

Issued by: Assembly of First Nations, BC First Nations Justice Council, Black Lake Denesuline First Nation, Prince Albert Grand Council, Prisoners' Legal Services and Union of B.C. Indian Chiefs

ENDING THE MASS INCARCERATION OF INDIGENOUS PEOPLES IN CANADA

Indigenous Peoples represent 5% of the population in Canada but 33% of people in federal prisons and 50% of women in federal prisons.ⁱ For three decades, Canada has been aware of the over-representation and steady rise, of almost 1% per year, in the proportion of Indigenous Peoples in Canadian prisons.ⁱⁱ This mass incarceration constitutes a serious threat to the health of Indigenous Peoples and contributes to the ongoing genocide of Indigenous Peoples in Canada.ⁱⁱⁱ

Indigenous Peoples spend more of their sentences in custody.^{iv} They are also disproportionately exposed to the most punishing and damaging aspects of prison, including solitary confinement (in Structured Intervention Units^v and elsewhere), violent and restrictive maximum-security environments,^{vi} and use of force by officers.^{vii} Indigenous Peoples are over-represented in self-harm injuries and deaths by suicide^{viii} in prison. Joey Toutsaint, Black Lake Denesuline First Nation, has been held for more than 3,000 days or 8 years and counting in solitary confinement in federal custody in breach of the *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules)^{ix} against the use of solitary confinement including Rules 43 and 45.

“The overrepresentation of Indigenous Peoples in the criminal justice system must be understood in the context of colonialism and the intergenerational trauma related to the residential schools. Disproportionately high rates of Indigenous Peoples in jails and prisons have been linked to structural racial discrimination at every level, including policing, the judicial system, and corrections...”^x

– Mr. José Francisco Calí-Tzay

Due to systemic discrimination, sections 81 and 84 of the *Corrections and Conditional Release Act* (“CCRA”), intended for Indigenous persons to serve their sentences in Indigenous communities, are underfunded and under-used. Indigenous-operated healing lodges are restricted by Correctional Service Canada (“CSC”) policies, less than 1% of CSC’s budget has historically been devoted to healing lodges,^{xi} ^{xii} and other options for individualized and non-institutional community-based placements remain ignored despite Indigenous Peoples representing about one third of people in prison.

The solution is to recognize Indigenous Peoples’ self-determination and direct funding and authority to Indigenous governments and organizations to restore balance and provide healing for Indigenous Peoples at every level of the justice system in line with the *United Nations Declaration on the Rights of Indigenous Peoples* (“UNDRIP”), Articles 7(2), 21(2), 22(2), 24(2) and 34.

Recommendations – we urge Canada to:

1. Recognize Indigenous Peoples’ self-determination by shifting authority and one third of CSC’s approximately \$3 billion annual budget – \$1 billion annually – to Indigenous governments and organizations to decarcerate Indigenous Peoples in a manner consistent with UNDRIP, Article 4.
 2. Implement the United Nations Special Rapporteur on the Rights of Indigenous Peoples’ recommendation to “[r]esort, wherever possible, to alternatives to detention enabling Indigenous persons to serve sentences in their communities; encourage, appropriately fund, and raise awareness about the use of alternatives to incarceration as provided by the United Nations Declaration on the Rights of Indigenous Peoples Act and sections 81 and 84 of the [CCRA]; and
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guarantee that Indigenous operated healing lodges established under section 81 are independent in providing correctional services”.^{xiii}

3. Implement 4th Universal Periodic Review commitments including addressing structural racism in and the over-representation of Indigenous and Black people in prisons (Recommendations 84, 129, 130, 133).^{xiv}
4. Ensure that funding is made available to implement Canada’s “Indigenous Justice Strategy,” in particular the six priority actions targeted at corrections reform.^{xv}
5. Carry out the United Nations Permanent Forum on Indigenous Issues’ call to “remove existing barriers, ensure culturally appropriate access to justice and prevent the overcriminalization of Indigenous Peoples.”^{xvi}

ⁱ Office of the Correctional Investigator, *Annual Report 2023-24*, p. 147. Online: <https://oci-bec.gc.ca/sites/default/files/2024-10/Annual%20Report%20EN%202024%20%E2%80%93%20WEB.pdf>; and Public Safety Canada, *2023 Corrections and Conditional Release Statistical Overview* (July 2025) [“2023 Statistical Overview”], section C16. Online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ccrso-2023/index-en.aspx>.

ⁱⁱ See for instance the Supreme Court of Canada’s decision in *R. v. Gladue*, [1999] 1 S.C.R. 688; and Statistics Canada, 2026 “Overrepresentation of Indigenous and Black adults in provincial and federal custody”. Online: <https://www150.statcan.gc.ca/n1/daily-quotidien/260114/dq260114b-eng.htm>

ⁱⁱⁱ Prisoners’ Legal Services, *Decarceration through Self Determination*, (April 2023). Online: <https://prisonjustice.org/wp-content/uploads/2023/04/Decarceration-through-Self-determination-w.pdf>.

^{iv} Government of Canada, *Parole Board of Canada 2024-25 Department Results Report: Supplementary Information Tables* (7 November 2025). Online: <https://www.canada.ca/en/parole-board/corporate/transparency/reporting-to-canadians/departamental-performance-report/2024-25/2024-25-departamental-results-supplementary-information-tables.html>.

^v 2023 Statistical Overview, section C26.

^{vi} 2023 Statistical Overview, section C17. Office of the Correctional Investigator, *Annual Report 2023-24* (June 26, 2024). Online: <https://oci-bec.gc.ca/en/content/office-correctional-investigator-annual-report-2023-24#s12>.

^{vii} Office of the Correctional Investigator Canada, *Annual Report 2020-2021* (June 30, 2021). Online: <https://oci-bec.gc.ca/en/content/office-correctional-investigator-annual-report-2020-2021#s4>.

^{viii} Office of the Correctional Investigator Canada, *Ten Years since Spirit Matters: A Roadmap for the Reform of Indigenous Corrections in Canada* (2023), p. 6. Online: <https://oci-bec.gc.ca/sites/default/files/2023-10/Spirit%20Matters%20EN%20C3%94%C3%87%C3%B4%20Web.pdf>.

^{ix} General Assembly resolution 70/175, *annex, adopted on 17 December 2015*.

^x Mr. José Francisco Calí-Tzay, United Nations Special Rapporteur on the Rights of Indigenous Peoples, Visit to Canada 1-10 March 2023, End of Mission Statement.

^{xi} According to the Office of the Auditor General of Canada’s 2016 report *Preparing Indigenous Offenders for Release* (online at https://publications.gc.ca/collections/collection_2016/bvg-oag/FA1-2016-2-2-eng.pdf), it cost CSC \$23 million to operate healing lodges during the 2015–16 fiscal year. CSC’s total spending that same year was \$2,357,784,645, according to its 2015-2016 Departmental Performance Report (online at <https://www.canada.ca/en/correctional-service/corporate/transparency/reporting/departamental-performance-reports/departamental-performance-report-2015-2016.html#s2>).

^{xii} According to the Office of the Auditor General of Canada’s 2016 report *Preparing Indigenous Offenders for Release* (online at https://publications.gc.ca/collections/collection_2016/bvg-oag/FA1-2016-2-2-eng.pdf), it cost CSC \$23 million to operate healing lodges during the 2015–16 fiscal year. CSC’s total spending that same year was \$2,357,784,645, according to its 2015-2016 Departmental Performance Report (online at <https://www.canada.ca/en/correctional-service/corporate/transparency/reporting/departamental-performance-reports/departamental-performance-report-2015-2016.html#s2>).

^{xiii} Mr. José Francisco Calí Tzay, United Nations Special Rapporteur on the Rights of Indigenous Peoples, Visit to Canada 1-10 March 2023, Report of the Special Rapporteur on the rights of Indigenous Peoples. Online: <https://docs.un.org/en/A/HRC/54/31/Add.2>

^{xiv} “Report of the Working Group on the Universal Periodic Review - Canada – Addendum”, A/HRC/55/12/Add.1 (15 March 2024).

^{xv} Department of Justice Canada, *Indigenous Justice Strategy* (March 2025). https://www.justice.gc.ca/eng/csjs-ijr-dja/ijs-sja/tijs-lsja/pdf/IJS_EN.pdf

^{xvi} United Nations Permanent Forum on Indigenous Issues, “Report on the twenty-fourth session (21 April-2 May 2025)”, E/2025/43-E/C.19/2025/8.