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**Special report by the Québec Ombudsman
(summary)**

Detention conditions, administration of
justice and crime prevention in Nunavik

Québec City, February 18, 2016

Summary

The Québec Ombudsman acts to ensure that the residual rights of all inmates under the responsibility of the Government of Québec are upheld. These are people whom the courts have ordered to be detained during legal proceedings (“awaiting trial”) or who have been sentenced to serve less than two years (“détainees”).

Following complaints and information received as the Correctional Ombudsman of Québec, the Québec Ombudsman conducted an investigation into the detention conditions for inmates in Nunavik, a territory of Québec located north of the 55th parallel, with a population of about 11,000 (the Nunavimmiut). It therefore visited three villages — Puvirnituq, Akulivik and Kuujuaq — in April 2015.

The investigation was aimed at determining whether detention conditions for Nunavik inmates are reasonable and comply with established standards and requirements. The investigation then went on to assess detention conditions for Nunavik's Inuit in correctional facilities in Southern Québec. The Québec Ombudsman's observations and recommendations regarding detention and correctional services are presented in Chapter 1 of this report.

In Nunavik, the Québec Ombudsman quickly noted that correctional issues are just one part of the systemic shortcomings in the administration of justice. Chapter 2 of this report is therefore dedicated to the human and financial impacts of the multiple transfers Nunavimmiut offenders experience because there is no correctional facility in Nunavik.

Chapter 3 addresses the over-representation of Inuit in Québec's judicial and correctional systems, along with the mismatch between the justice system and Inuit reality. It also proposes solutions for reducing crime and preventing court cases — and, thereby, reducing incarceration.

Inuit and the Québec correctional system

After committing an offence, people arrested in Nunavik are temporarily detained either in a Kativik Regional Police Force station administered by the Kativik Regional Government, or in Nunavik holding cells under the responsibility of the Ministère de la Sécurité publique. This is where they stay until their release, if applicable, or until they are transferred to a Southern correctional facility in cases of preventive custody while awaiting their court appearance and trial.

There is no correctional facility in Nunavik. Preventive custody therefore takes place in correctional facilities in Southern Québec, under the responsibility of the Direction générale des services correctionnels of the Ministère de la Sécurité publique. When there is a session of the Itinerant Court in a Nunavik village, it is also the Direction générale des services correctionnels that is responsible for custodial activities in Nunavik's police station cells (or holding cells) and for escorting offenders to the Itinerant Court. The administration of justice in Nunavik is carried out through Itinerant Court with a Court of Québec judge presiding. This Itinerant Court serves eight of the fourteen Nunavik communities. Judges of the Abitibi judicial district — of which Nunavik is part — travel to hear cases approximately 45 weeks out of the year, based

on a fixed calendar. Therefore, individuals in preventive custody are once again temporarily detained in Nunavik in the days preceding trial.

To ensure that the residual rights of Nunavik inmates are upheld and that inmates receive basic services during their incarceration, the Sivunirmut Agreement provides for shared responsibilities between the Direction générale des services correctionnels and the Kativik Regional Government governing Nunavik (and for which the Québec Ombudsman has no jurisdiction) for the custody of offenders during Itinerant Court visits. In this respect, under the terms of this agreement, since 2005, the Direction générale des services correctionnels has been required to provide the Kativik Regional Government with an annual report to ensure that detention cells in Nunavik meet requirements and are safe. However, it was only following a request from the Québec Ombudsman in 2013 that a first report was produced. The brevity of this report, the lack of objective information on Nunavik inmates and the absence of concrete solutions to pressing issues on detention conditions all confirmed the importance of the investigation that led to this report from the Québec Ombudsman.

In Nunavik, detention conditions are below even the most basic standards

Once on site, the Québec Ombudsman quickly ascertained that detention conditions in Nunavik are below current standards and do not always respect the fundamental rights of inmates — particularly their right to human dignity.

Detention conditions are particularly difficult in Puvirnituq, situated on the eastern shore of Hudson Bay. In the weeks of Itinerant Court sessions, occupancy in police station cells is much too high: during peak periods, a cell intended to hold two inmates might hold seven individuals. People with incompatible profiles (e.g. those brought in from Amos for their trial and intoxicated individuals) are in close proximity due to a shortage of space.

Additionally, in Puvirnituq, cells are generally unsanitary and equipment is obsolete, defective or insufficient. Often unusable, sanitary facilities do not offer any privacy, and access to water is limited. Janitorial and laundry services are often lacking or non-existent. According to the normative framework, the Kativik Regional Government is responsible for providing laundry and janitorial services for holding cells (Kuujjuaq, Kuujuarapik and Puvirnituq) and for all police station cells in Nunavik. In the 2013 and 2014 annual reports provided to the Kativik Regional Government, the Direction générale des services correctionnels determined that the latter had complied with this obligation. The Québec Ombudsman does not share this opinion and considers that a designated person must be tasked to see to it that these obligations are fulfilled in order to ensure at least a minimum level of sanitation.

The Québec Ombudsman also noted that inmates in Puvirnituq and some other villages are confined to their cells 24 hours a day — a unique situation in Québec that is in violation of minimum standards. They do not have access to an outdoor courtyard or a common area.

Despite attempts by the Direction générale des services correctionnels to meet its legal obligations, it is clear that detention conditions in Nunavik are currently unacceptable.

In light of its observations, the Québec Ombudsman considers that cells need to be added in Puvirnituaq in the short term, given the immoderate occupancy rate. In 2014-2015, the Itinerant Court spent 14 weeks there, a total of 68 days (excluding youth protection sessions). There is also incarceration in Puvirnituaq during court appearances in small villages in Hudson's Bay, such as Salluit, which do not have facilities to hold inmates overnight. The short duration of stays in these facilities does not justify current detention conditions in Nunavik. People incarcerated there should not have to fear for their health and safety during their stay.

The Québec Ombudsman has no jurisdiction regarding the Kativik Regional Government, given its special status. However, the Québec Ombudsman must ensure that the Direction générale des services correctionnels of the Ministère de la Sécurité publique provides for human detention conditions in compliance with standards and the law, even though the Direction générale des services correctionnels has delegated certain responsibilities to the Kativik Regional Government through the Sivunirmut Agreement.

In this respect, the Québec Ombudsman considers that the responsibilities shared between Ministère de la Sécurité publique correctional officers and the Kativik Regional Police Force officers must be clarified, as a misunderstanding of the roles has prejudicial effects on inmates. Clarifying — or redefining — the responsibilities for each, taking current detention conditions into account, along with creating a more active partnership between the Ministère de la Sécurité publique and the Kativik Regional Government, are essential in ensuring that the residual rights of inmates are upheld.

Detention conditions not adapted to the reality of Inuit in Southern Québec correctional facilities

When a judge orders the incarceration of a Nunavimmiut, he or she is incarcerated in one of 20 correctional facilities south of the 49th parallel — more than 1,000 km from where he or she lives. Inuit offenders are thus deprived of family and community support, which hinders their social reintegration after imprisonment. The language barrier and lack of information available in Inuktitut are also problems, making it difficult for inmates to assert their most basic rights.

For all aspects of Inuit detention to meet established standards and requirements, be reasonable and uphold residual rights — both in Northern and Southern Québec — ,the Québec Ombudsman has made **nineteen recommendations in Chapter 1 of this report**. These recommendations pertain to:

- ▶ bringing infrastructure and basic equipment up to standard
- ▶ access to laundry and janitorial services
- ▶ the quality of meals
- ▶ access to a courtyard
- ▶ the management of personal belongings
- ▶ surveillance of the premises
- ▶ the complaints examination system
- ▶ telephone calls
- ▶ anti-suicide material

- ▶ safe custody in which residual rights are upheld
- ▶ limiting language barriers.

They aim to significantly improve — at reasonable cost — detention conditions for Nunavimmiut. In all circumstances and regardless of where they are detained, Nunavimmiut should be treated fairly, and detention conditions must immediately be upgraded to a level that is acceptable in a lawful society like Québec.

The administration of justice in Nunavik

From arrest to incarceration: Trying times for Nunavimmiut

When someone is arrested in Nunavik and needs to be detained in a Southern correctional facility during the legal proceedings, various transfer scenarios are possible, as detailed in Chapter 2.

Generally, shortly after being arrested, offenders are taken by police officers to the justice of the peace. In Nunavik, given the distance, they make a first remote appearance, usually by telephone. If, during the court appearance, the criminal and penal prosecuting attorney has no objection to their release, offenders are released — with or without conditions — and the next steps of their judicial process take place during upcoming Itinerant Court sessions in their village or region. If, however, the prosecutor objects to their release, offenders are placed under preventive custody and a remand warrant is issued by the judge or justice of the peace. Remand warrants summon police officers to turn over the accused to the director of a correctional facility or its representatives — correctional officers — who must ensure that the accused is present for his or her bail hearing.

In practice, this means that many Inuit offenders need to travel to the Amos courthouse for their bail hearings, as this is where some of the judicial services are offered for Nunavik. The distance and difficult travel conditions mean that up to fourteen days may elapse between a person's arrest in Nunavik and arrival in Abitibi for the bail hearing. If the Itinerant Court is not in the village at the time of the arrest, Kativik Regional Police Force officers escort the offender to Montréal by plane. The shortage of police officers available for carrying out transfers, difficult weather conditions and several layovers often cause major delays. On arriving in Montréal, the accused is turned over to correctional officers and taken to the Amos correctional facility by prison van for the bail hearing, after spending a few hours to a few days in Saint-Jérôme.

If, after the bail hearing, the judge decides that the accused must remain in detention, preventive custody generally takes place at the Amos correctional facility. However, the person awaiting trial returns North with the Itinerant Court for the trial. In 2014-2015, 369 offenders were once again flown north to appear before the Itinerant Court.

Obviously, the human and financial impacts associated with transferring offenders are significant, especially when, following a bail hearing, the accused is released and travels back home at the cost of the public purse.

Major delays are also associated with these ways of proceeding, particularly due to the lengthening of preventive custody caused by transfers south. The average stay of Inuit in preventive custody has increased by about eight days in five years, and is about 18 days longer than for the rest of the prison population.

Management costs associated with transfers

Excluding costs that the Direction générale des services correctionnels is unable to quantify (such as the cost of inter-facility transfers), annual expenses linked to the transportation and incarceration of inmates represented at least \$3,754,166 in 2014-2015. If the annual costs of having the Kativik Regional Police Force transport and detain offenders awaiting trial is included, these annual expenses add up to \$6,556,604.

These costs will increase in the coming years, as the incarceration and crime rates in Nunavik continue to grow. The number of cases to be heard by the Court is also growing rapidly, increasing by 239% between 2002 and 2012. To meet demand, the Court has added sessions, and the number of weeks in the Court calendar has gone from 28 to 47 between 2005-2006 and 2014-2015. Travel costs for the Itinerant Court are also very high. For instance, a trip to Puvirnituk may cost around \$35,000, and to Salluit, between \$60,000 and \$70,000.

Pending solutions: Creation of an airlift between Abitibi-Témiscamingue and Nunavik, grouping inmates in the South and increased use of videoconferencing in the judicial process

The Québec Ombudsman deplors that the implementation of an airlift between Abitibi-Témiscamingue (Amos) and Nunavik — advocated by the Direction générale des services correctionnels and its partners for several years — has yet to materialize. The project consists of creating an aerial connection between the two regions for times when the Itinerant Court is not sitting. This would allow correctional officers and Kativik Regional Police Force officers to significantly reduce the costs associated with transfers, along with safety risks. This solution would also prevent Inuit from having to go through Montréal, then Saint-Jérôme, just for a bail hearing at the Amos courthouse.

In allowing direct trips between Nunavik and Amos, the future airlift would also make it easier for family and relatives to visit, and there would be no need to go near downtown Montréal, where there is an increased risk of re-offending and homelessness.

Having all Inuit in the correctional system incarcerated in the new correctional facility in Amos — set to open in the fall of 2016 — would optimize the airlift, bringing those released each week back North directly rather than having them go through Montréal. Grouping Inuit inmates could also contribute to their social reintegration by concentrating the correctional network's expertise regarding its Inuit clientele. Finally, such grouping, along with the new airlift, would allow incarcerated Nunavimmiut to be closer to their family.

Another solution for significantly reducing the need to transfer detainees and those awaiting trial to Southern Québec would be to increase the use of videoconferencing as part of legal proceedings. However, implementation of this solution is slow to happen.

With the exception of Kuujuaq, most villages do not have the equipment, technology or qualified staff needed for effective appearances via videoconferencing. That is why, when the criminal and penal prosecuting attorney objects to an offender's release following a telephone appearance, the accused is transferred to Abitibi-Témiscamingue for the bail hearing.

The Québec Ombudsman considers that additional efforts are needed to increase the use of videoconferencing or any other adapted technology, thus ensuring that pre-trial procedures, including bail hearings, are done remotely, free of unnecessary transfers, barring some exceptions. This would allow the Itinerant Court to focus on trials, and the Kativik Regional Police Force to optimize the use of its resources in order to serve the Nunavik communities by not having to escort inmates to Southern Québec.

In Chapter 2 of this report, the Québec Ombudsman makes four recommendations so that the Ministère de la Sécurité publique and the Ministère de la Justice identify alternatives to the multiple transfers experienced by Nunavimmiut offenders. Implementing these recommendations would help reduce injurious effects on people and generate substantial savings. The main solutions proposed include the implementation of an airlift, grouping Inuit in a single correctional facility, and the increased use and sharing of technological resources for remote court appearances.

Crime prevention

Although the purpose of the investigation in Nunavik was to observe detention conditions and make sure they are reasonable and respectful of inmates' residual rights, the Québec Ombudsman quickly noted that incarceration problems stemmed from a much broader issue.

Over-representation of Inuit in Québec's judicial and correctional systems

One obvious finding: there is an over-representation of Inuit in the judicial and correctional systems. Over the past few years, this over-representation has continued to grow. In 2015, the number of Inuit who spent time in a correctional facility increased by 64% compared to 2010. Furthermore, there is nothing to indicate that the situation will improve in the coming years. The crime rate in Nunavik continues to grow, whereas it is dropping for Québec as a whole.

The justice system's mismatch with the reality of Nunavimmiut and the scarcity of crime prevention resources — particularly those for treating addiction in the territory — contribute to the over-representation of Nunavik's Inuit in the judicial system and correctional facilities.

This problem is nothing new. As early as 1993, the Inuit Justice Task Force denounced the over-criminalization of Inuit and the misfit between the justice system and their reality.

The lack of concerted action from the authorities involved — and especially the Ministère de la Sécurité publique, the Ministère de la Justice, and local parties (Kativik Regional Government and Makivik Corporation) — exacerbates Inuit social problems and, as a result, perpetuates stereotypes about Inuit. Because court action and incarceration do not reduce social problems, it is imperative to go beyond justice system reforms and to implement changes that take the reality of these communities

into consideration. To do this, the authorities concerned must take concerted action to promote support for social reintegration and measures to keep cases out of the court. Chapter 3 focuses on these various issues.

It has become obvious that the justice system alone is not enough to lower the crime rate in Nunavik. There are insufficient resources to adequately resolve the complex mix of social issues affecting Nunavimmiut, which are at the root of most cases handled by the Itinerant Court. During the investigation it conducted, the Québec Ombudsman noted that Inuit found guilty and transferred South to serve their sentences do not always grasp the intricacies of their case or of the legalese used. The relative lack of attempt to make legal principles understandable to laypeople was striking during the Itinerant Court sittings that delegates of the Québec Ombudsman attended. Not to mention that indictments and other legal documents are not translated into Inuktitut.

Without minimizing the efforts made to adapt the administration of justice to the reality and needs of the North, particularly by the Ministère de la Justice and the judiciary, the Québec Ombudsman considers that the search for solutions to the issue of over-representation of Nunavimmiut in Québec's justice system and, consequently, in the correctional system, should focus on the root of the problem by zeroing in on the origin of crimes and on crime prevention.

Concerted efforts for social progress in Nunavik

Focusing on prevention and social reintegration

Because there are many Nunavimmiut with supervised probation and suspended prison sentences, and many are serving their sentence in their village, the Québec Ombudsman considers that working on the issues behind delinquent behaviours and on developing prevention and social reintegration programs adapted to the needs of each of the fourteen communities is essential.

Although studies show that Nunavimmiut offences are often linked to alcohol and drug abuse, the resources dedicated to treating alcoholism and substance abuse in Nunavik are scanty. Furthermore, Inuit offenders have limited access to social reintegration support services, both when they are released from the correctional facility and when they return to their village. However, such services are essential in curbing the increase in complex social problems affecting some Nunavimmiut.

The current situation, in which already there is limited access to addiction treatment resources (which foster crime prevention and social reintegration), is damaging. After serving a sentence in a Southern correctional facility, Nunavimmiut return to their communities and find themselves amid the same conditions that led to their criminalization, including alcohol and drug abuse by the people around them or in over-crowded apartments, which in turn creates a risk of re-offending. People with a criminal record also have a difficult time finding work.

In 2007, the Government of Québec, Makivik Corporation and Kativik Regional Government agreed to create the Safer Communities Program ("Ungaluk Program") instead of building a correctional facility in Nunavik. The sums invested in this program (\$10 million per year, indexed over a period of 22 years, for a total of \$315 million) were to be used to create programs to prevent and fight crime, promote the health and safety of Nunavik communities, help crime victims and improve correctional

services for Inuit. However, the Québec Ombudsman considers that participation in the Ungaluk Program's expert committee by government and Inuit community players is very modest at this time. For this reason, it recommends thorough planning and concerted action in the short-term in order to achieve the priorities set in establishing this program and, subsequently, to ensure positive outcomes in terms of crime prevention in Nunavik.

Strong justice committees and proactive support for initiatives aimed at preventing court action

The development of justice system alternatives is essential. This could include the consolidation of justice committees, improved access to psychosocial, rehabilitation and addiction treatment facilities, adapted reintegration programs and the implementation of a drug court program in keeping with the context in Nunavik, for people struggling with addiction.

The Québec Ombudsman feels that if the members of the justice committee were to benefit from support and funding to carry out their tasks effectively, they could act as resources in every community, thus improving Nunavimmiut understanding of and trust in justice and its administration on their territory. They could also offer support when detainees are released from correctional facilities.

The same is true for other alternative justice and social regulation initiatives, such as the Saqijjuq Project, which is funded by the Ungaluk Program. Targeting the repercussions of drug and alcohol abuse by mobilizing communities, Inuit organizations, and the government departments and agencies concerned, this initiative was given the go-ahead by the Government of Québec. However, the Québec Ombudsman notes the lack of decisions and of appropriate follow up. The proactive and cohesive participation of all partners, and the designation of a person entrusted with developing and implementing a common action plan to prevent and reduce crime and court cases in Nunavik, are essential for the success of the initiatives deemed valid.

The purpose of the seven recommendations in Chapter 3 is to mobilize partners to work together intensively toward preventing and possibly reducing the over-representation of Nunavimmiut in the justice and correctional systems. The Québec Ombudsman hopes that its external and independent perspective will contribute to the deliberations and cooperation of the parties and help to identify and implement concrete, effective solutions and to resolve complex — yet solvable — issues. Finally, to ensure positive results in the future, the Québec Ombudsman asks the Ministère de la Sécurité publique and the Ministère de la Justice to include an annual report on court-case prevention and social reintegration in Nunavik in their accountability report to the National Assembly.