



Applying an Indigenous and gender-based lens to the exploration of public health and human rights implications of COVID-19 in Canadian correctional facilities

Chaneesa Ryan¹ · Hollie Sabourin¹ · Abrar Ali¹

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Abstract

Due to overcrowding and subsequent unavoidable close contact, poor ventilation, and decreased hygiene standards and healthcare services as compared with in the community setting, the prison environment is highly conducive to the transmission of infections, including COVID-19. Physical distancing measures may be difficult to implement without introducing interventions that may violate human rights. Given that Indigenous women represent over 41% of federally incarcerated women, this is a cause for concern. Indigenous women are also more likely to have higher rates of numerous chronic conditions, including respiratory illnesses, substantially increasing vulnerability to COVID-19 complications. This can be exacerbated in prisons as access to healthcare may be limited. Outbreaks within the prison setting can not only overwhelm an already over-stretched healthcare system but also spread to the community and disproportionately impact marginalized communities and populations. In this commentary, we explore the public health and human rights implications of COVID-19 in prisons while calling particular attention to the unique needs and circumstances of incarcerated Indigenous women based on international best practice-based guidance to preventive and responsive measures to COVID-19.

Résumé

En raison du surpeuplement et des contacts étroits, de la mauvaise ventilation et des normes d'hygiène et des services de santé réduits qui en découlent inévitablement, le milieu carcéral est hautement propice à la transmission des infections, y compris la COVID-19, comparativement au milieu ouvert. Les mesures de distanciation physique peuvent être difficiles à y appliquer sans introduire des interventions potentiellement contraires aux droits de la personne. Comme les femmes autochtones représentent plus de 41 % de la population carcérale fédérale féminine, il faut s'en inquiéter. Les femmes autochtones sont aussi plus susceptibles de présenter de plus hauts niveaux de nombreux états chroniques, dont les maladies respiratoires, qui accroissent considérablement la vulnérabilité aux complications de la COVID-19. Cette situation est exacerbée en prison, où l'accès aux soins de santé peut être limité. Les éclosions en milieu carcéral peuvent non seulement submerger un système de soins de santé déjà trop sollicité, mais se propager au milieu ouvert et affecter démesurément les communautés et les populations marginalisées. Dans notre commentaire, nous explorons les conséquences, sur le plan de la santé publique et des droits de la personne, de la présence de la COVID-19 dans les établissements pénitentiaires et nous attirons une attention particulière sur les besoins spécifiques et la situation des femmes autochtones incarcérées, en nous fondant sur des directives de prévention et d'intervention face à la COVID-19 fondées sur les pratiques exemplaires internationales.

Keywords Indigenous · First Nations · Inuit · Métis · Women · Gender-diverse · COVID-19 · Incarceration · Gender-based · Public health · Human rights

Mots-clés Autochtone · Premières Nations · Inuits · Métis · femmes · diverses identités de genre · COVID-19 · incarcération · basé sur le sexe · santé publique · droits de la personne

✉ Chaneesa Ryan
cryan@nwac.ca

¹ Native Women's Association of Canada, 6th floor - 85 Albert Street, Ottawa, ON K1P 6A4, Canada

Introduction

Despite representing just over 4% of the Canadian female population, Indigenous women account for 41.4% of federally incarcerated women (Office of the Correctional Investigator

2019). Indigenous women lose 6–9 times more years of life to incarceration in comparison with non-Indigenous women (Owusu-Bempah et al. 2014). The gross overrepresentation of Indigenous women in Canada's federal correctional system must be considered within the context of Canada's colonial history. Bourassa et al. explain, "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" (2008, p.24). This history has resulted in intergenerational trauma which is associated with higher rates of violence and substance use that can be linked to incarceration and poorer health (Barlow 2009). In fact, reports indicate that 97% of federally incarcerated Indigenous women were diagnosed with a mental health disorder and 92% were found to have moderate to high substance abuse needs (OCI 2019).

Indigenous populations are more likely to have higher rates of numerous chronic conditions like hypertension, heart disease, stroke, and diabetes compared with the general Canadian population (NCCAH 2013). This complex multimorbidity at younger ages can substantially impact quality of life, vulnerability to COVID-19, and subsequent prognosis following infection. Further, these disparities in the prevalence of chronic diseases are more pronounced for Indigenous women compared with Indigenous men (Bourassa et al. 2008). Additionally, there are vast disparities in life expectancy between First Nations (78), Metis (80), and Inuit (73) females in comparison with the overall Canadian female population (84) (Statistics Canada 2017).

The over-incarceration of Indigenous women has been long recognized as a crisis (OCI 2019) and more recently by the UN Committee against Torture (2019) and the UN Special Rapporteur on violence against women (2019). The need for transformation within these systems is apparent as the pandemic continues to pose a serious threat to the safety and security of the incarcerated population. Inequities based on race, sex, and gender are why it is imperative to take a gender-based approach to explore the public health and human rights impact of COVID-19 on Indigenous women in Canada's federal correctional system in accordance with international guidance (WHO 2020a).

COVID-19 and the prison environment

COVID-19 is a respiratory illness caused by the novel coronavirus. It is transmitted through droplets, by direct contact with infected persons, or by contact with contaminated objects and surfaces (WHO 2020b). Due to overcrowding, poor ventilation, and decreased hygiene standards and healthcare services compared with in the community setting, the prison environment is highly conducive to the transmission of

infections, including COVID-19. Physical distancing and other prevention measures are difficult to implement adequately in the prison environment as people in prison live in close quarters, share toilet and hygiene facilities, and may not be able to access personal protective equipment.

The risk posed by COVID-19 is not merely a physical one. Concerns of infection and subsequent complications among incarcerated individuals may lead to higher levels of stress and anxiety. This, combined with the higher rates of poor mental health in this population, can result in considerable deterioration of existing conditions and an increased need for already overwhelmed mental health services and supports. Furthermore, concerns over further segregation and marginalization can contribute to avoiding disclosure of symptoms and potential infection, leading to further spread and outbreaks (Kothari et al. 2020).

The pandemic is exposing the existing inequalities and gaps in society and the situation is more critical than ever for incarcerated Indigenous women and gender-diverse people. According to the Public Health Agency of Canada (2020), certain populations are more vulnerable to acquiring the virus and in turn developing its complications, including those with underlying health conditions. Given the increased prevalence of chronic conditions, including respiratory illnesses, among Indigenous women, combined with their over-incarceration in facilities that are conducive to COVID-19 outbreaks, Indigenous women and gender-diverse people are at an increased risk. Prison health is a matter of public health, and it is critical that incarcerated people, including Indigenous women, do not get left behind in the response to this unprecedented crisis.

Incarceration as a death sentence and the impacts on human rights

Incarceration should be viewed as an opportunity for healing and growth before a successful reintegration into society is possible. As it stands, Correctional Service of Canada (CSC) facilities do not adequately meet the rehabilitative or reintegrative needs of Indigenous women, as demonstrated by their higher rates of recidivism compared with non-Indigenous women (CSC 2019). Incarceration should not be a death sentence, and the existence of COVID-19 in prisons could mean that an incarcerated individual can contract the virus and die in prison. As health is a fundamental human right and COVID-19 is threatening the health of incarcerated people, the overrepresentation of Indigenous women in prisons and in this pandemic is quickly demonstrating how inherently inseparable public health and human rights are (WHO 2020a).

To mitigate the impact of COVID-19 in Canada's correctional system, Public Safety Minister Bill Blair requested the consideration of the early release of low-risk offenders.

However, tracking the release of federal prisoners has been difficult (Harris 2020). The failure of Minister Blair to act in a timely and concerted manner is all the more startling in view of the emergence of international advice highlighting the urgency of de-carceration as a tactic to counter the impact of COVID-19 (WHO 2020b). Furthermore, while Minister Blair is calling for the release of low-risk offenders, it must be recognized that Indigenous women are disproportionately classified as medium and higher risk, and as such, many Indigenous women will not be considered for release. Consequently, it is essential that CSC consider the unique histories and needs of incarcerated Indigenous women when evaluating who is eligible for release while also respecting the right to self-determination of Indigenous communities. The “risk” level of Indigenous women must be assessed in partnership with Indigenous communities and governments, in alignment with the Missing and Murdered Indigenous Women and Girls (MMIWG) Calls for Justice 14.3, 14.4, and 14.5 (MMIWG 2019).

Position: The need for urgent and transformative change

COVID-19 is exposing the need for change in how we address the over-incarceration of Indigenous women in Canada. While the pandemic has quickly made the issue of incarceration a public health one, high rates of incarceration have affected the health and well-being of Indigenous women and gender-diverse people for too long. In addition to being more vulnerable to COVID-19 and having an increased risk of experiencing its complications, incarcerated Indigenous women are even more vulnerable to falling between the gaps in the federal response to this crisis. The Government of Canada must act quickly and transparently to release incarcerated Indigenous women while simultaneously reassessing the processes in which an individual is deemed eligible for release, which means addressing the systemic racism inherent to this process (MMIWG 2019).

Releasing incarcerated individuals will allow correctional facilities to practice stronger physical distancing and protect prisoners and correctional staff. Releases must be done in collaboration with community-based organizations who can support the successful reintegration of offenders. The Truth and Reconciliation Commission (TRC) of Canada (2015) and the National Inquiry into MMIWG (2019) have identified the need for transformative change within Canada’s correctional systems and the need to address the gross overrepresentation of Indigenous women.

Releasing Indigenous prisoners presents an opportunity for the Government of Canada to take a substantial step towards reconciliation with Indigenous Peoples and righting past

wrongs, something they have been criticized for in their failures to do so.

Conclusion

The global pandemic is not creating health or social inequities, it is shining a light on and exacerbating inequities that have long existed and been perpetuated by systems of oppression. Similarly, the over-incarceration of Indigenous women is not a result of the pandemic; however, the pandemic poses a considerable threat to their health, safety, and human rights. These inequities between the Indigenous and non-Indigenous population are further magnified by institutionalized sexism, resulting in a double burden for Indigenous women based on their race and gender (Roy 2004).

The failure of the Government of Canada to take action, as evidenced by the lack of response to the 1996 Royal Commission on Aboriginal Peoples, the TRC Calls to Action, and now the 231 MMIWG Calls for Justice, is egregious at best. There is a window of opportunity for the government to place public health and human rights at the forefront of their response to COVID-19 and act in a meaningful way in line with international best practices to protect incarcerated Indigenous women from further harm. They do not have to act alone. In fact, to be successful, they must work in collaboration with Indigenous communities and support services. Furthermore, The Final Report of the National Inquiry offers a comprehensive set of recommendations to address the genocidal violence faced by Indigenous women, two-spirit, and gender-diverse people (MMIWG 2019). Combined with the international best practice-based measures to prevent and control COVID-19 in prisons, the blueprint for action exists. All that is needed is the political will.

Compliance with ethical standards

Conflict of interest The authors declare that they have no conflict of interest.

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