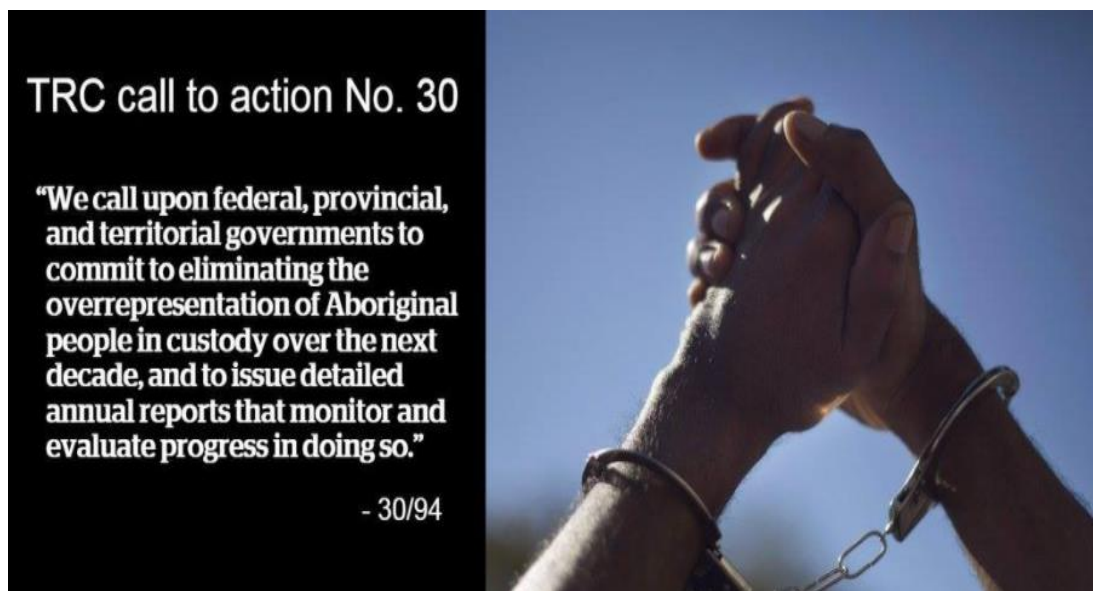


Introduction:

There is a high number of aboriginal people in Canadian prisons. In Canada, this is a well-documented problem. It is believed that such high rates of imprisonment among aboriginal people in Canada are due to the country's history. Specifically, to the influence of colonialism. In 2005, the *Truth and Reconciliation Commission* of Canada stated in its 'Calls to Action' that the Canadian governments need to make sure that the problem of the excessive number of aboriginals in custody is resolved within the next ten years, and to publish relevant reports to analyze the progress (*Truth and Reconciliation Commission*, 2015, p. 324). However, the high number of aboriginal people in custody has not improved in the past five years. This is why attention to the root causes of the excessive number of aboriginal people in custody continues to be necessary, and so is the implementation of possible solutions for this alarming issue.

This report draws attention to the relation between our Canadian juridical system and colonialism. It discusses the root causes of the excessive number of aboriginal people in custody and offers possible solutions.

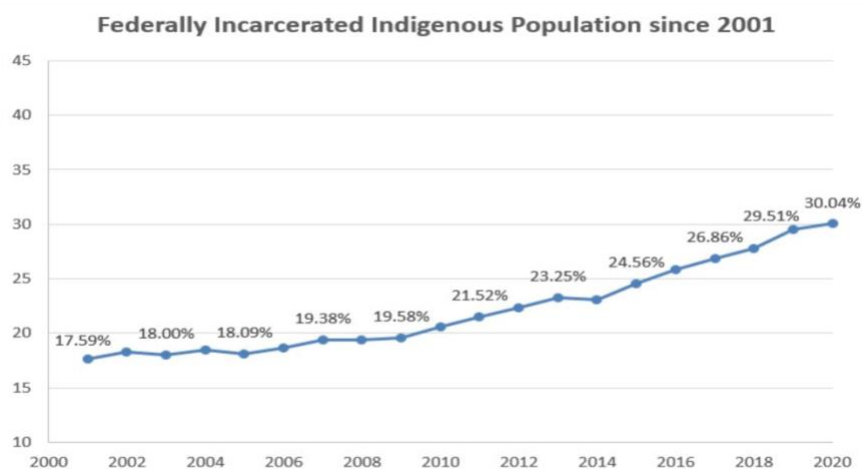


TRC call to action No. 30 (Librarianship, 2016)

Overrepresentation of aboriginal people in federal prisons has reached a historical high:

The number of Aboriginal prisoners increased by 42.8% during the ten-year from March 2009 to March 2018. During this period, the overall growth rate of adult prisoners was less than 1%. As of the end of March 2018, Aboriginal prisoners accounted for 28% of the total federal population in custody, while Aboriginal prisoners only accounted for 4.3% of Canada's total population at this time. In the past ten years, the number of Aboriginal women prisoners has increased by 60%, from 168 in March 2008 to 270 in March 2018 (Clark, 2020 as cited in OCI, 2018, p. 61).

In 2020, Aboriginal people made up 5% of Canada's total population. Yet, in federal prisons, Aboriginal prisoners account for more than 30% of the total population of federal prisoners, up from 25% four years ago (CBC News, 2020, para 3-4).



Data source: Federally Incarcerated Indigenous Population since 2001. (Johal, 2020 as cited in Government of Canada, 2020)

The connection between colonialism and Canadian prisons:

Although Canada's original colonial plan may not have included prisons, from the beginning, Canadian prisons were at the core of Canada's colonialist project. When drawing a relation between or prison system and residential schools, we observe that as seen with prisoners, children at these schools were forced to wear uniforms. The same applies to labour. Just like prisoners, residential school students were forced to work without financial compensation (Chartrand, 2019, para 20).



From Colonialism to Candor: The Indian Residential Schools-CHAIM Center (Kicknosway, 2015)

At the same time, in residential schools, aboriginal children were often locked in schools and closely supervised. Barriers, such as chains, were used on the playground's peripheries to prevent escape. Criminals in Canadian prisons, on the other hand, are also supervised through remissions and vacation tickets. Barriers are also used around prisons to prevent inmates' escape (Chartrand, 2019, para 20). In both, Canadian prisons and residential schools, individuals have been controlled. In addition, punishments in the form of flogging, whipping, beating, and abuse through the deprivation of food, and solitary confinement have been standard practices in both prisons and residential schools. These acts show the inextricable link between residential schools and Canadian prisons.

Root cause of the excessive number of aboriginals in custody:

There are three possible explanations for the root cause of the excessive number of aboriginal people in Canadian prisons: the influence of colonialism, systemic discrimination in the criminal system, and social economic marginalization.



European colonization of the Americas killed 10 percent of world population and caused global cooling. (Berrouet, 2019)

1. The impact of colonialism

The most basic explanation for the overpopulation of indigenous people in Canada's criminal justice system is colonialism. Early contact between France and Britain was characterized by attempts by colonial powers to control indigenous lands and natural resources. Control mechanisms that were implemented include violent relocation to reservations and other designated settlements and restrictive legislation. When analyzing restrictive legislation, the Indian Act serves as an example. These include restricting the use of mechanized agricultural tools by indigenous farmers; prohibiting ceremonial activities; preventing indigenous groups or communities from hiring lawyers to represent their interests before the federal government; lawyers representing indigenous groups or communities face the threat of fines (Clark, 2020, para 52). A current example of the impact of colonialism is the government's unwillingness to comply with the conditions stipulated in the treaty between the indigenous people and the federal

government. For example, the Canadian government promised land and other benefits to aboriginal people, like Indigenous communities practice their cultural and traditional construction projects on their land. But unfortunately, they have not been fulfilled (Clark, 2020, para 53).

This shows that colonial relations have always existed. In the colonial relationship, the land deprivation of the aborigines and cultural differences will become prominent. It is precise because of significant land exploitation and cultural differences that led to aboriginal crime and alcoholism. As a result, the number of Aboriginals in the criminal justice system is overwhelming. In other words, the influence of colonialism has primarily contributed to the excessive number of indigenous people in the criminal justice system.

2. Systemic discrimination in the Canadian Criminal System

Canada's widespread prejudice against Aboriginal people has been transformed into systemic discrimination in the criminal justice system. This is mainly observed with the police and in courts.

i. Police

Policing is manifested in the problems of over-regulation in indigenous communities, insufficient oversight, and the general lack of community policing models in indigenous communities. Indigenous peoples are generally subject to excessive or insufficient supervision (Clark, 2020, para 73). Excessive policing means that the aboriginal communities are under stricter supervision than other communities, resulting in the arrest of many aboriginals. Insufficient supervision means that it is not as active as non-indigenous people when resolving the legal demands of the individual or collective issues by indigenous people.

ii. Courts

Systemic discrimination in the courts usually means that indigenous offenders are more likely to be sentenced to detention and may be subjected to longer sentences when compared with non-indigenous offenders. At the same time, the frequency with which indigenous offenders obtain bail is much lower than the frequency with which non-indigenous offenders obtain bail. This has led to a high number of indigenous people in custody. The Criminal Code explains that the reasons for court to refuse bail and forcibly remand individuals in custody are: when the person is considered unlikely to appear in court for his/her next hearing or trial; when the person is considered a threat to the community or to other individuals; and when the nature of the alleged crime is seen as severe (Clark, 2020, para 78). Unfortunately, even when crimes are not considered serious, when individuals are not seen as flight risks, or a threat to the community, it is not uncommon for Aboriginal people to be refused bail in our Canadian courts.

3. Social and Economic Marginalization

Social and economic marginalization is also directly related to the excessive number of indigenous people in custody. In 2015, the average total income of non-indigenous people in Canada was \$46,449, while the average total income of aboriginal people was 36,748 (Clark 2020 as cited in *Statistics Canada*, 2016). At the same time, the employment rate of indigenous

people is also significantly lower than that of non-indigenous people. Among them, the employment rate of indigenous communities in remote areas is even lower. Relatively low income and/or unemployment lead to the poverty and limited opportunities for financial success.



The Canadian justice system is failing Aboriginal people. (Wohlgemuth, 2013)

Implementation of policies to solve the overrepresentation of the number of aboriginal people in custody:

The Canadian government has designed and implemented policies and measures to address systemic discrimination, colonialism, and socio-economic marginalization. All of which have led to excessive numbers of aboriginal people in custody. These policies and measures include changes in the criminal law regarding sentencing and rehabilitation with the implementation of Gladue courts (Clark, 2020, para 106).



Gladue Reports are not just a sentencing report (Kicknosway, 2015)

In 1995, the parliament passed a bill to amend the criminal law regarding sentencing. Its content includes consideration of sanctions other than imprisonment for all criminals. When this legislation was introduced, the government admitted that the sentencing rate involving the custody of indigenous people required action. When Bill 718 passed and the Enforcement Law Quantitative Guidelines were set in place, certain restrictions on judges' decision-making were

implemented. The purpose was to reduce the frequency of imprisonment imposed by Canadian courts (Clark, 2020, para 107). Yet, it did not significantly help to reduce the imprisonment rate of indigenous people. Restricting judges' decision-making power does not mean that Aboriginal people in Canada will be sentenced to lighter penalties.

2. Setting up Gladue Courts

The role of a Gladue court is to handle cases involving Aboriginal people who have been charged with a criminal offence. At least in part, this court aims at reducing imprisonment rates and implementing sentences and rehabilitation efforts that are more in line with Indigenous traditions. In other words, Gladue courts encourage the development of effective restorative justice/community-based justice alternatives to imprisoning indigenous offenders through cultural and personally appropriate procedures (Clark, 2020, para 128). The Gladue court accounts for Indigenous peoples' history in Canada and how the legacy of residential schools still plays a detrimental role in individuals' current lives.

For the Gladue court process, the Gladue report is usually prepared when the official seeks a sentence of at least 90 days' imprisonment for an individual who leaves custody or a sentence of at least three months' imprisonment for a detained individual. Consistent with Gladue According to the ruling, it may take several weeks for the Gladue writer to record the life factors that led the criminal to reach his current state and commit the crime through interviews with individuals who know the criminal and other methods. At the same time, . An important part of the Gladue process is the availability and accessibility of culturally appropriate rehabilitation programs, commonly referred to as community-based justice programs. The Gladue Supreme Court recognizes the importance of such plans and recommends that if there is no specific indigenous plan, the court should try to refer the offender to any restorative plan. This poses a challenge to many Canadian courts, as restorative plans are still lacking in most parts of the country, especially those designed for indigenous peoples (Clark, 2020, para 128).

In recent years, Gladue courts across Canada have resolved issues of sentencing, access to restorative justice procedures, and over-representation. However, courts in different regions of Canada do not necessarily share the same structure or procedures. For example, the concept of sentencing circle is seen as related to the way that indigenous people solve problems and find solutions in a common and supportive way. This view has taken hold in many places involving the sentencing of indigenous individuals. His sentencing team was detained in a room outside the ordinary courtroom (Clark 2020 as cited in Department of Justice Canada, 2017). Therefore, for Gladue court, it should be noted that even if it is set across Canada, it may not be applicable to all places.

3. Community-Based Justice Projects

The Canadian government implemented the Aboriginal Justice Initiative in 1991, which aims to support community-based justice projects such as triage plans, community participation in sentencing, and civil dispute mediation and arbitration procedures. Recently, the plan was updated in the 2017 federal budget and renamed the Indigenous Justice Plan. The Indigenous

Justice Plan is primarily designed to fund community-based initiatives and is the primary and most comprehensive federal program supporting Aboriginal and criminal justice (Clark, 2020, para 130). The three main goals of this plan are to assist indigenous people to assume greater community judicial responsibilities, reflect and incorporate indigenous values in the judicial system, and help reduce the victimization and crime rates of indigenous people in the community through a community-based judicial plan funded by IJP (Clark 2020 as cited in Department of Justice Canada, 2018b). Plans to adopt a community-based judicial approach include, for example, the Community Justice Committee and the Youth Justice Committee. This committee is funded to perform various functions, including family group meetings, elderly counseling, and spouse mediation (Clark, 2020, para 130).

The effectiveness of this program in reducing the incarceration rate of Indigenous people has been highlighted by the Canadian Department of Justice: “Individuals participating in the AJS program are more likely to be rehabilitated than individuals sent into the mainstream justice system. Recurrence studies conducted to support this assessment indicate Criminals who participate in AJS funding programs are about half as likely to commit another crime as those who do not participate in these programs” (Clark 2020 as cited in Department of Justice Canada, 2007). This shows that the effect of this plan is still relatively optimistic. The problem that remains, however, is that the rate of over-proportion of indigenous people continues to rise.

As addressed by Clark (2020), there are two reasons for this rise:

First, the plan focuses on mediating disputes and counseling within the family, rather than doing its best to make the intersection between the indigenous community and the mainstream system work effectively. The solution to the excessively high imprisonment rate of the aboriginals mainly depends on the mainstream judicial system. Nevertheless, the mainstream justice system did not participate in the plan.

Second, there are still gaps in successfully addressing the underlying social and economic factors of the overpopulation of indigenous people in the criminal justice system. In the previous section of this report, I mentioned that the high number of indigenous people in custody is social and economic marginalization. This means that poverty and social exploitation have caused a high crime rate among the indigenous people, which has led to a high number of people in custody. Therefore, the plan does not address any actions to reduce the social exploitation of indigenous peoples and economic marginalization.



The Supreme Court of Canada in Ottawa (Kilpatrick, 2012)

Conclusion: As stated throughout this report, there is a connection between Canadian prisons and colonialism. This leads us to suggest that prisons have always been the core of colonialism. The overrepresentation of Aboriginal people in Canadian prisons is inseparable from the legacy of colonialism. Socio-economic marginalization and systemic discrimination are both factors that have contributed to the excessive number of indigenous people in custody. This report highlighted apparent attempts at addressing this Canadian problem. These include the implementation of Gladue courts and community-based programs. Unfortunately, attempts at addressing the problem is, to this date, not leading to the expected positive results. Despite the promise of significant reforms, the imprisonment rate of indigenous criminals has not improved even worsened. Canada's Aboriginal criminal justice policy continues to face significant challenges. Overcoming historical and continuing challenges is the primary goal of the government and indigenous peoples. It is not until we see a substantial reduction in the overrepresentation of indigenous people in our Canadian prisons that we may claim that the judicial policy has brought positive progress

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