

## **Findings and Calls to Justice with a Focus on Indigenous Youth and Girls in Canada and Hawaii**

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Speakers:

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- Beginning of Recording -

### **Rebekah Enoch:**

The international Symposium on Girls in Conflict with the Law is the work of the following organizations: The Dui Hua foundation, a nonprofit organization that brings clemency and better treatment to at-risk detainees through dialogue; Patricia Lee, the managing attorney for the Juvenile Division of the San Francisco public defender's office; Penal Reform International, PRI, a non-governmental organization working globally to promote criminal justice systems that uphold human rights for all and do no harm; the Centre for Criminology and the Centre of Comparative and Public Law of the University of Hong Kong. The Symposium would not be possible without the dedicated support of the following organizations: The Canada Fund for Local Initiatives, the Ministry of Foreign Affairs of the Kingdom of the Netherlands, two private funds, the Alice Lam Memorial Fund, and Mark Headley & Christina Pehl. In addition, this Symposium has been aided by funding that supports Dui Hua's core work from Dui Hua Special Program Development Fund, Denmark's Ministry of Foreign Affairs, SIDA--the Swedish International Development Cooperation Agency, and the Norwegian Ministry of Foreign Affairs.

Before I introduce our panelists, I want to give you the details of our next webinar on February 23, from 5:00 to 6:00 PM Pacific Standard Time on the issue of sex trafficking with the founder of the first girls court of San Francisco, Judge Susan Breall, Pulitzer Prize-winning journalist and

political commentator, Nicholas Kristoff, and coordinator at the San Francisco Collaborative Against Human Trafficking, Antonia Lavine. Now, it is my honor to introduce our panelists today, Christa Big Canoe. Christa is an Anishinaabe woman, mother, and lawyer. She is from Georgina Island First Nation. She has been the legal director of Aboriginal Legal Services since 2011. She took a two-and-a-half year leave of absence to be senior and then lead Commissioned Council to the National Inquiry into Missing and Murdered Indigenous Women and Girls. In 2017, she was named as one of the top 25 most influential lawyers by *Canadian Lawyer* and was dubbed “a legal warrior” by the Canadian Broadcast Corporation. Christa has been before all levels of court, including the Supreme Court of Canada. She represents families at inquests and has been before various tribunals, providing Indigenous perspectives and representation. Christa passionately advocates for Indigenous women and children in multiple forums and legal processes and we are thrilled to have her here with us today.

Now, Christa, I'll hand it over to you.

**Christa Big Canoe:**

Miigwech Rebecca, [Greeting in Anishinaabemowin]. So first of all, I said good morning and we always acknowledge the first teacher. It's a good day. Any day that we get to get up and see the sun is called a good day. Within Indigenous cultures and specifically Anishinaabe culture, when we speak sort of about our people and our lands, we start with an acknowledgement in our mother language. So I just took the time to explain to you that I'm also from the Otter Clan and that I am the - there's no translation for legal directors so I explained too that within Anishinaabe law, we had people pre-contact that were called [Anishinaabemowin term] and that would be people who advocated for others and we'd work with community members to advocate their positions amongst family, council, and so I explained that I am the small chief of those who advocate for Aboriginal legal services, and our Anishinaabe name is those who seek the truth. So pretty much since I've been with Aboriginal Legal in 2011, I have tried to live that mandate in every Canadian legal process I've been a part of. I did take the two-year leave of absence to

actually be the senior and then lead council on the National Inquiry into Missing and Murdered Indigenous Women and Girls, and I provided the materials and provided a resource document that will link you to all of the material online. I'm still old school. I literally still crack open the old book. It's two volumes, it's quite large.

The national inquiry in Canada was called in 2016 and it was called because it was known that there were at least 1,200 missing and murdered Indigenous women and girls in Canada. It was a process like 40 years in the making. So the grassroots people and a lot of Indigenous and civil society organizations had lobbied the government for a long time to recognize the issue of missing and murdered Indigenous women, girls, two-spirited, transgendered, and gender-diverse people, and we had a government for a long time that just wasn't willing to acknowledge. In fact, the prime minister of the day in 2015 had been quoted as saying that Indigenous women and girls weren't high on his radar. So when a new government came in and they called the national inquiry, the national inquiry was the first in Canada. So in Canada we have inquiries; they're public in nature and sometimes they happen in provinces. So we have provinces and territories in Canada and so sometimes we have federal inquiries too, and even from time to time, you'll have what's called the joint inquiry.

The joint inter inquiry is something that takes place between some provinces and the federal government, but for Canada, the missing and murdered Indigenous women and girls was the first national. What that meant was there were 14 jurisdictions, so every province, every territory and the federal government, and the national inquiry went across the country, literally, and held over 26 hearings and we heard from a number of people. The reason I'm explaining the national inquiry first before launching into what Indigenous girls experience in this country at the hands of the criminal justice system or the child apprehension system is because we can look to the national inquiry that makes a number of findings and it's a really good resource. In the time I have with you today, I don't have the opportunity to walk through every single thing, but I do encourage you to look at my resource list. I do encourage you to listen to the podcast, to go visit the website and to read at least the executive summary of the national inquiries report.

The national inquiry heard a testimony in three parts. The first part which was really important and substantial was hearing from families and survivors of violence and harm. The reason that the story from the people had to be told first was because that had to situate all of the other issues we looked at. It's very comprehensive, the National Inquiry into Missing and Murdered Indigenous Women and Girls, but it's also relied on preexisting reports and good work already done in Canada and internationally to understand and characterize, to sort of cast light to the issues that Indigenous women as victims of crime are a part of, but if we don't look sort of more at the broader issue, and that is the colonial legacy that is Canada - so before we had Canada, we had Indigenous people living across North America and what's now called Canada. We have over 615 first nations. We have five distinct and large geographic Inuit regions, and we also have Metis people.

So the three groups formed the Indigenous people of Canada and they pre-existed in what's now Canada with their own laws, their own politics, their own policies. Even in Ontario where I'm from, there're 13 recognized distinct Indigenous languages. There are 133 first nations. There are countless Metis homeland, and although we don't have any Inuit communities or settlements, particularly in our area, a lot of people from the north that come south will go to Ottawa or Toronto. So just to give a concept, Canada from coast to coast to coast has a large number of Indigenous people, but they seemingly feel like a small number of the population and that's due to colonization. That's due to the colonial legacy where laws were enacted and forced people into place. So when we talk about the treatment of Indigenous girls within Canadian justice systems or other institutions, we have to recognize that always sits on a foundation of colonialism. People will say we're in a post-colonial era and I'll respectfully disagree with that. We still in Canada have something called the Indian Act. So we're the only free and democratic country in the entire world that actually has a race-based act that legislates different laws and rules for first nation or "status Indians" in the country.

So in 2021, it's still very sexually discriminatory. It's very gendered in its perspective because historically, it only recognized Indians based on male lineage. So over the course of a number of years, we have made strides in law and won a number of cases and we're starting to see broader definitions and community definitions of who qualifies or should be a registered Indian, but with that legacy of law and history, we still see a large amount of discrimination against women and girls who were disenfranchised or taken away from their communities because they didn't meet status criteria. So everything we look at when we look at Canada and the treatment of Indigenous girls in particular, we have to put on that lens that demonstrates the history of this country and what it's meant for Indigenous girls and families, particularly, in terms of the discrimination and violence they faced. So in the course of my work at Aboriginal Legal Services, before going to the national inquiry, I would often work, in fields that would assist survivors or victims. We did a lot of inquest work.

When there's a death in custody in Canada, and particularly in Ontario, there's something called a mandatory inquest. So if a young person or an adult dies in custody, then automatically, an inquest occurs. So there's this acute overrepresentation of Indigenous people totally within the criminal justice system, and essentially, what happens is if someone dies in custody and there is a mandatory inquest, then Aboriginal Legal Services would assist the family or represent them, and because there's an over-representation in custody of Indigenous people, there's also an overrepresentation in the death in custody. So unfortunately, had someone told me when I was going to Aboriginal Legal Services that I would become someone who would be known as a subject matter expert in death or Indigenous death in custody, I would have probably said, "No, thank you." However, representing families and individuals and going through the national inquiry process and working with over 150 families to share their stories, to hear that narrative has taught me a lot. Not only does it make me grateful for everything I have and the family I have, it demonstrates the beauty of culture and the resilience that people have despite all of the obstacles, despite all of the walls that are put in their place for them to achieve.

So I'm just going to focus a few minutes on some statistics and the reason I want to do that is because I want you to understand the gravity of the situation for Indigenous girls in Canada. So in the material, I also provided you some links to statistics and information, but the most recent statistics that come out of Canada are from 2017 and 2018 and I'm going to focus on some of the youth numbers, but I'm also going to talk about the overincarceration of Indigenous women because that trajectory of criminal activity or harm that occurs when we institutionalize girls continues throughout their life and it puts them at a higher risk. They're not vulnerable; it's the circumstance that makes them vulnerable: increased trafficking, increased violence, increased harm. So in 2017, in 2018, the statistics in Canada demonstrate that Indigenous youth aged 12 to 17 made up 43% of admissions to correctional services. There were nine reporting jurisdictions, and to keep in mind at the time, Canadian youth population was only about 8% of the entire population, but they make up 43% of the admissions to correctional services.

The bigger issue is that the numbers are even higher for girls. Over the last decade, a lot of incarceration rates have actually been decreasing for the rest of the population, but not for Indigenous. So correctional admissions consistently are reporting lower admissions, but the proportion of Indigenous youth admissions to correctional services increased from 26% in 2007 to 43% in 2017. So it's not getting better, it's getting worse. Indigenous youth are not only overrepresented in custody, so when they commit a crime they're convicted and put into the correctional system, but also community supervision. Community supervision includes things like probation or programs that are outside of a correctional facility, but obviously, put conditions onto a youth person, expose them to more interactions with police, expose them to more interactions sort of with the whole criminal justice system. Not only are they overrepresented in custody, but [also in] the community supervision.

The number of Indigenous people – and particularly youth - that make up the community admissions - I call them community admissions - is 39%. Remember, 8% of the population, 39% of community admissions. If you look at the whole circumstance, Indigenous people in general are overrepresented. Indigenous men account for 28% of all men admitted to custody in the

provinces and territories of Canada, but Indigenous women make up a greater proportion of custody emissions than male counterparts. In fact, 42% of women admitted to custody in Canada are Indigenous, so that's also an increase in the last decade. Back in 2007, the number of admissions for men have increased 28% and admissions for Indigenous women have increased 66% in the provinces and territories. We are incarcerating Indigenous women and girls at the highest rate we ever have in this country, and that says a lot because like in the United States, Canada had a residential school system. So pretty much for the last 150 years, we have either been taking children away and putting them into Indian residential school, we've been scooping them and putting them into child services, or we've been incarcerating them. In fact, in Canada, a lot of people refer to the criminal justice system as the new residential school.

The numbers in the United States are high too though. I know Meda we'll be talking more specifically about this in her commentary, but I did provide you a couple of resources because I want you to see some of the statistics in the United States. The Native American youth are 30% more likely than white youth to be referred to juvenile court than to have charges dropped. So it's not even a phenomenon. It's a trend that has began to occur in North America. I will speak mostly to the Canadian experience, but one of these trends that we see is not only are youth over-incarcerated, when you actually look at the charges that youth receive, first of all, Indigenous, black and people of color always having more interactions with policing services than non-Indigenous, and when youth are picked up for similar charges - so if you take a Caucasian youth who's from a middle-class or affluent family and you take an Indigenous child and they commit the same offense and they both go through the criminal justice system, you can almost always demonstrate that the Indigenous youth will get more serious punishment than the non-Indigenous youth.

This is true across the board and it's not like something we haven't known for a long time. In fact, in Canada, way back in the '90s, we had something called the Royal Commission on Aboriginal People and it was very clear that there was a crisis in terms of how we incarcerate Indigenous people and how the child welfare system treats Indigenous people and apprehends

youth. It's only gotten worse, it's not gotten better. So I've talked mostly about criminal, but I do want to touch on child welfare systems in Canada. So as the residential school system was falling apart and it was literally dilapidating and running out of funding more than the government coming along and saying, "Oh, this is wrong, let's change it." So back in the 1950s, legislation changed so that the federal government gave the provinces some jurisdiction over the Indians and Indian children specifically as it relates to child welfare. So as the residential school was slowly falling apart - the last one didn't close in Canada until 199 - but in those decades it was falling apart, we had something that's referred to as the '60s scoop. The '60s scoop got that name literally because kids were scooped out of their communities.

So a lot of value was placed on how Indigenous children might be being raised and so very often in Canada, it's not just based on abuse, it's actually based on neglect, and if you grow up and live in poverty or put into the circumstances where you don't have the same opportunity, so the actual act of colonization, putting in place things like legislation like the Indian Act and keeping people in remote and small communities means that they have less economic opportunity and help. So in Canada, there's been a lot of literature done on the fact that Indigenous youth have sort of been disenfranchised even beyond the physical means not just by geography, but also by the entire society in some ways. What happens though is we look and we take the balance and so often in almost all areas of child welfare that you see, one of the things is children are removed when they're abused or neglected. Indigenous children are more often removed from home when they fall into the neglect category and it's not like that they're being left or abandoned, it's that they don't have enough food or they're not meeting the levels.

So during the national inquiry, we heard this time and time again from families that had experienced loss or where someone had disappeared or had been murdered, how that person grew up and the family had zero support, and we heard time and time again that children would be given to non-Indigenous families and they'd be given \$2,000.00 a month to raise these kids, but Indigenous people accessing any type of welfare services were only getting \$1,200.00 for their whole family. So one of the recommendations and suggestions right within the national



inquiry or a finding was we need to adequately fund parents to be able to keep their children at home so that there's less of a gap of poverty and programming is faced that way, because unfortunately in most of Canada, the apprehension of Indigenous children meant money for the child welfare services. So higher apprehension rates meant more money and more staffing for the actual institutions.

So one of the really important things to keep in mind when we're again talking about Indigenous youth and particularly girls is their interactions with the criminal justice system often coincide with interactions with child welfare services. So when children are removed from their homes, their community, when they lose their language, when they lose their culture, they have an increased chance of experiencing interactions with the criminal justice system, and we see that then also in terms of the violence or the vulnerable circumstances that are now posed to these young Indigenous women with the lack of opportunity, being put into systems, and then they're at a higher risk for violence, and it's not that they're vulnerable, it's that they're perpetrated violence against them. So I'm being very cognizant of the time I have, I know this is very high-level and I apologize if I'm speaking very fast. Really today, what I'm trying to do is to engage you with the concept that Indigenous girls in particular are a group of individuals that if we invested time, money, care, love, we would actually have really good outcomes, and I know that because of the resilience of Indigenous people is largely due to women within the communities, as the caregivers, as the life providers, as the people that hold solutions to a number of these issues.

Women, when empowered, actually provide - they don't just take the opportunity, they create more opportunity. So if I can compel even any one of today's participants to look at the resources, to look at the report and to take on some of the calls to justice, to want to learn more and to even have conversations with colleagues, friends, then it will increase the knowledge base, and really, knowledge is power, right? We have the report and I was telling you, it's a large volume, it's very thick. I'm not asking you to read the whole thing, I'm asking you just to educate yourself more about the circumstances of Indigenous women and girls and to use resources, and it's not just the report. The national inquiry spent two and a half years, we had all of those

hearings. You can literally find the testimony of families; they're in transcript format, they're in video format. It's a warehouse of information. We had over 86 expert witnesses talk about a whole array, everything from policing, overincarceration, social services, human rights. On the webpage, you can actually find transcripts and evidence of a number of knowledge-keepers, experts, and individuals that speak exactly to sort of ways we can make solutions.

One of the other things I wanted to share with you that I didn't put on the list - in hindsight I wish I had put on the list - is Tanya Talaga. Tanya Talaga is actually an Indigenous journalist in Canada and she first got known very well for *Seven Fallen Feathers*. The Seven Fallen Feathers were youth that died in Thunder Bay, Ontario. I happened to be one of the lawyers for six of the families so the story is particularly important and poignant to me, but the book that Tanya writes, it sets up and situates the circumstances these youth faced throughout their life to their deaths and then what the processes have done about Indigenous youth after. In *All Our Relations*, which is the first book I held up, Tanya was CBC's Massey lecturer and so she had to go around the country and do lectures, but she wrote this book and this book is essentially about the suicide of young girls in Canada, young Indigenous girls, and what they face daily and what happens within their communities in their lives. So if you sort of want to put your pulse on the finger of some of the Indigenous issues and concerns, I would recommend either one of those two good books. I'm not going to lie they're both tough reads. They're both really human because they're about real people, so it's not fiction. It is the lived realities of Indigenous people. Tanya also regularly reports. If you Google her name, you're going to find a number of great news pieces where she talks about the situations of Indigenous people in Canada.

Keeping in mind I probably only have a few minutes left, I just want to sort of circle back and I want to talk to you briefly about some of the things we know. So the national inquiry actually made a finding of genocide and it was very controversial in 2019 that four commissioners said that genocide still existed in Canada. Of course, that caught a lot of the news or the eye internationally. Interestingly, it had only been a few years prior - less than five - when The Truth and Reconciliation Commission of Canada came out and said the same thing. During the

testimony we heard in the national inquiry, one of the things that was still happening in Canada, and particularly in one province, Saskatchewan, was the sterilization of Indigenous woman. So basically, at hospital services, we're removing Indigenous women's uteruses after they gave birth, and this was all done through mechanisms of child welfare. "We won't give you your child unless you agree to do this." It blows your mind that something like this can still be happening up until recent years, but it is something that historically happened.

It leads me back to this concept and I want to kind of leave you with this thought. The Indian Act of Canada, as I said earlier, is a piece of legislation that applies only to registered or status Indians in Canada. In the Act, there still is a provision called "mentally incompetent Indians." In Canada, we have tried to erase that language from almost all of our legislation or law. We've taken the time to remove the concept of "mentally incompetent" from almost all provincial or medical legislation, yet it remains in the Indian Act. The Indian Act is 145 years old. This is one of the mechanisms that has been used through residential schools for justifying taking kids away from families. For kids that resisted any of that oppression or spoke out, they were often then deemed a mentally incompetent Indian, and then they were put away and sometimes they were put into - we had traditionally tuberculosis hospitals or mental wellness hospitals or what was called back then sanitariums, and they would put what were now declared mentally incompetent Indians there, and essentially, anything would happen to them.

So we have a long history in Canada of sterilizing women, of removing their ability to give life. We're now in 2021 and you're right, it probably isn't happening at the same rate, and maybe that act, that portion of that act is no longer enforced, but the fact that we live in a country that won't even remove either A, the act, or B, that really horrendous provision of the act speaks to how Indigenous girls and women continue to feel in this country. We continue to feel like objects that are lesser than, and we see that both in the criminal justice system and child welfare systems, and we certainly see it with the overincarceration of Indigenous girls. When they leave, they do not have the same support. So when they finally make their way outside of institutions, they do not have the same supports. We don't even have the same law that applies if you're a status

Indian in this country. The call out for increased knowledge and particularly domestically is often to challenge Canadians to think about how we can rectify and get rid of this horrendous antiquated law. When we hear from the victims and survivors of missing and murdered women or disappeared women or those who experienced the harm, empowering them to share their narrative is important because the story comes from their perspective, but if we refuse to listen, if we refuse to hear what also they recommend are some of the solutions and to put those solutions into place, then we're not moving the needle, we're just listening to stories. It's important to listen to stories, but we have to be able to actually create the change.

So one of the things the federal government promised they would do one year after the release of the national inquiry was to have a national action plan. It has now been more than a year, and yes, we've had COVID which has created unusual times, but it's now a year and a half and the federal government in Canada has not actually released a national action plan. So getting people onboard to hear and understand not just the narratives, but what possible solutions are and to take that knowledge is power and use it to create that conversation increases public will. So if all I've done in my half hour with you today is piqued your interest to learn more about these issues, to hear these stories, to hear these narratives and to be part of that change, then I've done exactly what I set out to do starting this, and I would strongly encourage anyone to take the time to hear the narratives. The very final thought I have on this though is if you're going to listen to the stories, if you're going to take the time to watch a video from the national inquiry, if you're going to listen or read Tanya's *All of Our Relations*, then protect your spirit, and when I say protect your spirit, I mean you have to take the time to acknowledge that what you're about to hear, listen or participate in is a true story about a real human being who's had a horrific, horrific thing happened to them, whether they're the person that lost someone or they're someone who survived the violence, whether they're a child that was in the residential school and they're now sharing their tale and story of that.

These are real human beings, and so we do need to protect our spirits. We do need to bolster ourselves and we need to acknowledge that what we're listening to is something that happened

in our time, in our age, in our governments, in our countries, and we want to be prepared in case we hear something that shocks us. So anytime you're watching a narrative from the national inquiry or The Truth and Reconciliation Commission or hearing these stories, you also want to make sure you have opportunities for a bit of self-care or someone to talk to, because once it sinks in, once you actually receive the narrative or story as truth, there's an unshakable thing that will happen. You'll recognize that this is the world I live in, and the only way to do anything is to try to help them make it better, try and help and change. How can I help Indigenous women and girls raise their voices? And if you're not an Indigenous girl or woman, it's about how you're a good ally and how you support.

So in addition to the material I sent, there's also a PDF that's for all Canadians, and it comes from the calls to justice for the national inquiry. It's a call to all Canadians, but it could be a call to anyone internationally, and it's a call to understand, and there're links and resources on how to be allies. You need to help amplify the voices of Indigenous women and girls working in these areas to raise the issue, to challenge the lawmakers, to fight in criminal courts, to fight against child apprehension services, and it takes entire communities and professionals of multidisciplinary backgrounds to understand the issue, share the knowledge and make the change. [Anishinaabemowin], that is my presentation for today.

**Rebekah Enoch:**

Wow. Thank you so much, Christa, for your presentation. Really, I heard echoes of what I learned when I was living for seven years in Australia about the trauma and the injustice and the Aboriginal community there, and it's always so confronting and painful to learn that that narrative and those themes carry over into multiple countries through multiple narratives in Indigenous populations, but really important and impactful to hear. Thank you so much for that. Now, I would like to introduce our commentator and a previous panelist from the webinar International Perspectives on Girls in Conflict with the Law, Meda Chesney-Lind. Meda is the chair of the Department of Women's Studies at the University of Hawaii at Manoa and the Past-

President of the American Society of Criminology. Nationally recognized for her work on women and crime, her testimony before the US Congress resulted in national support of gender-responsive programming for girls in the juvenile justice system. In 2013, the Western Society of Criminology named an award after her, honoring significant contributions to the fields of gender crime and justice and made her the inaugural recipient. In 2017, she was elected president of the American Society of Criminology and is currently serving as past-president of the society. Now, I hand it over to Meda for her 15-minute commentary.

**Meda Chesney-Lind:**

Aloha. Thank you, Christa, for a wonderful presentation. We're getting some slides coming up here. Thank you so much. A lot of what you're going to hear in my presentation was basically trying to track the same trends and situations in another society very much affected by the colonial heritage of Hawaii, like the colonial heritage in Canada meant that native people were criminalized, and that included even the Queen of Hawaii, Liliuokalani, who was incarcerated and initially was, after the overthrow, threatened with death, but after her abdication from the throne, she was sentenced to five years of hard labor. She commented while she was incarcerated - and she was incarcerated in Iolani Palace. She talked about the conditions of her confinement, and remember that Liliuokalani was a Victorian woman, so this was a particularly shocking idea of the fact that she was searched, that everything that was given to her was searched. She was not given initially anything in her room whatsoever and so she knew nothing about what was happening and she lived in that situation. Her people though resisted and brought her flowers wrapped in newspaper, and so she was able, through that mechanism, to stay up-to-date on what was happening.

But moving to the present, the overrepresentation of Native Hawaiians continues in our criminal justice system, and I'm trying here to be a good ally as you talk about this, Christa. I'm going to quote one native Hawaiian scholar who said, "I listened to a native Hawaiian graduate student tell a story of five years' incarceration. He shared that every night during headcount, it would

take the guards over 15 minutes to call the Hawaiian last names beginning with the letter K,” and I would add to that story, when I was teaching in prison, Hawaiian language was ubiquitous and the words for guard, [kia’i], and inmate, [pa’ahao], were all Hawaiian words, so if anything, the prison system was a place of Hawaiian suffering and pain. Moving to the juvenile justice system, we did look at the conditions of youth in the juvenile justice system in Hawaii. There were two theoretical traditions that informed us. The first was Foucault and Erving Goffman, and the notion here was of total institutions and the stigma that is associated with surviving in a total institution.

That's one backdrop. The second backdrop is the Juvenile Justice and Delinquency Prevention Act of 1974 which was supposed to encourage jurisdictions to notably deinstitutionalize or get runaway and truant youth out of their systems, to separate juvenile and adult offenders, to remove juveniles from adult jails and to reduce minority contact, which everybody recognized was disproportionate in the United States. So they were specifically also looking at the girls who were in the juvenile justice system. The status offense again, as everybody knows, is an offense for which only a juvenile is taken into custody, and girls were massively overrepresented among those youth. One other context in Hawaii and elsewhere, we've had repeated - and you heard this in the previous presentation - numbers of inquiries and basically, reports looking at the condition of our juvenile justice system, and again, and again, seeing abusive conditions and a lack of appropriate programming and an ineffective grievance system.

This, the data that I'm reporting on today, came out of yet another investigation that was the Juvenile Detention Assessment Initiative, and here we are again in yet another decade looking at trying to get kids out of secure confinement, reducing racial disparities, and saving taxpayer dollars because, of course, this kind of incarceration does not come cheap. Our team in the particular group that I worked with looked at those particular issues, and I was especially focused on looking at the use of restraints, isolation and due process issues as well as issues of safety, and notice that we worked with the ACLU of Hawaii and also with the Office of Youth Services at that time. Now, we look at the patterns that we found in our research. First, you noticed, if you

look at the top slide, that native Hawaiian youth comprise about 30%, so unlike the situation in Canada, native Hawaiians are actually a fairly big chunk of Hawaii's population. That's not necessarily good news for them though because they end up in situations that I'm going to describe in just a few minutes.

So we look at arrests and you notice that juvenile arrests are about in line with the proportion of the native Hawaiian population, but then you go down to the ethnicity of the youth detained at our youth facility and you notice that suddenly, there are 46% of the detained youth. We see a pattern also that as in Christa's data, native Hawaiian girls are even more overrepresented than their male counterparts. Part of the story here in Hawaii is that we continue - despite decades of efforts to deinstitutionalize status offenders, here we are with juvenile runaway arrests at 35% of the Hawaii population. At the same time, as you see, it's only about a sliver of the national arrest population. I think it's something on the order of 8%, so it's crazy that we've continued to arrest or did, in those years, arrest so many youth for these kinds of offenses. If you then look at runaway admissions in Hawaii, you see that it's a third of all admissions at our detention facility and it's a sliver again nationally at 6%. Then you look at girls and again, you see a huge factor in girls' detentions was their offense again of running away from home which I've written about in other work that I've done. We talk about this as criminalizing girls' survival strategies because of course, as we've heard in this series, so many of their families are incredibly abusive.

Now we're going to look very quickly at some of the incidents that I did research on. Notice that these were the incidents that resulted in kids having to spend time in isolation. Look at the kinds of behaviors that we're talking about here. First, you notice that girls are overrepresented among those involved in these incidents and the first thing that we're seeing is a huge percentage of girls involved in suicidal self-mutilation, arguing with staff. That's because there was nothing - during the time that we were there, looking at the detention facility, girls were spending inordinate amounts of time just sitting on the ground doing nothing. Then when they did get to do something, it was often to prepare meals for the boys and for the staff, so there were all kinds of issues. Boys are much more likely to get involved in fighting and assaultive types of offenses and



horseplay. Then we look at what happens to the kids and they had two kinds of punishments that they typically use. One was eight hours of isolation, the other was eight hours of what they called work detail. Now, Christa talked about dilapidated facilities. This was in a dilapidated facility, but they would make the kids go around and constantly engage in cleaning behaviors and they had to do this for eight hours at a stretch. So it's kind of forced labor and then isolation. This is the kind of room kids would have to spend eight hours in and they could not look out the windows - if they looked out the windows, they would be sent to yet another period of isolation.

We have semi-good news. The dilapidated facility that I studied was replaced by this new facility that was built. However, it's still extremely austere and very security-oriented, so it's a kind of mini-Pelican Bay. We've had some developments since that are very good. We've had a new family court judge who came in and really has made a determined effort to remove status offenders from the detention facilities or move kids, period, from detention and long-term residential care, and that has had a relatively good effect. Schooling has been increased; our committee dinged the Department of Education for failing these youth. They eliminated the use of isolation that was brought to their attention, but challenges remain. We still have kids in custody that shouldn't be there, and the other thing that we're doing that I'm very troubled by is there were girls that they said needed mental health work and help, and that involved sending them to mainland facilities.

Now, these are native Hawaiian youth, very much tied to the land and their culture and they're being sent to places like Utah. But to end on a happy note, Brian Bilsky, who worked with me on this, then started volunteering at the detention home and getting the youth involved in writing poetry and expressing themselves and talking about their histories and their stories. So [mo'olelo] means story and that effort continues to this day with student volunteers. Then last slide, uh, I just want to leave with another Hawaiian notion. The Hawaiian culture was very much built around forgiveness, and [pu'uhonua] is basically a place of refuge no matter what your offense. I wanted to leave you with a little bit of Hawaiian culture, but also with the notion of a vision of justice that is forgiving and gives people refuge and forgiveness. With that, I'll end my

presentation and maybe we'll have some time for questions from the audience. Thank you very much.

**Rebekah Enoch:**

Thank you so much, Meda, we really appreciate that. Now, we want to open it up to questions for our two panelists. I've got one question from the audience for Christa Big Canoe. Are there any programs to support families torn apart in the '60s scoop? It seems like the legacy of this is deep-seated and still very real for those effected. I was moved by a CBC podcast called *Finding Cleo* about an Indigenous family that was torn apart during the scoop.

**Christa Big Canoe:**

Yes, thank you for the question, and the answer in a nutshell is not comprehensively, but yes, there are programs. So in Canada, in Ontario in particular, there was a class action in relation to the '60s scoop. So a number of individuals are now receiving compensation, but the process in of itself is very legalistic. It requires a survivor of the '60s scoop to fill out an application. It requires that then all goes to this large sort of data collection institution called Collectiva, and then it is determined whether you've met enough of the markers to receive compensation and at what level. So we also had the Indian Residential School Settlement Agreement in Canada and it was very much the same. The problem is it's based on tort law. So it's based on law in terms of how we compensate people, and it doesn't actually take into account a good way to understand that maybe monetary compensation isn't the best process. So lessons taken from the Indian Residential School Settlement Agreement though for things like the '60s scoop and now we have a day class action which was similar to residential schools, but schools in which children attended in the day and then went home and in some cases didn't go home, but wasn't called a residential school.

So it's sort of like we've learned from some of the legal processes. One of the good things that came out of TRC was something called The Healing and Wellness Foundation and it existed for a number of years. The national inquiry called for it to be reinstated because of the work that was being done. So not only was it like an academic warehouse of ways and mechanisms and solutions, it also had and provided programs for people to access like healing programs. The best solutions though are those that are Indigenous-driven, and so for example, even where I work now, Aboriginal Legal Services, we have a couple of programs that deliver to families. So we have something called Giiwedin Anang which means north star in Anishinaabe, and it's about keeping families together because we are still feeling the intergenerational impacts of things like residential school and the '60s scoop. This is not something that's going to alleviate or fix itself regardless of compensation or programs. It's going to be not just one lifetime; it's going to be generations of lifetime to heal.

So for example, I'm a second generation residential school survivor. What that means is I never attended myself - my father did, and he was actually only there for a short duration and ran away. He was one of the lucky kids that ran away, but the impact it has had on his life - and that trickled down even into our lives - have an intergenerational impact. So someone who sits in a place of privilege like I do, who is educated, who has a good job, who lives in a good house, I still feel the impacts. So the point is that programming is important. When we see things like compensation is important - I'm not saying it's not important, but really what has to happen is Indigenous-driven processes that look to the culture and the family to rehabilitate, to rejuvenate, to reground, and that's where we actually see success. That's where we see a lowering of recidivism and crime. That's where we see a coming together of communities. That's where we actually see the big healing work done, is when it's Indigenous-driven on the terms of the Indigenous people it impacts and with a cultural purpose.

Even for those that don't want to engage in the spiritual components, it's still important to reintegrate those cultural components, and even better than reintegration is to revitalize it with the Indigenous groups. So there are programs, but there is no comprehensive set, and yes,

*Finding Chloe* is amazing. The same journalists also did *What Happened to Alberta* and it's a podcast about a family that's another MMIW. So the more we tap into these things and learn about them, the more we can speak about them comprehensively as community, and again, it's about pushing with that public will our lawmakers and people to take up the cause and let Indigenous people create their own passive solution.

**Rebekah Enoch:**

Thanks for that, Christa. We probably only have time for one more or two more questions. I'm going to give you the question from Richard Ross, a former panelist, and he has extensive work documenting narratives in the juvenile justice system with his photography, interviewing children who are involved in that process and it's really trying to put a human face, as I know you described and did a great job in your presentation on the statistics. He's saying, "Great presentations. We all suffer from a lack of timely data. How do we get data that is more current than 2006, 2007? Is this a role for AECF, JDAI?" Maybe there're Canadian organizations, and also Meda, you might have information on that too. If you both are able to speak to it, that would be great. Maybe Meda can go first just because I only know the Canadian answers to that.

**Meda Chesney-Lind:**

[Laughter] Well, one is a joke; there're only two kinds of data – data and better data. We use the data we have. One of the things that's so frustrating in the United States is that they stopped counting runaway arrests a couple of years ago, so we simply don't know how many kids are running away, at least in terms of how many arrests there are, and that was a huge part of the story. As you could see in the older data, what percentage of juvenile arrests involve kids being busted for runaway, now they just disappear. So I think some of this has to do with politics and priorities. As you hear in the Canadian system, there's been a low priority on these kinds of statistics, and particularly during the Trump administration, there was an effort to even dismantle big chunks of the Bureau of Justice statistics.

So numbers are power and we always want to have better numbers. I also apologize just personally, the paper that I presented - we do have a little bit more current data in Hawaii, but it's always a struggle to get the data and our responsibility as academics is to be the keepers of this knowledge and then to speak truth to power whenever we could. When I had those data and presented them to the family court judge, he basically was embarrassed into changing some of the behavior, but we have to continue to be able to find fora, especially to talk to judges. I really commend Christa for her work in legal training because - I know Doug Campbell; our lives may overlap a little bit because I did some judicial training in Canada to alert people to these biases against native people and against girls in particular, and the same patterns are found here in the islands when you look at the numbers of Hawaiian youth.

One thing I also just add as a footnote, our adult prison system is now undercounting Hawaiians, and I think it's a deliberate effort because it got to be political, and so then since they controlled the data, they started jiggering their definitions of what many of our native Hawaiians are part-Hawaiian. So they started saying, "Oh, you have to be X percent Hawaiian to be counted as Hawaiian," and that's not a thing in Hawaiian culture. That's a thing in Western culture. I'll stop there.

**Christa Big Canoe:**

So I might just add, this whole concept of statistics is a funny thing because I can list a number of statistics. So the same prime minister that said Indigenous women and girls weren't high on the radar also eliminated part of our statistical tools and survey during his tenure, and it's only coming back in. The statistics I provided were mostly 2017, 2018, which is probably the most current, but yes, we need more statistics. In my material I also provided some information about the Lakota Peoples Law Project, and there's a lot of other - look at the footnotes. There's a lot of other good reports and a lot of those numbers come from 2015. One of the things that the national inquiry found, first of all, everyone wanted to know when the national inquiry came out

was how many actual missing and murdered Indigenous women are there, and the answer is we don't know. Our commissioners found likely over 4,000, but we don't know because the way we capture information is not consistent.

So one of the calls to justice and one of these key principles is the collection of disaggregated data based on the terms that an individual self-identifies, not based on blood quantum, right? So if an individual identifies as a particular Indigenous group, that's how we should characterize it, but we need to do the disaggregated data, and we're not. We need to have some shared definitions with the police statistics, like solve rates. The way they define who's missing, the way they define who's murdered, even if it was a homicide does not merit, and the other thing we could we could not get the needle to the canvas on was how many kids are apprehended in Canada, and in each jurisdiction it varied. So upwards of 27,000 in BC, upwards of 20,000 in Ontario, but no one's keeping those statistics. Why? That's the big question - why aren't they? So the point is we actually need to start demanding a better count, and counting does matter, not to know how many women have died or not to know, but a better counting needs to occur because we don't know how to address or fix situations if we don't actually accurately capture what the issue is.

One final thought to leave you on, during the testimony, a gentleman named Paul Tuccaro, who had lost his sister who's disappeared in Alberta, there was this big focus on the national inquiry, how many women, how many women, how many women, and he said, "I'm sick of people wanting to know how many women." He said, "The number that matters to me is how many tears did those women cry before they were killed?" So we have to stop looking at numbers as the solution, but we do have to start capturing accurately the truth, and sometimes that does mean statistics. Thank you.

**Rebekah Enoch:**

Thank you. I'm going to go with one last question that seems to apply to some of the things you were just touching on. Candace Shaw says, "Thank you for the presentations. Christa Big Canoe, what do you advise as being key, crucial, critical components to the forthcoming MMIWG national action plan? Do you see any particular areas, items, calls to justice that could be immediately actionable until such time that the national action plan has released?"

**Christa Big Canoe:**

That's a great question, and the answer is any single one of them, and it doesn't actually require the national action plan to put into place. So across Canada, we are starting to see police services and other agencies and institutions picking up parts of the calls and implementing them, and there's a number of grassroots organizations that are doing the same. The answer isn't perfect, I'm sure, but the reality is any single one of these calls to justices that go to governments - not just the Canadian government, but any of the jurisdictions like provinces or territories - are implementable and actionable with their authority. So this concept that they have to wait for the feds to catch up is ridiculous. There's a number, any number of them, and some places are already doing it. Universities are already picking it up. Some media outlets are already taking in the recommendation, so any single one of the calls to justice. The things about the calls to justice is they're all based on a human rights framework and people as rights holder. So all we're asking everyone to do is uphold the rights of Indigenous women, girls, two-spirited, transgendered and gender-diverse people, and that's what they should be doing in law anyways.

**Rebekah Enoch:**

Well, thank you both so much for those very painful to hear, but insightful presentations, and really impactful to just get a small taste of what you guys have covered and studied for the breadth of your career. Appreciate you trying to give us a bite-sized taste of that today. I just want to remind everyone about the ninth of 12 webinars. This is the ninth of 12 webinars, and that we will be sending everyone who attended today a follow-up email with a link to register for

the next webinar on February 23rd from 5:00 to 6:00 Pacific Standard again on the issue of sex trafficking with the founder of the first girls court of San Francisco, Judge Susan Breall, Pulitzer Prize-winning journalist and political commentator Nicholas Kristoff, and coordinator at the San Francisco Collaborative Against Human Trafficking, Antonio Levine. We will also be sending out links and attachments for some of the materials that Christa Big Canoe was referencing, and if Meda has anything she wants us to send out.

So if you all want to dive deeper and explore some of the materials and ideas that were being shared and find out a little bit more of where they're coming from and what's so important about these issues, look for that in your inbox, and if you subscribe to Dui Hua Publications, we will be able to more easily invite you to other upcoming webinars. So please visit [DuiHua.org](http://DuiHua.org) to subscribe, learn more about our upcoming webinars and all the stuff that are happening, and I want to thank you so much for attending and we hope to host you again at our upcoming webinars in the future.

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