

## Aboriginal Women

**Profile of an Aboriginal Woman Prisoner** according to information posted on the web site of the Correctional Service of Canada (CSC)

CSC describes the ‘average’ Aboriginal woman in a penitentiary as: 27 years old, with a limited education (usually grade nine), is unemployed or under-employed, and the sole support mother to two or three children. She is usually unemployed at the time she is arrested.<sup>1</sup>

She has often left home at an early 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 to have been subjected to racism, stereotyping, and discrimination because of her race and colour. However, her experience on the streets becomes violent as she continues to experience sexual, emotional and physical abuse. She is likely to become involved in an abusive relationship. There are usually children born from this relationship and the social, emotional and economic struggle continues. The cycle of an unhealthy family continues.

- In 2006, the 1 172 785 Aboriginal people in Canada represented 3.8% of the country’s total population.<sup>2</sup>
- In 2006, 600 695 Aboriginal women and girls in Canada made up 3% of the total population of women and girls in Canada.<sup>3</sup>
- The population of Aboriginal women is growing much more rapidly than the rest of the population of women and girls in Canada. In the period of 2001 to 2006, the number of Aboriginal women and girls rose by 20.3% in comparison to a 5.6% growth rate in the non-Aboriginal population of women and girls.<sup>4</sup>
- In 2004-2005, Aboriginal women made up 30% of the women in federal prisons. In provincial jails and detention centres in Saskatchewan, women compose 87% of the female prison population, 83% in Manitoba, 54% in Alberta, and 29% in British Columbia.<sup>5</sup>
- The Correctional Investigator found that:
  - The Correctional Service of Canada (CSC) routinely classifies First Nations, Metis, and Inuit women as higher security risks than non-Aboriginal women in prison;
  - Aboriginal women are released later in their sentences than other prisoners;

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<sup>1</sup> Statistics Canada. *Aboriginal identity population by age groups, median age, and sex, for 2006, for Canada provinces and territories*. Ottawa: Statistics Canada, 2007.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid

<sup>5</sup> “Incarceration rates in US and Canada.” *The Marxist-Leninist Daily*. On line:  
<http://www.cpcml.ca/Tmld2008/D38038a.htm>

- They are more likely to have their conditional release revoked for technical reasons than non-Aboriginal parolees;
  - Aboriginal prisoners often do not receive timely access to rehabilitative programming and services, which hinder their community integration.<sup>6</sup>
- The Canadian legal system is too often experienced by its Aboriginal population as a foreign and inappropriate system for the resolution of conflict in Aboriginal communities.<sup>7</sup>
  - The difference in the Aboriginal and non-Aboriginal notions of justice can lead to the misunderstanding of actions and reactions of Aboriginal people in the court room. Judges and juries can misunderstand words, demeanour and body language, which can negatively impact sentencing. To require people to act in a way contrary to their most basic beliefs infringes rights, and is a deeply discriminatory act.
  - The over-representation of Aboriginal people within the Canadian criminal justice system is an egregious example of the racist legacy of colonization.<sup>8</sup>
  - According to the 2007 report of the Correctional Investigator, Aboriginal people were incarcerated at a rate of 1 024 per 100 000 versus 117 per 100 000 for non-Aboriginal people.<sup>9</sup>

### **Criminalizing Aboriginal Women**

- Aboriginal women are over-represented in the federal prison system. They represent only 3% of the women in Canada, yet account for 32% of the women in federal prisons. The number of Aboriginal women federally incarcerated had increased by 151% between 1997 and 2007.<sup>10</sup>
- Aboriginal women are over-represented in the maximum security prison population, making up 45% of the maximum security federally sentenced women, 44% of the medium security population and 18% of minimum security women in 2006.<sup>11</sup>
- The Custody Rating Scale is used for the security classification of federally sentenced women, but it was designed for men, not women.<sup>12</sup> The Custody rating scale “was not designed to identify, reflect or accommodate the needs, capacities and circumstances of federally sentenced

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<sup>6</sup> Sapers, Howard. *Report finds evidence of systematic discrimination against Aboriginal inmates in Canada's prisons*. Ottawa: Office of the Correctional Investigator, 2006.

<sup>7</sup> Ibid.

<sup>8</sup> Native Women's Association of Canada. *Aboriginal women and restorative justice*. Ottawa: Native Women's Association of Canada, 2007.

<sup>9</sup> Monture, Patricia. *Confronting power: Aboriginal women and justice reform*. Canadian Women Studies, 2006, v.25, n.3 at 26.

<sup>10</sup> Sapers, Howard. *Annual report of the Correctional Investigator, 2006-2007*. Ottawa: Minister of Public Works and Government Services of Canada, 2007 at 20.

<sup>11</sup> Ibid.

<sup>12</sup> Native Women's Association of Canada. *Number of Aboriginal people in Canada's prisons growing: New investments to address poverty and secure better education outcomes needed to address crisis in national organizations*. Ottawa, Native Women's Association of Canada, 2006.

women or members of racialized groups, nor has it been adequately validated for these populations. This results in unnecessarily high security classifications and leads to ineligibility for programming intended to prepare the women for eventual release and to increase their chances of success. Aboriginal women classified as maximum security are also denied access to the support of the Healing Lodge.<sup>13</sup>

- The Correctional Service of Canada does not meet its statutory obligation to ensure the rights of Aboriginal prisoners to effective assistance in reintegrating into the community.<sup>14</sup>
- The Correctional Service's own statistics confirm that that situation of Aboriginal prisoners is deteriorating in many areas that the Correctional Service could positively influence:
  - Significant delays in timely and safe reintegration into the community;
  - Under-representation in minimum-security institutions and over-representation in maximum-security institutions and administrative segregation;
  - Limited use of legislative provisions designed to enhance Aboriginal reintegration;
  - High ratio of detention referrals.<sup>15</sup>

## Social Conditions and Justice

- Aboriginal people have experienced the most racial discrimination of any group in Canada. Discrimination against Aboriginal people has been a central policy of Canadian governments since confederation.
- In the past, legislation regarding the registration of Indian people treated women and men differently. Prior to 1985, under certain provisions in the *Indian Act*, women classified as 'status Indian', who married non-status men (Aboriginal or non-Aboriginal) lost their status, and as a result, their First Nation (band) membership. As well, these women could no longer pass status on to their children.<sup>16</sup>
- The opposite was true for First Nations men. Non-status women (Aboriginal or non-Aboriginal) who married status Indian men were automatically conferred Indian status. Changes were made to the *Indian Act* in '985 through Bill C-3, which allowed many women and their children to reclaim their 'Indian' status, and, in some cases, their First Nation (band) membership. Others who had voluntarily or involuntarily lost their Indian status through other provisions of the *Indian Act* could also apply to have their status restored.<sup>17</sup>
- The colonization of Aboriginal people continues today, not only as a consequence of the *Indian Act*, land thefts, residential schools, but also as a result of child welfare, social

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<sup>13</sup> Canadian Human Rights Commission. *Protecting their rights: A systematic review of human rights in correctional services for federally sentenced women*. Ottawa: Canadian Human Rights Commission, 2004 at 28.

<sup>14</sup> Ibid at 29.

<sup>15</sup> Sapers, Howard. *Annual report of the Correctional Investigator, 2006-2007*. Ottawa: Minister of Public Works and Government Services Canada, 2007 at 21-22.

<sup>16</sup> Ibid.

<sup>17</sup> Statistics Canada. *Women in Canada: A gender-based statistical report by Statistics Canada*. Ottawa: Statistics Canada, 2006 at 85.

services, health, education and economic policies. The Canadian Government administers policies aiming to control virtually every aspect of Aboriginal life. Education has been used as a tool for the cultural assimilation of Aboriginal Canadians in the past, and continues to be culturally biased. The material taught in Canadian schools focuses on the culture, history and reality of non-Aboriginal Canadians, and while Aboriginal people no longer attend residential schools many are still forced to leave their communities in order to attend high school.

- According to the Canadian Millennium Scholarship Foundation in 2005, there was a gap of about 15 percentage points between the post-secondary educational attainment of Aboriginal Canadians (39%) and non-Aboriginal Canadians (54%).<sup>18</sup>
- The justice system has played a major role in the creation of poor social conditions in Aboriginal communities today. It has failed to provide them with protection against oppression and has instead been a tool of this oppression through the denial of Aboriginal land claims, the imposition of residential schools, the separation of families through child welfare practices, and the denial of Aboriginal control over their own communities. This has resulted in social disruption in the community and widespread poverty.
- Aboriginal housing is indisputably the Canadian government's constitutional responsibility and fiduciary duty based on treaty agreements.<sup>19</sup> In 2004, 16, 878 of the 95,479 on-reserve dwellings were in need of major repairs, while 5,199 dwellings needed to be replaced.<sup>20</sup> There is also a problem with overcrowding and the spread of infectious diseases, with an estimated 20, 000 to 35,000 more dwellings needed on reserves.<sup>21</sup> This human rights violation has been highlighted United Nations human rights committees and the Canadian Human Rights Commission.<sup>22</sup>
- Aboriginal people are four times more likely than non-Aboriginal people to live in a crowded dwelling.<sup>23</sup>
- In 2006, one in four Aboriginal people lived in dwellings that required major repairs. Aboriginals were 3 times more likely than the rest of the population to live in a dwelling that needed major repairs.<sup>24</sup>

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<sup>18</sup> Ibid

<sup>19</sup> Canada Millennium Scholarship Foundation. *Changing course: Improving Aboriginal access to post secondary education in Canada*. 2005 at 3.

<sup>20</sup> National Aboriginal Housing Association. *Agenda for action*. On line: <http://www.aboriginalhousing.org/EN/priorities.html>

<sup>21</sup> Canada Mortgage and Housing Corporation & Indian and Northern Affairs Canada. *Aboriginal housing background paper*. Ottawa: Indian and Northern Affairs Canada, 2004 at 2.

<sup>22</sup> Human Resources and Development Canada. *Factsheet on Aboriginal housing*. Ottawa: Human Resources and Development Canada, 2005 at 1.

<sup>23</sup> PovNet. *UN calls on Canada to tackle housing crisis*. On line: <http://www.povnet.org/node/2227>

<sup>24</sup> Statistics Canada. *Aboriginal peoples in Canada in 2006: Inuit, Métis and First Nations, 2006 census*. Ottawa: Statistics Canada, 2007.

- The gap between employment rates between Aboriginal and non-Aboriginal women was particularly large in the 15-24 age group, in which 35% of Aboriginal women versus 57% of non-Aboriginal women were employed.<sup>25</sup>
- Unemployment rates among Aboriginal women and girls participating in the labour force are twice those of their non-Aboriginal counterparts. In 2001, 17% of Aboriginal women in the labour force were unemployed, compared with a rate of 7% for non-Aboriginal women.<sup>26</sup>
- The incomes of Aboriginal women in Canada tend to be relatively low. In 2000 the median income of an Aboriginal woman was \$12,300 about \$5,000 less than that of non-Indigenous women who had an average income of \$17,300 that year.<sup>27</sup>
- On average, Aboriginal women in Canadian urban centers are unable to earn enough money to meet their own needs, much less support a family. In the 2001 census, the average annual income of Aboriginal women reserve was \$5,500 less than that of non-Indigenous women and substantially less than the amount Statistics Canada estimated people living in a large Canadian city would have needed to provide food, shelter and clothing for themselves.<sup>28</sup>
- Aboriginal women are more likely than their non-Aboriginal counterparts to be prostituted and are the most likely of all sex workers to be criminalized or physically or sexually abused.<sup>29</sup>
- Homelessness and inadequate shelter widespread problems facing Indigenous families.<sup>30</sup>
- In 2003, 35% of on-reserve residents were receiving social assistance, compared to 5.5% of the general population.<sup>31</sup>
- The average number of social assistance recipients per month increased from 70 927 to 76 905 in 2004-2005.<sup>32</sup>
- The number of Aboriginal women (including Inuit, Métis, and First Nations women) living in poverty was 36% in 2005.<sup>33</sup>

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<sup>25</sup> Ibid.

<sup>26</sup> Statistics Canada. *Women in Canada: A gender-based statistical report by Statistics Canada*. Ottawa: Statistics Canada, 2006 at 198.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid at 199.

<sup>29</sup> Balfour, Gillian and Elizabeth Comack (ed.). *Criminalizing Women*. Halifax: Fernwood Publishing, 2006 at 99.

<sup>30</sup> Statistics Canada. *Violence against Aboriginal women*. Ottawa: Statistics Canada, 2006.

<sup>31</sup> Amnesty International. *Stolen sisters: Discrimination and violence against Indigenous women in Canada*. Amnesty International, 2004.

<sup>32</sup> National Council of Welfare Reports. *First Nation, Métis and Inuit children and youth: Time to act*. Ottawa: National Council of Welfare Reports, 2007 at 27.

<sup>33</sup> The Canadian Civil Society Response. *Reality Check: Women in Canada and the Beijing Declaration and Platform for Action Fifteen Years On*. Ottawa: Canadian Labour Congress, 2010 at 7.

- “Historically, the justice system has discriminated against Aboriginal people by providing legal sanction for their oppression. The oppression of previous generations forced Aboriginal people into their current state of social and economic distress. Now, a seemingly neutral justice system discriminates against current generations of Aboriginal people by applying laws which have an adverse impact on people of lower socio-economic status. This is no less racial discrimination; it is merely “laundered” racial discrimination... To change this situation will require a real commitment to ending social inequality in Canadian society...”<sup>34</sup>

## Violence

- In 2004, Amnesty International released a report titled: “Stolen Sisters: A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada”. The report includes stories about Canada’s missing and murdered Aboriginal women, and concludes: **“In every instance, Canadian authorities could and should have done more to ensure the safety of these women and girls.”**<sup>35</sup>
- Violence against women, and certainly violence against Aboriginal women, is rarely understood as a human rights issue. To the extent that governments, media and the general public do consider concerns about violence against women, it is more frequent for it to be described as a criminal concern or a social issue. It is both of those things of course. But it is also very much a human rights issue.
- Women have the right to be safe and free from violence. Indigenous women have the right to be safe and free from violence. When a woman is targeted for violence because of her gender or because of her Indigenous identity, her fundamental rights have been abused. And when she is not offered an adequate level of protection by state authorities because of her gender or because of her Indigenous identity, those rights have been violated.<sup>36</sup>
- Results of the 2004 General Social Survey suggest that violence in marriages and common-law unions is a reality that many Aboriginal women face. Indeed, 24% of Aboriginal women, three times the figure among their non-Aboriginal counterparts (8%), experienced spousal violence from either a current or previous marital or common-law partner in five-year period prior to the survey. At the same time, 18% of Aboriginal men reported being victims of some form of spousal abuse.<sup>37</sup>
- Aboriginal women are much more likely to have been sexually and/or physically abused than non-Aboriginal women, and are eight times more likely to be killed by a spouse. “The victimization of federally sentenced Aboriginal women prisoners includes sexual and

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<sup>34</sup> Ibid at 28.

<sup>35</sup> Amnesty International. *Stolen sisters: Discrimination and violence against Indigenous women in Canada*. Amnesty International, 2004.

<sup>36</sup> Aboriginal Law Bulletin. *Autonomy-based solutions and criminal justice reform: A comparison of the recommendations of the Australian Royal Commission into Aboriginal deaths in custody and the Aboriginal justice inquiry of Manitoba*. Aboriginal Law Bulletin, 1992. On line: <http://www.austlii.edu.au/aujournals/AboriginalLB/1992/3.html#fnB24>

<sup>37</sup> Amnesty International. *Stolen sisters: Discrimination and violence against Indigenous women in Canada*. Amnesty International, 2004.

physical assault, emotional and psychological 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, resulting in internalized oppression.<sup>38</sup>

- Violence against Aboriginal women in particular can be traced back to colonization. Many Aboriginal communities were matriarchal or semi-matriarchal before colonization imposed patriarchal religious, economic and political institutions upon them. Aboriginal women face both racism and sexism as a result, being seen not just as Aboriginals and not just as women but as Aboriginal women, commonly objectified and dehumanized in racist and sexist stereotypes that make these women at risk of physical, emotional and sexual violence.<sup>39</sup>
- Aboriginal women are also twice as likely as other women to experience emotional abuse from either a current or previous marital or common-law partner. In the five-year period prior to the survey, 36% of Aboriginal women, compared with 17% of their non-Aboriginal counterparts, reported experiencing emotional abuse from a partner.<sup>40</sup>
- Along with higher rates of spousal violence Aboriginal women “were also significantly more likely than non-Aboriginal women to report the most severe and potentially Life threatening forms of violence, including being beaten or choked, having had a gun or knife used against them, or being sexually assaulted (54% of Aboriginal women compared with 37% of non-Aboriginal women).”<sup>41</sup>
- Before contact, Aboriginal women were seen to occupy a position of honour, often seen as being closest to Mother Earth and Creation. With colonization, they were stripped of their position and structures were destroyed. Discrimination based both on the sex and race of Aboriginal women is manifested in the response or lack of response of law enforcement to violence against these women.
- While Aboriginal people are over-policed, in that they are arrested and detained under circumstances in which non-Aboriginal people may not be, they are also under-policed in that the police are not available for prevention and supportive police services. In a tragic example of police unresponsiveness, in February 2000 Corrine McKeowen and Doreen Leclair were stabbed to death after five desperate calls for help were ignored by police.
- The over-representation of Aboriginal women in the criminal justice system is linked to their victimization, which is rooted in colonization and is perpetuated by current state practices.

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<sup>38</sup> Statistics Canada. *Women in Canada: A gender-based statistical report by Statistics Canada*. Ottawa: Statistics Canada, 2006 at 195.

<sup>39</sup> Canadian Research Institute for the Advancement of Women. *New federal policies affecting women's equality: Reality check*. Ottawa: CRIAW, 2006 at 5.

<sup>40</sup> Statistics Canada. *Violence against Aboriginal women: Statistical trends 2006*. Ottawa: Statistics Canada, 2006.

<sup>41</sup> Statistics Canada. *Women in Canada: A gender-based statistical report by Statistics Canada*. Ottawa: Statistics Canada, 2006.

Aboriginal women may be charged when they are reacting to abuse or when they are reacting to the poor social conditions relative to the discrimination they experience.

## Health

- Canadian laws have been used to oppress the traditional ceremonies and methods Aboriginal people have employed to deal with personal issues and pressures. Until recently, many were prohibited by law and even now that they are considered legal they are denigrated by some. This has had a significantly negative impact on the well-being of Aboriginal people today.
- The prevalence of AIDS in the Aboriginal population has steadily increased in the last ten years. In 2002, Aboriginal peoples accounted for 6% to 12% of new HIV infections in Canada, compared with 9% in 1999. Aboriginal people account for around 17-26% of new HIV infections.<sup>42</sup>
- In 2000 and 2001, the proportion of reported AIDS cases among Aboriginal persons decreased to 7.9% and 5.3% respectively; however an increase was seen in the first six months of 2002, where Aboriginal persons accounted for 14.1 % of the total reported AIDS cases where ethnicity was known. This trend will be monitored closely to see if it is confirmed when data for the full year are available.<sup>43</sup>
- Rates of diabetes are also considerably higher for those off reserve than for the total Canadian population. In 2001, 7% of the women and girls Aboriginal off reserve population aged 15 and over had been diagnosed with diabetes, compared with 3% of the total population of women and girls.
- Health Canada has raised diabetes as a significant concern for the Aboriginal population because of “early onset, greater severity at diagnosis, high rates of complications, lack of accessible services, increasing trends, and increasing prevalence of risk factors for a population already at risk.”<sup>44</sup>

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<sup>43</sup> Public Health Agency of Canada. *HIV/AIDS among Aboriginal peoples in Canada: A continuing concern*. Ottawa: Public Health Agency of Canada, 2004.

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