality Rights of Aboriginal People* (Ottawa: Minister of Public Works and Government Services Canada, 2013) at page 54, online: Canadian Human Rights Commission <http://www.chrc-ccdp.gc.ca/sites/default/files/equality_aboriginal_report.pdf>.

³⁵ Correctional Service Canada, *Demographic Overview of Aboriginal Peoples in Canada and Aboriginal Offenders in Federal Corrections*, online: Correctional Service Canada <<http://www.csc-scc.gc.ca/aboriginal/002003-1008-eng.shtml>>.

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