



Expert Mechanism on the Rights of Indigenous Peoples July 8 - 12, 2013

Native Youth Sexual Health Network

Item 5: Study on access to justice in the promotion and protection of the rights of Indigenous Peoples

We are presenting information to supplement the study on access to justice in the promotion and protection of the rights of Indigenous Peoples. On this item, we present information and recommendations that expand on the justice report to include effects of structural and institutional discrimination regarding the intersection of justice with sexual and reproductive health and rights.

Within the region of North America, Indigenous youth are disproportionately affected by HIV through increases in our HIV infection rates, and lack of access to culturally safe health care. For example, in Canada between 1998 and the end of 2006, nearly one-third (32.4%) of Aboriginal people diagnosed with HIV were under the age of 30(1).

Compounded with this health crisis, is the issue of criminalization, which targets Indigenous youth for high rates of incarceration due to racism and the legacy of colonialism within the justice system itself. Racial profiling and police violence are still very much a reality for Indigenous youth across North America, which should also be taken into consideration with the well-documented high rates of sexual violence for Indigenous women.

While Indigenous youth in Canada represent 6% of the general youth population, they account for 26% of youth admitted to correctional services (2). Furthermore, Indigenous young women comprise 36% of all young women incarcerated. American Indian and Alaska Native youth are arrested at a rate of 3 times the national average, and 79% of youth in the Federal Bureau of Prison's custody are American Indian and Alaska Native (3). Overall, Indigenous peoples now account for 21.5 per cent of prison population in Canada despite being only 4% of the general population. (4)

These interactions with the justice system start young with Indigenous children still being removed from families and communities by child welfare agencies due to poverty, racism and structural issues within the system which has historically labelled Indigenous families and mothers as 'unfit'. These realities are even worse for Two Spirit and transgender youth who

experience even more targeting by police, as well as discrimination inside and outside the criminal justice system.

A further intersection of the issue of justice is the criminalization of HIV. This involves serious criminal charges being brought onto people living with HIV even in circumstances where HIV was not transmitted and protection such as a condom was used. This does nothing to stop HIV infection and in fact creates an environment of fear and stigma that prevents effective public health efforts like testing for sexually transmitted infections and public education. (5) Increased criminalization in fact endangers the lives of people living with HIV especially women in abusive relationships. Furthermore, with no harm reduction services like clean syringes and a lack of equitable health care for those who are incarcerated, HIV and Hepatitis C are on a significant rise in prisons, where Indigenous peoples sexual and reproductive rights are already routinely violated; including the shackling of pregnant women also while in labor, coerced sterilization and sexual violence from prison staff and guards.

Already youth labelled as ‘young offenders’ in Canada and the US are now facing mandatory minimum sentencing as well as stricter and tougher sentences for minor drug offenses without an increase in community based restorative justice, and in fact cuts to Indigenous cultural practices within correctional services. Additionally, this is actually in contravention of a previous Supreme Court ruling “Gladue” in Canada that mandated judges taking into account the history of colonization when it came to sentencing Aboriginal people. Sound evidence has already been documented that increased criminalization and incarceration do not actually produce more safety and well-being in communities.

Out of all of these realities as they pertain to accessing justice, we recommend the following:

1. That the criminalization of HIV be included in an extension of EMRIP’s study on access to justice with a focus on Indigenous women and youth, as well as legal standards and prosecutorial guidelines that are culturally safe for Indigenous peoples;
2. That UN agencies and Member States continue to seriously consider Indigenous methods of accountability and justice, including restorative justice models that include the full, effective and meaningful participation and leadership of Indigenous youth
3. In addition to ‘expert’ advice from UN agencies and member states, we recommend future EMRIP studies take into account the lived realities of Indigenous Peoples, especially youth, who have experience with police violence, criminalization and incarceration - in particular the rights, health, and well being for Indigenous peoples who are currently imprisoned.

We can do more than just react to the harms of injustices; we can restore, we can create, and we can grow stronger together.

References and Resources:

1. Population Specific HIV/AIDS Status Report: Aboriginal Peoples, Public Health Agency of Canada (PHAC), 2010
<http://www.phac-aspc.gc.ca/aids-sida/publication/ps-pd/aboriginal-autochtones/index-eng.php>

2. Canadian Centre for Justice Statistics. (2012). Youth correctional statistics in Canada, 2011/2012.
3. American Indians and Crime: A BJS Statistical Profile, 2004
<http://www.bjs.gov/content/pub/pdf/aic02.pdf>
4. "Warehousing Indigenous Women"
<http://www.cbc.ca/manitoba/features/warehousing/>
5. Canadian HIV/AIDS Legal Network & Global Network of People Living with HIV. (2010). Criminalization of HIV Exposure: Canada. <http://www.aidslaw.ca/EN/lawyers-kit/documents/Canadianlaw.pdf>
6. Canadian Aboriginal AIDS Network. (2006). Aboriginal People and Incarceration Issues related to HIV/AIDS, Hepatitis C and Residential Schooling.
7. "Marginalized: Aboriginal Women's Experiences in Federal Corrections"
http://www.publicsafety.gc.ca/res/cor/apc/_fl/apc-33-eng.pdf
8. "Police (In)Justice: Responding Together to Change the Story" Collaborative Statement and Resources: Native Youth Sexual Health Network & Families of Sisters in Spirit
<http://www.nativeyouthsexualhealth.com/policeinjusticerespondingtogethertochangethestory.pdf>