Activism around Gendered Penal Practices

Introduction

We begin by honouring women who have experienced prison for their ongoing survival in a system that is brutal, sadistic, racist and sexist, that punishes and re-punishes—the poor, the black, the mentally unwell, the disabled, mothers, daughters, sisters and grandmothers. We also want to remember the women who have passed because of their experience of this brutal system that gave them no way out other than death.

We are abolition activists. Abolitionism is both our starting principle and the driver of our work. Abolition activism and scholarship challenges the fundamental premises upon which the penal system is based (Davis 2003; Mathiesen 1974). It recognises that imprisonment of women is driven by State sanctioning of a violent, racist and sexist system. We reached this position, personally and in our respective organisations, after long years spent in struggling to reform the system. Sisters Insider Inc., based in Queensland, and the Canadian Association of Elizabeth Fry Societies (CAEFS), both began as reform organisations. Each organisation independently came to the conclusion that tinkering with the details of a fundamentally failed system only continues to prop it up. The perpetuation of systemic inequality and human rights violations in our respective countries and around the world, has cemented an alliance between our organisations, and has hardened our resolve to work *for and with* criminalised women.

The journey has been very difficult personally, and for our organisations, and has come at significant personal and professional cost. For 12 years, the Sisters Inside Inc. Management Committee met inside prison but is no longer permitted to do so. Debbie has been banned from all Queensland prisons due to her activism around human rights breaches by Queensland Corrective Services (QCS). Kim is still negotiating her re-entry to Canadian prisons for women. This is not the first time she has been denied access. Since the death in October 2007 of Ashley Smith, a young woman who died in her segregation cell at the Grand Valley Institution for Women in Ontario[1], Kim and her 17 advocates have experienced many more challenges as they work to chronicle the ongoing human rights violations experienced by women in Canadian prisons—most especially Indigenous women and those with disabling intellectual and mental health concerns.

International Trends in the Incarceration of Women

> The majority of … women do not need to be in prison at all. Most are charged with minor and non-violent offences and do not pose a risk to the public. Many are imprisoned due to their poverty and inability to pay fines. A large proportion is in need of treatment for mental disabilities or substance addiction, rather than isolation from society. Many are victims themselves but are imprisoned due to discriminatory legislation and practices. Community sanctions and measures would serve the social reintegration requirements of a vast majority much more effectively than imprisonment. (United Nations Office on Drugs and Crime 2008:3)

[1] The death of Ashley Smith and the subsequent inquiry is discussed in Kelly Hannah-Moffatt's article in this volume.

The UN *Handbook for Prison Managers and Policy Makers on Women and Imprisonment* demonstrates: 'the nature of the criminalisation of women worldwide; the disproportionate criminalisation of women in general; the disproportionate criminalisation of socially, racially and culturally disadvantaged women in particular; and proposes strategies for Member States to begin to address gender-based discrimination in their criminal justice systems' (2008). Throughout the world, the majority of women are imprisoned as a result of their social disadvantage, and the failure of States to meet their human rights obligations.

The profiles of women prisoners in Canada and Australia are remarkably similar (Australian Institute of Health and Welfare 2010; Australian Bureau of Statistics (ABS) 2004; Office of Correctional Investigator (OCI) Canada 2010)—and these characteristics are shared with jurisdictions around the world. Almost all women prisoners have experienced physical, sexual and/or emotional abuse. The majority were sexually abused as children. Most live in poverty. Most are mothers of dependent children and were their primary carers prior to imprisonment. Most have major health problems, including mental health and/or substance abuse issues. Most have had limited access to education. Many have intellectual or learning disabilities. Many were homeless prior to imprisonment; many continue to be homeless following release from prison. And, a highly disproportionate number are Indigenous women (ABS 2004; Secretariat of the United Nations Permanent Forum on Indigenous Issues 2010).

Indigenous women are incarcerated at very high rates in both countries. In Australia this is more than 20 times the rate of non-Indigenous women (Australian Human Rights Commission (AHRC) 2008:10.2), and in Canada, while comparable data are not available, they are 34 per cent of the Canadian federal prison population but around 4 per cent of the total population (OCI 2010). Indigenous and other racialised women are disproportionately imprisoned around the world. In Australia and Canada, inequitable treatment is evident at all stages in the criminal justice process (Aboriginal and Torres Strait Islander Social Justice Commissioner (ATSISJC) Australia 2002: chap 5; Canadian Human Rights Commission (CHRC) 2003). Once in prison, they are more likely to be classified as high security prisoners than non-Indigenous women (CHRC 2003; Anti-Discrimination Commission Queensland (ADCQ) 2006). It is clear that current legislation, policy and practices have an adverse impact on women, in that they have 'the effect of creating and perpetuating racial discrimination'.

Prisons throughout the world largely function as a default system for providing shelter to women who are victims of crime. For many, these are crimes proscribed under criminal laws—particularly violent crimes such as child abuse and domestic violence. For most, these are crimes perpetrated by States—a failure to meet women's rights to which they are entitled under *the Universal Declaration of Human Rights* such as education, housing, safety and health services.

Despite the lack of evidence of an increased crime rate amongst women, the rate at which women are imprisoned, in both Canada and Australia, has almost doubled over the past 10 years, and has increased at an even faster rate for Indigenous women (ATSISJC 2002; ABS 2009; CAEFS 2010; Correctional Service of Canada (CSC) 2009; Kong and AuCoin 2008). Most women are serving short sentences for minor offences. In Queensland, for example, the average period of imprisonment for women is less than 2 months (QCS, cited in ADCQ 2006:90). Even a short sentence can result in women losing their employment, housing and custody of their children. It can cause irreparable harm to their children and families.

Australian evidence suggests that even a short period in prison is a key factor in recidivism amongst women prisoners (Baldry 2007:2-4), and the children of prisoners are 5 times as likely to be imprisoned themselves (ATSISJC 2009:19).

Further, prisons themselves largely function to perpetuate women's experience of powerlessness and violence. Prisons are brutal and brutalising environments. Every aspect of women's lives is controlled by prison officers; the exercise of arbitrary power and abuse by officers is not uncommon. Women are dependent on prison officers to meet their every need. Prisons themselves reinforce the notion that women are not entitled to have their human rights met. And then, upon release, women are expected to immediately switch from total compliance and dependence, to total independence and social responsibility.

For these reasons, we are committed to the ultimate abolition of prisons. In the meantime, we advocate for the progressive decarceration of women.

Activism in Canada

There have been several key events in Canadian correctional developments concerning women that provide an important context for this account of activism, and the work of CAEFS, and we outline some of those here.

In 1990 a landmark report *Creating Choices: The Report of the Task Force on Federally Sentenced Women*[2] (CSC) (1990) was tabled. CAEFS co-chaired the Task Force and recognised that it was the most progressive statement of the need for penal reform internationally at the time (see also Hannah-Moffatt this volume). Unfortunately, whilst the final report of the Canadian Task Force was visionary for CSC, it represented a compromised position for CAEFS, other community groups, and especially for women in and released from prison. Within one year of the tabling of the *Creating Choices*, the community and prisoner members of the Task Force were cut out of the implementation process one by one. No doubt due to the suicides of six Aboriginal women in the Prison for Women (P4W), the last group to be extinguished was the Aboriginal women who formed the Vision Circle for the Okimaw Ohci Healing Lodge, the new national prison for First Nations, Métis, and Inuit women. In 1993, just two and a halfyears after *Creating Choices*, CAEFS passed a resolution in favour of penal abolition.

In 1996 the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, conducted by Madam Justice Louise Arbour, confirmed that the promise of *Creating Choices* was not being fulfilled.[3] She issued a scathing indictment of the manner in which the CSC manages corrections and the imprisonment of women in particular. In her report, she indicted the prison industrial complex:

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[2] In Canada, prisoners with a sentence of two years or more are the responsibility of Federal correctional authorities; those with shorter sentences are administered by provincial or territorial correctional authorities.

[3] Louise Arbour went on to become a member of the Supreme Court of Canada and the United Nations High Commissioner for Human Rights.

> In terms of general correctional issues, the facts of this inquiry have revealed a disturbing lack of commitment to the ideals of justice on the part of the Correctional Service. I firmly believe that increased judicial supervision is required. The two areas in which the Service has been the most delinquent are the management of segregation and administration of the grievance process. In both areas, the deficiencies that the facts have revealed were serious and detrimental to prisoners in every respect, including in undermining their rehabilitative prospects. There is nothing to suggest that the Service is either willing or able to reform without judicial guidance and control. (Arbour 1996:198)

On 6 July 2000, we finally celebrated the closure of the dreadful P4W, ending its 66 year history of confining women and girls. However, for federally sentenced women, CAEFS and many others, it was a muted celebration. The P4W was replaced by ten other federal prison units for women; this has now become eleven, including the Burnaby Correctional Centre for Women which replaced a provincial prison for women in British Columbia. Four of these were segregated maximum security units in men's prisons. One remains open. Three have been closed, but have been replaced by five new segregated super-max prisons for women within the walls of the regional prisons. The number of women serving federal prison terms has almost tripled since the tabling of *Creating Choices*. It is no wonder that women prisoners frequently ask: *Whatever happened to 'Creating Choices?*

In the wake of 9/11, we feared the response to those events and decided we must provide leadership for Canadian women and women around the globe. In October 2001, CAEFS co-hosted a conference with the Canadian Association of Sexual Assault Centres (CASAC), *Women's Resistance: From Victimisation to Criminalisation.* CAEFS and CASAC hosted 650 women, approximately 550 of whom were subsidised to attend. Every plenary included women with the lived experience of victimisation and criminalisation, as well as front-line anti-violence workers and prisoner advocates. Academics, artists, members of the media, judiciary, legal, medical, educational, psychological and social work professions, presented workshops alongside advocates, allies and activists. During the plenaries and 120 workshops, women from Canada and internationally identified and explored the state of women's inequality, as well as the strategies we must employ to survive the predicted onslaught.

A few weeks following the conference in Canada, in November 2001, Sisters Inside hosted the organisation's first International Conference. At that time over 300 women gathered together in Australia for a few very important days. During this time the Canadian and Australian governments were promoting the idea that they were working to better protect our collective security with an increased focus on 'organised crime'. The synchronicity of our country's respective social and criminal justice agenda was not lost on either of us. In both countries authorities still really focus on catching and imprisoning the disorganised ones.

In Canada they pay lip service to the *Charter of Rights and Freedoms* (1982) while they continue to diminish and/or remove constitutionally enshrined human and civil rights of groups and individuals whom they decide to define as subversive, organised and/or terrorist in orientation. However, the State is also creating ever greater numbers of disenfranchised and unconnected members of our communities by openly slashing health, education and social services. We have acknowledged this very concretely by changing CAEFS' mission to recognise the reality that laws and policies are increasingly in conflict with peoples' lives, resulting in the virtual inevitability of criminalisation. For example, by creating criminally low welfare rates, and even bans on receipt of State resources, many poor people are immediately relegated to the criminalised underclass.

The fact that women are the fastest growing prison population worldwide is not accidental. In Canada, as in many other countries, poor women are criminalised for welfare fraud, prostitution, drug trafficking or other strategies they employ to support themselves and their families, or to survive the stresses of poverty (Chan and Mirchandani 2007). Further, the so called 'war on drugs' has become a war on the dispossessed, especially women who use, sell, or otherwise deal in legal or illegal drugs in order to cope with everyday life and/or to gain the financial resources they need for survival. Criminalising poor women stamps them as somehow dangerous to the general public. We must stop criminalising poor women for the things that they do in order to survive in increasingly inhospitable surroundings.

If we are truly interested in addressing fraudulent transactions that harm others, we must address criminally low welfare rates. If we are serious about crime prevention, we must challenge the creation of laws and policies that effectively criminalise the poor, people with disabilities and those who resist colonisation. We must question the development of classification, assessment and correctional tools that obscure structural disadvantage while constructing individual members of those very groups as acting with criminal intention and with unconstrained choice. Too often women and girls are released from prison following psycho-social, cognitive skills or drug abstinence programming, with the assumption that they are now able to make better choices, but with little regard for their life circumstances. They are sent forth with the official judgment that they are in control of, and therefore responsible, for their own lives—including their own criminalisation. We absolutely reject and resist such notions.

Contemporary anti-violence policies and practices are also harming women. Fewer women are willing today to try to seek protection from misogynist violence by invoking the power of the State, in part because so-called gender neutral, zero tolerance policies, are being used to counter-charge women (McMahon and Pence 2003). In cases of homicides committed by abused women, we are also seeing lawyers advising women who felt that they had no choice but to use lethal force to defend themselves and/or their children, to plead guilty to either second degree murder or manslaughter, rather than taking matters to trial. When a major review of battered women's homicide cases was undertaken in Canada, Judge Lynn Ratushny found that approximately 20 to 30 of the women serving federal sentences in relation to the deaths of abusive partners had entered guilty pleas and therefore precluded their cases from review (Ratushny 1997). Notwithstanding that review, we continue to see women imprisoned for long periods for defending themselves and or their children.

It is difficult to talk or write about the work of CAEFS without feeling both extreme despair and outrage. Much of the energy of prisoner activists is driven by emotions that vacillate between the two. Part of the difficulty in addressing the issues that are increasingly arising for women prisoners in Canada, and internationally, is the reality that things are supposed to have improved significantly since the bleak days when Canada had only one federal prison for women.

So, 20 years after what many have described as the most progressive penal reform initiative internationally, how far have we come?

According to CSC statistics, 82 per cent of the women in federal prisons are serving their first federal sentence, and only 1.6 per cent of the women have experienced three or more terms of imprisonment. Lifers comprise 22 per cent of the federal women's population; 4

per cent of the women serving federal sentences were convicted of first degree murder and 14 per cent for second degree murder. Approximately 44 per cent of the women serving federal sentences are racialised women, about 30 per cent are Aboriginal, 6 per cent are African Canadian, 1 per cent identify as South Asian; the rest are described as *uncategorised.* More than half (52 per cent) of all federally sentenced women and 83 per cent of federally sentenced women labelled as 'maximum security', are under the age of 35 and, depending upon the day, 40-60 per cent will be Aboriginal women in the segregated maximum security setting. All of the women designated as super-maximum security pursuant to the CSC's 'management protocol' are Aboriginal women (OCI 2010). OCI 2010 has raised many concerns about the correctional system for federally sentenced women, including the rapid growth of prison numbers especially for Aboriginal women, the high rate of mental health problems among women inmates and the inadequacy of services for them, and the lack of access to minimum security facilities for women.

If a woman is poor, racialised and officially diagnosed as 'mentally ill', she is more likely to be sent to prison today than to a psychiatric or mental health facility. Older, progressive ideas about de-institutionalisation have died away; now people are being dumped into the streets (Mental Health Commission Canada 2010). Once in prison, these women tend to be characterised by the CSC as among the most difficult prisoners to manage. Therefore, authorities classify them, disproportionately, as maximum security prisoners. This means that these women serve the majority of their sentences in segregated maximum security units in men's prisons. Such conditions of confinement only exacerbate pre-existing mental health issues. Moreover, the levels of isolation and consequent sensory deprivation tend to create additional mental health issues. Ironically, the odious reflex of CSC to develop mental health services in prisons only worsens the trend to criminalise women with mental and cognitive disabilities. Developing such services in prisons, at a time when they are increasingly non-existent in the community, is used to justify federal sentences for more women with the argument that they can access services in prison that are not available in community settings. As a result, women are entering prisons with significant needs. But prisons are not, and cannot be, treatment centres (Carlen and Tombs 2006).

Despite these grim realities, those of us who work with and are allied with women prisoners know very well that these women continue to call upon all of us to do our utmost to ensure that their voices are brought out from behind the walls. It is as a result of their continued perseverance that the rest of us are afforded the privilege of being able to continue to walk with them as they challenge the manner in which they are held captive and imprisoned in Canada.

The Human Rights Complaint

On International Women's Day, 8 March 2001, after years attempting to negotiate with CSC to implement the recommendations of the Arbour report (1996) and the provisions of the *Corrections and Conditional Release Act* (Canada), CAEFS and the Native Women's Association of Canada filed a complaint with the Canadian Human Rights Commission.[4] As

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[4] The human rights complaint was supported by Aboriginal Women's Action Network, Assembly of First Nations, National Association of Friendship Centres, Federation of Saskatchewan Indian Nations, Strength in Sterhood, DisAbled Women's Network Canada, National Action Committee on the Status of Women, National Association of Women and the Law, CASAC, Canadian Research Institute for the Advancement of Women, Canadian Bar Association, Amnesty International and many local members, as well as the individual members

a result, the Commission decided to conduct a broad-based systemic review of the situation experienced by federally sentenced women, utilising its authority pursuant to s.61(2) of the Canadian *Human Rights Act (1976-77*) (Canada) to report on the manner in which the Government of Canada is discriminating against women serving prison sentences of two years or more.

Amongst other issues, the CAEFS' complaint articulated, that unlike their male counterparts, women who are classified as minimum security prisoners do not have access to minimum security prisons. (The only exception was 10 beds that had been slated for closure.)

Furthermore, despite the promises of *Creating Choices* and the *Corrections and Conditional Release Act 1922* (Canada), there are insufficient community-based releasing options for women, especially Aboriginal women. In addition to being subjected to a discriminatory classification scheme, women classified as maximum security prisoners and those identified as having cognitive and mental disabilities are not provided with adequate or appropriate carceral placement options. The Commission confirmed that the Canadian government is breaching the human rights of women prisoners by discrimination on the basis of sex, race and disability (CHRC 2003).

Canada prides itself on its international human rights reputation. When it comes to the manner in which we treat our most marginalised, that reputation is too often unwarranted. Consequently, we have also taken these issues to the United Nations. The UN Human Rights Committee, as well as a number of Special Rapporteurs and other international bodies, has criticised the Canadian government's refusal to implement the recommendations of the Arbour Commission or even the repeated recommendations of their own Correctional Service. CSC's task forces on federally sentenced women and segregation called for external oversight and its own commission recommended judicial oversight (Arbour Commission, 1996). CSC has even rejected the recommendations of the Parliamentary Standing Committee on Justice and Human Rights, Canada (1999) on this point.

CAEFS continues to challenge Canadians to reach behind the walls and welcome women into the communities, so that they may take responsibility and account for their actions in ways that enhance our national, provincial and local commitment and adherence to fundamental principles of equality and justice. We think that current international realities demand that we expand our coalition to end imprisonment, making common cause with activists around the world. We could easily start with women and girls. Just think about what we might achieve if our individual countries alone, let alone collectively and globally, manage to decarcerate women. We could see reinvestment in community development, women's services and women's equality of resources freed up as a result of prison closures. In turn, this could lead to the decarceration of men.

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of CAEFS. Human Rights and Prison Watch International as well as Amnesty International have already indicated their concern regarding the human rights abuses in Canadian prisons for women.

Activism in Australia

On International Human Rights Day in December 2003, Sisters Inside wrote to the (then) Queensland Department of Correctional Services (DCS)[5], asking the Department to undertake a major review and report into the treatment of women prisoners in Queensland. The complaint argued that some of the practices in women's prisons were in breach of the *Anti-Discrimination Act 1991* (Qld), the Federal Government's anti-discrimination laws and human rights conventions.

Within one month, the DCS wrote back saying there was no discrimination!

Sisters Inside believed that discrimination against women was built into the whole criminal justice and prison systems. We also believed that Aboriginal women and women with disabilities faced even greater discrimination than the general women's prison population. So, Sisters Inside wrote again to the DCS, giving them more detailed evidence, largely derived from government sources, which demonstrated discrimination against women prisoners.

The DCS did not act on Sisters Inside's concerns.

In light of the DCS failure to respond, in June 2004 Sisters Inside submitted a 'formal complaint' to the *Anti Discrimination Commission Queensland* (ADCQ), asking the Commission to investigate possible systemic discrimination in the administration of women's prisons. Further, Sisters Inside argued that 'women prisoners experience direct and indirect discrimination on the grounds of sex, race, religion and impairment' (Kilroy 2004:3).

Sisters Inside argued that DCS discriminated against women prisoners through six main means. The classification system is the same as that applied to men, despite their very different criminogenic profile, and effectively functions to turn social disadvantages into risk factors, which are then used to justify high security classifications for large numbers of women. The small number of low security beds available, despite evidence that the vast majority of women prisoners are low risk, means that even those women classified as low security prisoners often serve their entire sentence in a high security prison. Women have limited access to conditional and community release (now parole)—due to both their inappropriately high security classifications and their limited access to compulsory core programs. The discrimination against women prisoners is further exacerbated by the inappropriateness of these so-called rehabilitation programs which were designed to address men's criminogenic profile. Women have much less access to work and work choices than male prisoners, and much of this work is heavily sex-role stereotyped, with limited transferability to potential employment post release. And, the practice of strip searching women prisoners has a demonstrably greater impact on women prisoners, due to the high incidence of a history of assault, particularly sexual assault, and the use of male prison officers in these searches (Kilroy 2004:3).

In March 2006, the ADCQ released its detailed report on *Women in Prison*. The report reiterated much of the data submitted by Sisters Inside; the report agreed that some

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[5] Now Queensland Corrective Services (QCS).

discrimination and breaches of fundamental human rights were probably occurring to women in Queensland prisons. The report recommended changes needed to avoid being in breach of the *Anti-Discrimination Act 1991* (Qld). *Women in Prison* makes 3 general recommendations and recommends 68 specific changes. Overall, the ADCQ had 4 central concerns which were highly consistent with the issues raised by Sisters Inside—that women prisoners may be over-classified, children's needs are inadequately addressed, mental health issues are often ignored and that Indigenous women are especially at risk of discrimination (ADCQ 2006:5).

The complaint to the ADCQ marked a watershed in Sisters Inside's development. Over the previous 5 years, at a service delivery level, Sisters Inside had largely worked with women prisoners. At a governance level, the organisation was driven by the advice of a Steering Group of women prisoners who met regularly with the Sisters Inside Management Committee inside prison. Upon submission of the complaint, Sisters Inside's professional staff suddenly began facing frequent challenges to accessing the prison, and would often be given administrative excuses for being excluded from prison, even though arrangements had been confirmed shortly before. Debbie was formally barred from entering the prison shortly after submission of the complaint. Soon thereafter, most Sisters Inside staff were also formally barred from entering the prison. The Management Committee was no longer able to meet directly with women prisoners in discharging its role.

This situation had been foreseen and resolved in advance of the crisis. During the establishment of Sisters Inside, considerable time and energy was devoted to establishing a sound basis for the organisation. The substantial process of developing Sisters Inside's organisational framework, particularly our *Values and Vision*[6] occurred in tandem with the process of incorporation in 1999. Many days of workshops were held inside maximum security at the Brisbane Women's Correctional Centre (BWCC) over a 6 month period. A consistent group of women prisoners, and their supporters from the outside, participated in these workshops which aimed to articulate the core purpose of Sisters Inside. The substantial debates which occurred included discussion about the tension between Sisters Inside's potential activist and service delivery roles. It was decided to try to pursue both functions. The organisational structure was set up in a manner that sought to provide some protection for its service delivery functions through clearly delineated responsibilities amongst Sisters Inside personnel. This included a clear decision that public advocacy would only be undertaken by the Director and Management Committee and that service delivery staff would not be directly involved with Sisters Inside's activism work. The decision had been made in advance that, should the organisation be forced to choose, advocating for the human rights of women in prison was a higher priority than 'filling the gaps' in service provision to women prisoners. In keeping with the plans made five years earlier, when locked out of women's prisons, Sisters Inside adjusted its service delivery focus and largely provided services to women following their release from prison. Sisters Inside has only recently received approval to resume its suite of services inside Queensland women's prisons.

The process surrounding the ADCQ report significantly increased Sisters Inside's national and international profile. Over the past 10 years we have conducted biennial international conferences, which have brought together activists from around the world, and

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6 At <http://www.sistersinside.com.au/values.htm>.

women with lived prison experience. Within Australia, Debbie has worked alongside anti-prison activists in several states and territories, assisting them to seek similar investigations of human rights violations against women in their criminal justice systems. The Victorian, New South Wales, Northern Territory and Australian governments have each taken (different) actions to investigate issues relevant to women and imprisonment over the past 5 years. The most comprehensive recent investigation of the criminalisation of women has come from the Ombudsman for the Northern Territory (2008), whose report found remarkably similar human rights issues for women prisoners in the NT, to those identified by the ADCQ.

As a result of this groundswell, Sisters Inside has been increasingly invited to contribute to community education and consultations. Debbie has dealt with an escalation in public speaking and media appearances since 2005. This has included travelling widely throughout Australia, visiting women's prisons and engaging with women prisoners in most states and territories. Debbie has appeared before several Australian and state government parliamentary inquiries. Sisters Inside has contributed significant submissions to a wide variety of Australian and Queensland Government consultation processes and legislative reviews. In 2008, Sisters Inside submitted a major paper on breaches of women prisoners' right to education, to the UN Human Rights Council, through the Special Rapporteur on Education. Debbie's admission as a practicing lawyer in late 2007 further extended the activism platforms available to Sisters Inside. The organisation's detailed documentation of evidence of breaches of women's human rights to the *National Human Rights Consultation* (Sisters Inside 2009) and publication of a resource for criminalised women and their advocates, *Human Rights In Action* (Kilroy et al 2009) have cemented our leading activist role in Australia.

Sadly, these efforts have had limited outcomes for criminalised women to date. Whilst governments occasionally make minor concessions at a policy level, or provide funding to fill gaps in existing services, the human rights of women prisoners in Queensland and Australia more widely continue to be breached on a daily basis. The Canadian experience has shown that the existence of national human rights legislation alone, does little to improve the situation of criminalised women. However, it does provide a moral compass for the State, an agreed, consistent basis for arguing women's legitimate expectations, and some incentive for governments to begin to address the rights and needs of criminalised women. It is critical that Australia commit to a Bill of Rights and that this is backed up by international human rights instruments which articulate the responsibilities of States in meeting the rights and needs of criminalised women, particularly women prisoners.

International Activism – The United Nations Context

The injustice of the worldwide trend toward increasing criminalisation and imprisonment of women is progressively being acknowledged. The international community is increasingly, albeit inconsistently, acknowledging the need for a human rights driven approach to address the over-criminalisation and over-imprisonment of women and girls.

Prior to 1990, the limited international attention to the needs and rights of criminalised women was almost exclusively focused on biological imperatives, which were seen as

'special needs' or 'special problems'[7]. More recently, some hopeful signs have emerged. For example, whilst never specifically mentioning the needs of criminalised women and their families, the *Standard Minimum Rules for Non-Custodial Measures (*the *Tokyo Rules,* adopted in 1990) are concerned with reducing rates of imprisonment, observing participants' human rights, working toward social justice and addressing rehabilitation needs (General Principles 1.5). *The Basic Principles for the Treatment of Prisoners* (also adopted in 1990) re-engaged with the human rights of prisoners in a way not seen in previous documents. Of particular relevance to women (given the high proportion with mental health issues) was its advocacy of the abolition of solitary confinement as punishment.

This century has seen the explicit application of this more rights-based, developmental approach to women. The *Vienna Declaration* (endorsed by the General Assembly in 2003) recognised the relationship between treating women 'fairly' within the criminal justice systems and the relative impact of programs and services on women and men. *General Assembly Resolution 61/145* (2006) recognised the critical role violence against women and gender discrimination play in the criminalisation of women and their subsequent treatment in prisons (and other institutions). It also addressed women's right to physical and psychological safety whilst in prison, including the right to be free of victimisation, and focused on State policies and actions that have a discriminatory impact on women. This was followed by *General Assembly Resolution 63/241* (2008), which acknowledged the role of the imprisonment of parents in undermining the rights of their children.

In 2009 the Human Rights Council (*Resolution 10/2* of 25 March 2009) called for Member States to pay greater attention to the issue of women and girls in prison, and the impact of parental imprisonment on children. Also in 2009, the *Commission on Crime Prevention and Criminal Justice* (CCPCJ) in *Resolution 18/1* highlighted a number of areas for specific attention. It acknowledged the significant increase in the imprisonment of women worldwide. It recognised that women are often accommodated in prisons designed for men, which fail to address the vulnerability and specific needs of women prisoners. It commented on the impact of women's imprisonment on families and children, and the need to consider gender-specific social reintegration processes. It noted the importance of collecting, maintaining, analysing and publishing data on criminalised women. It recognised the value of involving non-government organisations (NGOs), amongst others, in the provision of assistance to Member States.

International Activism by NGOs

In the midst of these more optimistic trends, Sisters Inside and CAEFS jointly issued a statement in 2005 to the 11th UN Congress on Crime Prevention and Criminal Justice meeting in Bangkok, which advocated the need for a new international instrument to address the needs and rights of criminalised and imprisoned women (Pate and Kilroy 2005).

Since then, CAEFS and Sisters Inside have jointly been at the forefront of international activism by NGOs to improve the situation of women prisoners through the United Nations.

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[7] See for example the Standard Minimum Rules for the Treatment of Prisoners (SMR - 1957), Resolution 9 of the Sixth UN Congress on the Prevention of Crime and the Treatment of Offenders (1980), United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules - 1985) and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988).

Both organisations have consultative status with the UN and regularly participate in UN processes. Most recently, Kim and Debbie were active participants in the International Expert Group that developed the *Draft United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offender*s (Bangkok November 2009), which were subsequently adopted by the *12th United Nations Congress on Crime Prevention and Criminal Justice* (Brazil April 2010).

Sadly, the *Draft Rules* presented for discussion at the Expert Group meeting (and subsequently adopted in principle) largely represented a reversion to the narrow, biologically-driven approaches of the past. The Draft Rules appeared predicated on 2 assumptions—the goodwill of prison authorities and the capacity of prison staff to function in a highly sophisticated, multi-functional way. In the experience of Sisters Inside, CAEFS and other NGOs throughout the world, these are not legitimate assumptions.

Whilst the *Draft Rules* make some reference to women's experiences of abuse and violence, they fail to address any other of the key issues that contribute to the criminalisation of women. They make no call to Member States to address underlying causes of women's imprisonment—social, economic, cultural and racial disadvantage.[8] They make no call to address the breaches of women's human rights in society at large which underlie most criminalisation, including issues such as racism, poverty, homelessness and mental health.

The *Draft Rules* do not address the increasing criminalisation of women world-wide, most commonly for non-violent behaviour and behaviour that is more symptomatic of mental health and related issues, than of criminality. They fail to address the fundamental inequities in the arrest, charging, pre-trial imprisonment on remand, prosecution and sentencing of women—particularly of Indigenous and other minority groups of women. They fail to address the needs of women prisoners with disabling mental health issues, which will inevitably be escalated by the proposed strengthening of the authority of correctional staff, and increased dependence on prison staff.

The *Draft Rules* fail to prohibit, or even discourage, strip searching of women prisoners (a practice which falls within the definition of torture in the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*). Despite the provisions of the S*tandard Minimum Rules for the Treatment of Prisoners* (SMR – 1957), women are commonly supervised by male prison officers in prisons around the world. The current reality is that male officers often participate in strip searching of women prisoners and the supervision, frequently including visual surveillance of naked women with mental health issues in secure custody. This has a particular impact on the psychological welfare of women with a history of abuse by men in positions of authority over them—the vast majority of women prisoners. Common strip searching and surveillance practices would be considered sexual assault in any setting other than a prison. Yet these practices are effectively legitimised by the *Draft Rules*. Of even greater concern, the *Draft Rules* fail to prohibit, or even discourage, strip searching of children—a practice which can cause lasting psychological damage to the child and serve to reduce children's contact with their imprisoned mothers.

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[8] According to UNICEF (2007) women perform 66 per cent of the world's work and produce 50 per cent of the food, yet earn only 10 per cent of the income and own 1 per cent of the property.

The *Draft Rules* fail to address the fact that prison policies and processes are based on the criminogenic patterns of men. Women throughout the world are accommodated in high security prisons designed for men who have committed serious violence crimes. This is despite the fact that very few women have committed crimes of this sort (and those categorised as 'violent prisoners' have most often committed crimes driven by sustained violence by partners or family members against themselves or their children). Women are subjected to compulsory rehabilitation programs designed for men (which fail to meet the definition of education in the *Universal Declaration of Human Rights*).

Women's limited access to both education and vocational training severely undermines their opportunities to overcome the poverty of themselves and their families—one of the key drivers in many women's original criminalisation. International evidence clearly demonstrates that women prisoners generally have access to a narrower range of sex-role stereotyped work than men prisoners, and often receive lower levels of remuneration for their work (Kilroy 2004). This is despite the fact that many women prisoners' income must both meet their own material needs and contribute financially to the support of their children.

The *Draft Rules* take inadequate account of the unique role of women as primary, or sole, carers of dependent children prior to imprisonment. They fail to focus on the need for small, localised, low or open security, community-based, child-friendly facilities for women prisoners that contribute to their community integration or reintegration. They fail to advocate judicial review of decisions made by prison authorities affecting the separation of mother and child, recognition of the family caring responsibilities of mothers as a mitigating factor in sentencing, and the establishment of conditions conducive to mothers and their children maintaining regular contact in a manner that optimises the quality of their relationship.

Women prisoners repeatedly report that they are penalised if they attempt to access their rights—even those few rights which are allowed under prison rules. Women who speak out are frequently treated as a threat to the 'good order and security' of prisons, or their claims are dismissed as 'frivolous' or 'vexatious'. They are commonly punished and placed in isolation or other detention facilities—the very setting in which torture most commonly occurs. The increase in the power of prison staff proposed in the *Draft Rules* can only be expected to exacerbate this problem.

These issues and more will be central to ongoing international activism. The *Draft Rules* are inconsistent with *CCPCJ Resolution 18/1*. However, the very existence of this Resolution indicates the potential support for a more human rights driven approach by Member States. It provides a critical, internationally-acknowledged, basis for arguing a more just outcome for criminalised women throughout the world.

In preparation for the International Expert Group meeting in 2009, CAEFS and Sisters Inside jointly developed an alternative set of rules, designed to better reflect and address the human rights of women prisoners (Sisters Inside and CAEFS 2009). These were largely ignored by government delegates at the meeting. However, it is intended that these alternate international rules will provide a basis for further activism by NGOs internationally, over coming years.

A Call to Arms

Depending on where we stand, our projects may differ somewhat. In Canada, we urge focus on the Aboriginal women who, by forcing international focus on inadequate housing and other basic human rights on Reserves, and on poisoned land and water, have taken our federal government to the United Nations. This has caused Canada to lose its number one world rating in relation to the standard of living of its citizens. In Australia, we recognise the mothers and grandmothers, the daughters and granddaughters, who spent their lives looking for one another following the State crime of the Stolen Generations. And, the Aboriginal women and men driving opposition to the military invasion of communities in the Northern Territory and working tirelessly to rebuild Country, Law and Culture.

We remember the Wave Hill Walk Off—the 200 Gurindji pastoral workers, house servants and their families who maintained a prolonged strike at the vast Vestey's cattle station in the Northern Territory in 1966, in protest against the appalling living conditions and zero wages being paid. We urge focus on the workers who led the Winnipeg general strike and other labour leaders who helped define a humane work week—and, equally importantly, helped secure our weekends. We toast the working class feminist organisers who insisted that women and children no longer be considered the property of the men who sired or married them; who insisted that violence against women and children must no longer be tolerated, while hiding those same women from the men who tried to kill them and their kids.

We would follow the young people who demand that we fight globalisation and capitalism. The students in Quebec who went on strike a few years ago to fight the increased privatisation of prisons, health care and education and corresponding cuts to public funding of education and other essential services. The First Nations who blockade highways and logging roads to draw attention to the rape of the land. Canada's pledge to Aboriginal women and women's groups, who for 20 years refused to accept *never* as an answer, as they demanded and ensured that 500 missing and murdered Aboriginal women in Canada did not continue to be abandoned by the criminal injustice system and the penal industrial machine.

We honour the brave women who enacted the realities of the routine strip searching occurring in women's prisons throughout Australia, before the media at a national conference of (predominantly) criminal justice apparatchiks, in Adelaide in 2000. Despite the derision of conference participants, the disbelief of many in the media, and the personally re-traumatising effects of the experience, these women stood by their demonstration of the torture being perpetrated against women on a daily basis in Australian prisons. We honour the women in prisons throughout Australia who brave the disproportionate use of police riot squads against women prisoners, to assert their rights and needs. We honour the women who support their fellow prisoners, and advocate for them, at the risk of 'administrative segregation' to maintain the 'good order' of the prison.

We also honour the Canadian lawyers, who were sued, in addition to being censured by their so-called professional colleagues, and nearly lost their livelihood when they named the racism of the police after they strip-searched three 12 year old girls in a school. (Similar bully-boy tactics were also employed to allege bias against Corinne Sparks, the African

Nova Scotian judge who took judicial notice of the racism of police).[9] And, the many young people, men and especially the women prisoners who refuse to succumb, who will not stand-down or over, but instead walk with their sisters inside ... like the ones who courageously authorised the release of information to the media about what has now come to be known in Canada as the *April 1994 incident*, when 8 women, 5 of whom are Aboriginal, were illegally stripped, shackled, transferred to a men's prison, then were held for 9 months in isolation until the videotape of the degrading, humiliating and illegal treatment they suffered was broadcast worldwide.[10]

By focusing on initiatives to keep women in the community and facilitate their integration after prison, our member societies work to encourage the Canadian public to embrace abolition and decarceration. Particularly in this time of fiscal restraint, our aim is to retain a proactive focus in order to encourage the development of—and support for—community-based options, rather than pay the human and fiscal costs of our current increasing reliance on incarceration. We focus on increasing public awareness of the myriad issues facing women in prison and gradually break down the stereotypes of criminalised women.

Conclusion

There is a long way to go in achieving justice for criminalised women throughout the world. CAEFS, Sisters Inside and other NGOs internationally will continue to advocate for the rights of criminalised and imprisoned women, within their own jurisdictions—at both policy and practice levels. International collective action by individuals and organisations committed to social justice and human rights is essential to creating internationally-agreed benchmarks against which the human rights records of States can be examined and critiqued.

As our allies in and from prison often remind us, the words of an Australian Indigenous activist artist, Lilla Watson[11], best encapsulate and convey the message of our work:

If you have come here to help me,
you are wasting our time.
If you have come here because
your liberation is bound up with mine,
then let us work together.

Debbie Kilroy and Kim Pate*

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9 The Supreme Court of Canada rejected charges of bias against her: *R v RDS* [1997] 3 SCR 484, (1997) 151 DLR 4th 193.

10 This was the incident that lead to the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, by Madam Justice Arbour (Arbour Commission, 1996).

11 This quote is usually attributed to Lilla Watson from a speech to the *1985 United Nations Decade for Women Conference* in Nairobi, but other sources suggest that Watson credits other Aboriginal women with co-authoring the statement.

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