Native Women's Association of Canada

L'Association des femmes autochtones du Canada

Minimizing COVID-19-related Risk Among Incarcerated Indigenous Females Through Transparency and Accountability

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Abstract

Due to the increased risk of COVID-19 in places of detention such as prisons, greater transparency and independent external oversight is required. In Canada, Indigenous women represent over 41% of federally incarcerated women, despite just representing 4% of the total female population. Epidemiological data shows that Indigenous inmates and federally incarcerated women have been disproportionately impacted by the infection (OCI, 2020-c; Iftene, 2020). As a result, federally incarcerated Indigenous women are at an elevated risk based on their over-incarceration, gender and ethnicity. NWAC is calling for increased transparency and oversight of places of deprivation of liberty and swift, concrete and meaningful follow-up to Canada's different national inquiries in order to keep Indigenous women safe from harm.

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Introduction

If, as it is sometimes stated, that sunlight is indeed the best disinfectant, then transparency will go a long way to ensuring that COVID-19-related risks are minimized for incarcerated Indigenous women in Canadian prisons. In this context, transparency can be directly interpreted in terms of independent external oversight of places of penal detention in the country, a function that is imperfectly served currently by a patchwork of ombudsperson institutions and human rights commissions.

More broadly, however, the concept of transparency also demands openness on the part of the wider Canadian governing authorities, who should be held accountable for how Indigenous Peoples are currently treated. As it is well known, Indigenous women make up only 4% of the population, but comprise just under 42% of the federal prison population. This begs the question: Why do these women, whose socio-economic circumstances involve life-sapping poverty and neglect, enter prisons as victims of violence and abuse on a disproportionate scale?

In past decades, there has been a myriad of government-initiated national inquiries on the condition of Indigenous Peoples in Canada. Yet precious little ever seems to become of these multi-million-dollar initiatives. The failure of the Canadian government to implement a national action plan to address the 231 Calls for Justice contained in the 2019 Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) is the latest example of state neglect (for more information about other state inquiries, please see the section titled "Governmental Transparency: Canada's Unimpressive Track Record in Ensuring Follow-up to State-initiated National Inquiries" in the paper).

In light of Canada's highly unimpressive track record to act on past domestic inquiries, is it any wonder there is widespread skepticism that things will be any different or that meaningful and fundamental change will finally take place. The need for greater transparency and accountability at all levels—institutional and governmental—is even more compelling during the current COVID-19 pandemic in order to keep Indigenous women safe from harm, reduce their institutional and societal risk, and address entrenched discriminatory practices. This paper seeks to address all of these issues, beginning with a focus on the national travesty that has resulted from the 'Indigenization' of Canada's prison population.

It is not by chance that this paper is being launched to coincide with the International Day on the Elimination of Violence against Women as a timely reminder that Canada needs to do a great deal more to ensure that Indigenous women, incarcerated or not, can lead lives with the same safety and security expected by non-Indigenous women, along with full respect for their dignity and human rights.

Canada's National travesty: The Indigenization of Canada's Prison Population

In January 2020, before COVID-19 had evolved into a global crisis, Canada's federal prisons ombudsperson, the Correctional Investigator of Canada, issued a disturbing news release and supporting information on the historically high number of Indigenous persons serving federal sentences (2020-a). The Correctional Investigator stated that the situation was even more troubling for Indigenous women, who now account for 42% of incarcerated women in Canada, despite accounting for roughly 4% of the population (2020-a).

While the novel coronavirus poses a new and serious risk to the wellbeing of incarcerated individuals, Indigenous women who are criminalized and incarcerated at a much higher rate than their non-Indigenous counterparts are already embroiled in a crisis. The correctional system has failed and continues to fail to account for their unique needs and experiences. This failure permeates the entire criminal justice system, with Indigenous women being over-classified as high risk, which means they are less likely to be granted day or full parole, and are more likely to be released at the statutory release date (Wesley, 2012) compared to their non-Indigenous female counterparts. Thus, they are often unable to return to their communities until much later and to reintegrate into society due to the restrictions and barriers resulting from being over-classified as high risk.

As a significantly higher number of Indigenous women spend more time behind bars than their non-Indigenous counterparts, they are more likely to come into contact with COVID-19 while institutionalized. The coronavirus therefore poses an additional risk to an already high-risk population. The World Health Organization (2020) recognized very early on in the pandemic that COVID-19 contributes to the heightened vulnerability of prisoners.

The gross over-representation of Indigenous women in Canada's federal correctional system and their over-classification as medium- and high-risk offenders (Office of the Correctional Investigator (OCI), 2012; OCI, 2020) must be considered within the context of Canada's colonial history. Bourassa et al. (2004) explain that "racism, sexism and colonialism are dynamic processes rather than static, measurable determinants of health; they began historically and continue to cumulatively and negatively impact health status of Aboriginal women" (p. 24).

Canada's methods of addressing the over-representation of Indigenous women under federal sentence as well as responding to their unique physical, mental, and spiritual needs while in detention has been anything but dynamic. Indigenous women suffer when they are continuously forced to conform to the colonialist ideals of the Western correctional system, which repeatedly fails to consider the complex and traumatic history between Indigenous Peoples and the Canadian

state (Native Women's Association of Canada, 2017). Attempts at rehabilitation and integration will continue to fall short until this history is acknowledged and considered.

A connection to culture has long been identified as a strengths-based protective factor that promotes a healthy mind and spirit. It has been shown that culturally safe and trauma-informed supports are extremely beneficial to incarcerated Indigenous women and help in their healing journey and reintegration into the community. The benefits of integrating culture into rehabilitation are best exemplified in the creation of the healing lodges by Correctional Services Canada (CSC) to address the growing over-incarceration of Indigenous Peoples (OCI, 2012). These lodges aim to understand and address the factors that led to an individual's incarceration; they also offer culturally specific and trauma-informed programs that incorporate Indigenous traditions, worldviews, and values (OCI, 2012). The benefits are outlined in the Office of the Auditor General report *Preparing Indigenous Offenders for Release*, which found that individuals who participated in healing lodge programs had much lower rates of re-offending upon release (2017).

Unfortunately, access to culturally safe and trauma-informed supports are lacking and when available, many barriers relating to access persist. One of the most significant barriers is that the ability to take part in cultural programming (such as that offered through healing lodges) is contingent upon being classified as low-risk (OCI, 2012). Consequently, high-risk or maximum-security classified women—where Indigenous women are disproportionately represented, and are arguably most in need of specialized supports—are unable to access the very supports that are designed for them.

This reality exists in spite of healing lodges being identified as valuable to all Indigenous women prisoners regardless of their security classification (NWAC, 2019). While Indigenous women experienced a difficult time accessing culturally safe services before the pandemic, given that institutional programs and visits have been suspended for the foreseeable future (Sapers, 2020), there is no doubt that the risks to the health of incarcerated Indigenous women will be exacerbated, and their hopes of healing and a successful reintegration compromised.

For many Indigenous women, the circumstances that culminated in their involvement in the criminal justice system stems from complex collective and individual life experiences marked by violence and racism. These experiences can be traced to colonization, whose impacts continue to contribute to disproportionate amounts of poor health and social inequities. Such inequities can lead to higher rates of substance use, sex work, mental health, abuse, and violence (Marsh et al., 2015), all behaviors that can contribute to a greater risk of having a negative encounter with the law.

The failure of Canada's federal correctional system to respond meaningfully to the impacts that colonization has had on Indigenous women is a national travesty. This is echoed in the Correctional Investigator's recent annual report, which exposed the bleak reality of incarcerated Indigenous women as well as the related challenges found in CSC institutions. The report indicated that 92% of federally sentenced Indigenous women have moderate to high substance abuse needs, and 72% reported childhood abuse (OCI, 2020b). These statistics demonstrate the need for supports rather than punishment, but instead of receiving support, Indigenous women face further challenges and barriers to healing in federal correctional institutions.

CSC's ambivalence to the needs of federally incarcerated Indigenous women highlights a disturbing history of human rights violations perpetrated by the Canadian state against the health, autonomy, and self-determination of Indigenous Peoples. International human rights standards recognize that Indigenous women have distinctive needs. These standards include the Bangkok Rules (officially known as "The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders"), the United Nations Declaration on the Rights of Indigenous Peoples, and national efforts to address violence and inequities faced by Indigenous Peoples in Canada, such as the Truth and Reconciliation Commission (TRC) and the MMIWG National Inquiry. In the context of prison, Bangkok Rules #54 and #55 remain highly relevant, the former asserting that "prison authorities shall provide comprehensive programmes and services that address these needs, in consultation with women prisoners themselves and the relevant groups" (2010, p. 18).

It is highly regrettable that it has taken a pandemic to expose the inequalities and violence faced by Indigenous women who are experiencing criminalization or incarceration. It is time to acknowledge that CSC has long been an agent in the perpetration of colonial and genocidal violence experienced by Indigenous women in Canada. As we all bear witness to the impact COVID-19 is having on the world, and as the pandemic shines a light on the inequalities experienced by incarcerated persons and the most vulnerable members of society, we must admit to ourselves that there are many people in our communities who have long been dealing with a crisis.

The Impact of the First Wave of COVID-19 in Prisons and the Looming Second Wave

Decades of oppression, assimilation, and discrimination have led to socio-economic conditions that contribute to poorer health outcomes in Indigenous populations. Indigenous Peoples in Canada are three to five times more likely to develop type 2 diabetes (Crowshoe et al., 2018), 40 to 290 times to have tuberculosis (Patterson et al., 2018), and to develop chronic respiratory conditions (National Collaborating Centre for Aboriginal Health, 2013) and heart disease (Foulds et al., 2018) compared to their non-Indigenous counterparts. The increased predisposition to chronic and infectious diseases is more pronounced among Indigenous women compared to Indigenous men (Statistics Canada, n.d.; Bourassa et al., 2004; Canadian Women's Health Network, n.d.) (for more information on how sex and gender impact Indigenous Peoples' health, please see the latter reference).

This disproportionate burden of disease also increases Indigenous women's susceptibility to COVID-19 infection. Further compounding this increased vulnerability to COVID-19 is the increased lack of access to adequate housing and clean water, which possibly contribute to outbreaks in Indigenous communities (ISC, 2020)—a fact demonstrated in past pandemics. For example, during the H1N1 outbreak in 2009, despite representing just over 4% of the Canadian population, Indigenous Peoples accounted for 28% of hospital admissions and 18% of H1N1 deaths (National Collaborating Centre for Infectious Diseases, 2016).

It remains doubtful that we will witness a strong pivot from the institutional inaction demonstrated by officials tasked with overseeing the prison response to the pandemic before the looming second wave begins to make its impact on prisons, which already appears to be underway in many regions of Canada. Lawson (2020, p. 7) elucidates on this response, stating: "the crisis is being poorly managed, with inadequate protection for inmates, their family members, and staff at penitentiaries." Prisons are ideal breeding grounds for infection, partly due to their intrinsically closed nature, the proximity of prison cells, high turnover among both staff and inmates, overcrowding, and the communal dining, recreational, and bathing facilities, which make close contact inevitable and physical distancing near impossible.

Overcrowding (such as in the form of 'double-bunking') is common in federal prisons (CSC, 2018; Iftene, 2020). Decreased hygiene standards (Murphy & Sapers, 2020), poorer ventilation systems in older buildings (Besney et al., 2017), and a critical lack of adequate and accessible health care services within the prison setting (Miller, 2013) compound the risk. While this is alarming for inmates and employees alike, it is of particular concern for Indigenous women given their over-representation among federally incarcerated women and the increased prevalence of chronic diseases among Indigenous Peoples.

CSC has a duty to provide inmates with health services that are comparable to those available in the community. It has failed to do so throughout this pandemic (Iftene, 2020), underscored by the 360 confirmed cases of COVID-19 and two inmate deaths attributed to the disease within federal correctional facilities (OCI, 2020-c). As an example, 60% of the inmates residing in the Joliette Institution for Women in Quebec tested positive for COVID-19, and eight CSC staff and 54 offenders (40% of whom are Indigenous) at the Mission Institution in British Columbia tested positive (OCI, 2020-c). There were known COVID-19 cases in three other federal institutions in Canada. Thus far, the rate of COVID-19 infections within federal correctional facilities in Canada is 13 times that of the Canadian population (2.4% vs. 0.18%) (OCI, 2020-c). Further, Iftene (2020) found that "federally incarcerated women have been the most affected by the infection. The rate of infection in women's penitentiaries was 77 times higher than among women in the community" (p. 376). Additionally, a report from the OCI (2020) indicated that Inuit inmates are over-represented in COVID-19 diagnoses: Inuit represent less than 1% of the incarcerated population but 5% of the COVID-19 cases in federal correctional facilities (OCI, 2020-c). These findings demonstrate that, while incarcerated, individuals are at an elevated risk of COVID-19; yet if you are a woman and you are Indigenous the risk is even greater.

While CSC responded to COVID-19 by releasing small numbers of low-risk offenders, concern has been expressed about the slow response and the lack of transparency, availability of COVID-19 testing, protective equipment, and health care services. Furthermore, the release of low-risk offenders was of little consequence to Indigenous women prisoners, who are disproportionately classified as medium- and high-risk offenders and are therefore less likely to be eligible for release. In addition, physical distancing and safety measures were often not implemented in the facilities even after COVID-19 diagnoses, resulting in dangerous situations for both offenders and staff alike.

Conversely, some facilities implemented extremely repressive and restrictive measures: for example, extended lockdowns that confined some offenders to their cells for 23 hours and 40 minutes a day without any connection or access to family members, friends, cultural activities, harm-reduction supplies, phones, or hygiene necessities including laundry or showers. Such lockdown measures not only potentially violate section 7 of the Charter of Rights and Freedoms (Canadian Charter, 1982, s 6(2) (b)), but also international human rights standards, particularly Rules 44 and 45 of the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

These restrictive measures have serious, long-lasting, and damaging effects on inmates' mental health (PRI, 2020; Wesley, 2012) and compound both the mental health impacts of COVID-19 and those that are already prevalent within this population (CADTH, 2015; Larocque,

2017). Mental health services and supports within federal correctional facilities, which were already stretched thin before the pandemic (Wesley, 2012), have been reduced as a result of shifting priorities during the outbreak. This factor will likely exacerbate the inaccessibility of these services and ultimately lead to the deterioration of the mental health of incarcerated Indigenous women.

Although COVID-19 is indiscriminate, given the disproportionate number of Indigenous women in federal correctional facilities and their increased vulnerability to COVID-19, they stand to be once again disproportionately impacted by the pandemic. The current global health crisis has only highlighted the existing limitations of CSC institutions to safeguard prisoners and uphold the Canadian Charter and international human rights. The failure of CSC institutions to respond in accordance with good international practices which would facilitate a compassionate and adequate response to the pandemic underscores the need for further accountability measures, independent oversight, and community consultation.

Any response the government offers needs to address this crisis from all angles, including by addressing the fact that systemic racism continues to result in the criminalization of racialized women which, in turn, increases their presence in penitentiaries. Lawson (2020, p. 7-8) captures this key point when she writes, "Although a decarceration strategy is more crucial than ever, the need to invest in social support rather than prisons exists independent of the crisis. The ways in which racialized women have been criminalized for escaping abuse, poverty, and mental illness are a primary component of that need for better support." Given the state's responsibility to ensure the safety of, and to provide health services to incarcerated individuals, combined with its commitment to address the over-incarceration of Indigenous women, Canada's failure to do so in the wake of COVID-19 is a national disgrace.

Institutional Transparency: Canada's Patchwork of External Oversight of Prisons

If sunlight is indeed the best disinfectant, as argued in the introduction to this paper, it follows that places of deprivation of liberty in Canada are imperfectly served by independent oversight mechanisms, particularly those with a pre-emptive mandate to prevent abuses from taking place in the first instance. Currently, oversight of Canadian prisons consists of a patchwork of federal, provincial, and territorial complaints-handling bodies.

Leading Indigenous human rights academic and activist Pam Palmater recently pointed out the following incontrovertible reality in a Royal Society of Canada article, "Institutional settings in Canada have been the hardest hit by the covid-19 pandemic; from numerous deaths in long-term care homes, to the outbreaks in prisons, homeless centres and domestic abuse shelters" (2020, p. 1). Is it any coincidence that prisons and care homes are subjected to weak independent, preventive oversight? How will such fragmented oversight benefit such closed settings as COVID-19's second wave descends on Canadian society?

Moreover, despite Canada first declaring to the international community that it would ratify the Optional Protocol to the UN Convention against Torture (OPCAT) in 2006 as part of its election pledge to the UN Human Rights Council, the country seems no closer to ratifying this vitally important instrument aimed at preventing neglect and abuse from taking place in an array of detention settings. Since its adoption by the UN General Assembly in December 2002, the OPCAT has set the international standard as to how places of deprivation of liberty—for example, prisons, police stations, immigration detention centers, or care homes for the elderly—should be proactively monitored by independent expert bodies.

In past years, various international entities have either recommended that Canada should ratify or expedite the ratification of the OPCAT (UN Committee against Torture, 2018, §21d.). The UN Special Rapporteurs on violence against women (2019, §95a) and on the rights of persons with disabilities (2019, §92a) advanced the former recommendation following country visits to Canada in 2018 and 2019, respectively. Moreover, during its Universal Periodic Review in May 2018, some 27 UN Member States urged Canada to ratify or consider ratifying the OPCAT (The Canada OPCAT Project, 2018).

Regardless, in view of the federal government's deafening silence on the issue of ratification and the absence of any open, transparent, and inclusive national process of discussion on the issue, it can only be assumed that the ratification of the OPCAT remains a distant aspiration of the current administration, *if at all*. In May 2016, the then Minister of Foreign Affairs Stéphane Dion declared to much fanfare that the OPCAT could no longer be optional for Canada (The Canada OPCAT Project, 2020). Clearly, it is proving to be entirely optional.

In the absence of the ratification of the OPCAT and the implementation of a National Preventive Mechanism in Canada, the oversight of places of deprivation of liberty in the country is exercised by a collection of ombudsperson bodies and human rights commissions, which mostly have a reactive complaints-handling function (Pringle, 2018). While certain mechanisms do undertake human rights thematic inquiries, they are a subsidiary function to their overall focus—the processing of complaints. These institutions are not National Preventive Mechanisms in any sense of the word.

Thus, the main avenue of recourse for an Indigenous woman in a federal prison facility is to file a complaint about her treatment or conditions of detention with the federal prison ombudsperson's office, the OCI, or, alternatively, the Canadian Human Rights Commission if the grievance included a discriminatory component. Despite their limited powers, the alternative might be to approach a member of the national federal prison lay-visiting scheme, known as Citizen Advisory Committees, consisting of some 400 members of the public (Government of Canada, 2020).

In contrast, independent oversight at the provincial/territorial level is less specialized than at the federal level. For the most part, the main avenue for an Indigenous woman prisoner to voice a concern about treatment is to lodge a complaint with a provincial/territorial ombudsperson office or human rights commission. Again, this depends upon the substance of the complaint.

In a word, during the current pandemic, there exists limited independent, preventive oversight of Indigenous female prisoners in Canada—at a time when they are at heightened risk. Not only is the threat of serious sickness due to elevated COVID-19 infection rates very real, but pandemic-related lock-down measures, loss of contact with the outside world, and much diminished regimes of institutional activities have all resulted in heightened isolation (Ricciardelli & Bucerius, 2020; Iftene, 2020; Lawson, 2020). If one also considers that Indigenous Peoples score far worse on all indicators of health than the general public, the dangers of confinement during the pandemic are even greater (Craft et al., 2020).

Furthermore, it remains far from clear to what extent, if at all, the country's ombudsperson-type bodies and commissions have been actively undertaking visits to prisons in past months. As a case in point, the Office of the Correctional Investigator suspended its visits to prisons on March 24, 2020 (OCI, 2020d). In a June 19 update, it stated: "… as soon as it is safe to do so, I intend to conduct short, but targeted inspections of institutions in the Ontario and Quebec regions, visits that can be completed by same day travel" (2020c). Yet what of the numerous other federal facilities in other regions?

The Ontario Ombudsman issued a similar statement on the impact of the COVID-19 outbreak on the province's correctional facilities on March 26, 2020. In so doing, it outlined the institution's methodological approach to ensuring at least some continuity of its human rights monitoring function during the public health emergency (Ontario Ombudsman, 2020a). The latter approach did not include on-site visits to prison facilities (Ontario Ombudsman, 2020b) and, to date, there has been no indication from the organization's website that visits have resumed. Likewise, the Saskatchewan Ombudsman's statement on April 8, 2020, which made a brief reference to new provisions for provincial prisoners to file confidential complaints with the

institution by telephone, strongly suggests that its on-site visits were also suspended (Saskatchewan Ombudsman, 2020).

A scan of the websites of other comparable institutions generally provides generic information about the closure of offices and the suspension of in-person delivery of services. Rarely is any detailed mention made of how these oversight bodies are ensuring the rights of prisoners during the current pandemic. The use of remote email and telephone hotlines is, arguably, a poor substitute for on-site visits. Conversely, as noted below, during the pandemic, certain monitoring bodies have continued to conduct visits adhering to the 'do no harm' principles.

In a recent publication, Professor Adelina Iftene (2020) also commented on the lack of oversight by public health and human rights agencies concerning the implementation of COVID-19-related protocols in Canada's prisons. Lawson has also observed a lack of oversight (2020), while Canadian academic Carla Ferstman, based at the University of Essex's Human Rights Centre in the United Kingdom, has also weighed in, commenting that "independent detention monitoring and oversight bodies which are crucial to help stop abuse and inadequate prison conditions, have been placed on hold, increasing detainee vulnerability, isolation, fears and anxieties" (Ferstman, 2020, p. 181).

In stark contrast, during the first months of the current global health emergency, there have been multiple international recommendations that independent monitoring bodies should strive to exercise their oversight functions of prisons and other closed settings, despite the COVID-19 conditions—being mindful of the 'do no harm' principle. Such recommendations have been advanced by international human rights entities as diverse as the UN Subcommittee on Prevention of Torture (2020), UN Working Group on Arbitrary Detention (2020), European Committee on the Prevention of Torture (2020), and World Health Organization (2020).

Two main regional human rights systems to which Canada belongs have echoed the importance of independent oversight (Association for the Prevention of Torture and Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights, 2020; Inter-American Commission on Human Rights, 2020). So too have leading human rights non-governmental organizations, such as the Association for the Prevention of Torture (Association for the Prevention of Torture and Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights, 2020), Dignity (2020), and Penal Reform International (2020-b).

As an illustrative case in point, the Council of Europe's esteemed regional detention monitoring body, the European Committee for the Prevention of Torture (2020b), recommenced its program of visits to places of detention in July 2020. As of mid-November 2020, it had

undertaken visits to nine countries, aptly illustrating that such oversight can be effectively exercised during the pandemic in accordance with the 'do no harm' principle. Similarly, at the national level selected National Preventive Mechanisms have also resumed such visits, including in countries with significantly higher COVID-19 overall infection rates than in Canada such as the United Kingdom.

While it may be understandable why Canada's different complaints bodies initially suspended physical visits to prison facilities and implemented remote monitoring systems, a balance still needs to be struck between doing no harm and preventing harm to prisoners. It is undeniable that during the current pandemic imprisoned Indigenous and non-Indigenous women alike in Canada have remained tightly sealed off from the outside world.

Governmental Transparency: Canada's Unimpressive Track Record in Ensuring Follow-up to State-initiated National Inquiries

Arguably, the over-representation of Indigenous women in Canadian prisons is just one manifestation of the egregious treatment of Indigenous women and their wider communities in Canada. Over the years, issues of discrimination and violence have been tackled on multiple occasions, including in the context of several state-initiated national inquiries aimed at righting much wider past societal wrongs committed against Indigenous Peoples in Canada.

If one is genuinely seeking to address the over-representation of Indigenous women in Canada's prisons, it is axiomatic that the root causes of discrimination need to be addressed outside prison walls. Regrettably, however, Canadian authorities have appeared reluctant to do so, despite the recurrent commissioning of high-profile state-led national inquiries.

Simply put, if transparency and accountability are required to reduce risk in places of deprivation of liberty, as argued earlier, then it is equally required that government be held open and accountable in their efforts to address the wider societal discrimination and violence committed against Indigenous women in contemporary society.

In more recent times, multiple recommendations on this wider point have been made by the Truth and Reconciliation Commission (2015) and, most recently, the National Inquiry into MMIWG (2019). The pressing need for wholesale change regarding how Indigenous women are treated in Canada was highlighted in the June 2019 publication of the Inquiry's Final Report. Launched in September 2016, the Inquiry had a mandate to report on all forms of violence against Indigenous women and girls and make recommendations for concrete and effective action. Its 231

clusters of recommendations, known as Calls for Justice, are aimed at righting past and current wrongs.

Notably, 14 Calls for Justice target Correctional Services Canada. Specifically, Call for Justice 5.21 states: "Implement the recommendations in the reports of the Office of the Correctional Investigator, the Calls to Action of the Truth and Reconciliation Commission of Canada and others in order to reduce the gross overrepresentation of Indigenous women and girls in the criminal justice system" (2019). Nevertheless, restitutionary recommendations of past independent inquiries into the treatment of Indigenous persons in Canada date back decades, not just a handful of years. Most notable were the 1996 key findings of the Royal Commission on Aboriginal Peoples (RCAP, 1996). Disappointingly, little became of the Royal Commission's recommendations (CBC News, 2016).

The following, highly damning excerpt from the 2019 Final Report of the National Inquiry into MMIWG is emblematic of the core findings of the report as a whole, meriting a closer reading:

> *The truths shared in these National Inquiry hearings tell the story — or, more accurately, thousands of stories — of acts of genocide against Indigenous women, girls, and 2SLGBTQQIA people. The violence the National Inquiry heard amounts to a race-based genocide of Indigenous Peoples, including First Nations, Inuit and Métis, which especially targets women, girls, and 2SLGBTQQIA people. This genocide has been empowered by colonial structures evidenced notably by the Indian Act, the Sixties Scoop, residential schools and breaches of human and Indigenous rights, leading directly to the current increased rates of violence, death, and suicide in Indigenous populations.* (National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019a, p. 50)

It can be seen from the above excerpt that a significant outcome of the National Inquiry was the labelling of systemic violence toward women, girls, and 2SLGBTQQIA a "genocide". The use of this term should reflect broad recognition of the severity of the present crisis facing Indigenous women, girls, and gender-diverse persons. The use of this term also acknowledges the need for actions to be taken to dismantle systems of oppression and colonization—particularly those at the intersections of race and gender. Accordingly, greater transparency and accountability is needed in the overrepresentation of Indigenous women in prisons as it is a symptom of a genocidal system, as highlighted above in Call for Justice 5.21.

It was therefore with considerable concern that NWAC learned from Crown-Indigenous Relations Minister Carolyn Bennett on May 26, 2020, that the federal government would not publish its national action plan on the Final Report by June 3, 2020, the first anniversary of its

publication, as originally promised, and had no timetable for doing so (Native Women's Association of Canada, 2020). Despite some promising initial steps to establish sub-working groups under the auspices of Crown-Indigenous Relations and Northern Affairs Canada to develop a national action plan, the fear remains that the Final Report may go the same way as other past state-initiated national inquiries.

Finally, it should be noted that, while all three aforementioned inquiries called for sweeping systemic change, specific recommendations were also directed at the over-representation of Indigenous women in Canada's prisons (National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019c; Truth and Reconciliation Commission of Canada, 2015). The RCAP inquiry addressed this issue nearly two-and-a-half decades earlier, making multiple transformative recommendations to remedy the fact that: "Aboriginal people are over-represented in the criminal justice system, most dramatically and significantly in provincial and territorial prisons and federal penitentiaries" (Royal Commission on Aboriginal Peoples, 1996b, p. 309).

Spooling forward nearly 25 years, what change has occurred for the better? Conversely, the over-representation of Indigenous women in prison has significantly increased and, according to current trajectories, is only set to set to worsen in federal institutions (Office of the Correctional Investigator, 2020a).

Unless Canadian state efforts to address the multiple restitutionary recommendations of past nationwide inquiries are undertaken in an open, transparent, and accountable manner, the chances of equitable treatment for Indigenous women—both inside and outside prison—will continue to be slim.

Conclusion

This paper has sought to address how the multiple risks faced by Indigenous women—both in penal settings and in the wider community—can be addressed effectively through greater transparency and accountability. If, as it is commonly argued, that sunlight is the best disinfectant for institutional ills, it follows that transparency coupled with accountability will go a long way to ensuring that COVID-19-related risks are minimized for incarcerated Indigenous women in Canadian prisons at all jurisdictional levels.

For this reason, Canada should make good on its original 2006 pledge to ratify and effectively implement the Optional Protocol to the UN Convention against Torture. Regrettably, independent oversight of prisons in the country is currently and imperfectly served by a patchwork arrangement of ombudsperson institutions and human rights commissions distributed across the

country. Put simply, to quote former Foreign Minister Stéphane Dion from 2016, the Optional Protocol should no longer be optional for Canada.

In this paper, we have also advanced a compelling argument as to why the concept of transparency demands a serious commitment by provincial/territorial and federal authorities to greater openness and accountability for how Indigenous women are treated in contemporary Canadian society. There is no shortage of recommendations flowing from two recent state-initiated national inquiries on how to counter and minimize the everyday risks and hazards faced by Indigenous women.

Specifically, the comprehensive set of recommendations contained in the 231 Calls for Justice by the National Inquiry are aimed at addressing the genocidal violence faced by Indigenous women, Two-Spirit, and gender-diverse people, including their gross over-representation in the criminal justice system. It must also be stressed that these *Calls are legal imperatives, not just discretionary options for action.* For example, the creation of the position of Deputy Commissioner for Indigenous Corrections to ensure attention to, and accountability regarding, Indigenous issues would be one such step forward (2019).

Yet, the challenge now is for Canadian authorities at all levels to act on the numerous Calls to Action issued by the Truth and Reconciliation Commission and the Calls for Justice issued by the National Inquiry into MMIWG. Whether the authorities will grasp this opportunity and alter Canada's continuing trajectory of discriminatory treatment of Indigenous women and their communities is a question that has yet to be answered.

If the answer to the question ultimately proves to be 'no,' then we must critically reflect on whether the Canadian state, and in this case, Correctional Services Canada, as perpetrators of the past and ongoing genocidal violence against Indigenous women in Canada, will ever be equipped to address this *crisis within a crisis*.

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