



# **Canadian Human Rights Commission**

## **Submission to the United Nations Human Rights Council on the occasion of its review of Canada during the 4<sup>th</sup> cycle of the Universal Periodic Review**

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The Canadian Human Rights Commission (CHRC) is Canada's national human rights institution. It has been accredited "A-status" by the Global Alliance of National Human Rights Institutions, first in 1999 and again in 2006, 2011 and 2016.

The CHRC was established by Parliament through the *Canadian Human Rights Act* (CHRA) in 1977.<sup>1</sup> It has a broad mandate to promote and protect human rights.

The CHRC's efforts to promote and protect human rights include screening and, where possible, mediating discrimination complaints, representing the public interest in the litigation of complaints, developing policy, conducting research in consultation with rights holders and stakeholders, issuing public statements, tabling special reports in Parliament, and monitoring Canada's implementation of its international human rights obligations. The CHRC has additional responsibilities under the *Employment Equity Act*, the *Accessible Canada Act*, the *Pay Equity Act*, and the *National Housing Strategy Act*.

The CHRC is committed to working with the Government of Canada as well as domestic and international partners and stakeholders to ensure continued progress in the protection of human rights, including Canada's implementation of the rights and obligations enshrined in the various human rights treaties to which Canada is a party. In the spirit of constructive engagement, the CHRC submits this report to the Human Rights Council on the occasion of its review of Canada during the 4<sup>th</sup> cycle of the Universal Periodic Review (UPR).

There are a multitude of significant human rights issues in Canada requiring attention, including in relation to socio-economic disadvantage and poverty, systemic discrimination and the proliferation of hate, and access to employment, education, health and housing. In particular, the CHRC views the situation of Indigenous peoples as one of the most pressing human rights issues facing Canada today. Many communities continue to live without access to basic needs such as safe drinking water, suitable sanitation, food security and adequate housing, and Indigenous women and girls continue to bear a disproportionate burden of violence. In addition and of particular concern, Canada continues to grapple with the legacy of residential schools and the ongoing and traumatic discovery of unmarked graves.

In the past three cycles of the UPR, and in intervening and subsequent reviews undertaken by international bodies, recommendations have been made concerning a variety of these human rights issues. The CHRC wishes to note that all of these recommendations are important and we continue to advocate for progress in these areas both domestically and internationally. It is clear that, in many areas, little progress has been made in resolving longstanding issues.

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<sup>1</sup> Available at: [laws-lois.justice.gc.ca/PDF/H-6.pdf](https://laws-lois.justice.gc.ca/PDF/H-6.pdf). Although Canada's human rights laws are not part of the Constitution, they are considered "quasi-constitutional" in nature, meaning that all other laws must be interpreted in a manner consistent with human rights law.

During the last cycle of the UPR, a number of States recommended to Canada that it ratify the Optional Protocol to the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).<sup>2</sup>

Accordingly, the CHRC has chosen to focus this submission on situations where people are deprived of their liberty. While this issue affects a number of different groups in a variety of places of detention across Canada, it has a disproportionate affect on Indigenous peoples, Black and other racialized individuals, people with disabilities and in particular mental health disabilities, women, youth, individuals identifying as 2SLGBTQIA, and people experiencing homelessness.

The following submission begins by briefly outlining the current situation and concerns of people deprived of their liberty in Canada. While Canada has made a number of commitments to address some of these concerns since the last UPR, action on these has yet to take place. The CHRC believes that these longstanding issues require attention, and continue to illustrate a substantial and ongoing gap in the protection and enjoyment of human rights for various individuals and groups across Canada. One demonstrable step that Canada could take to bring about positive change would be to ratify the OPCAT.

## **1. The current situation and concerns of people deprived of their liberty in Canada<sup>3</sup>**

Canada has a long history of control over Indigenous peoples' liberty, tracing back to their removal from traditional lands, restrictions to living on reserves with inadequate housing, and the removal of children from their homes and communities. Historically children have been removed through the residential school system, but more recently this has occurred through discrimination in child welfare systems. This ongoing reality arising from Canada's colonial history looms large over many aspects of Indigenous peoples' lives, continuing to have a detrimental effect on the well-being of Indigenous communities across Canada and provides context for understanding the current state of Indigenous incarceration.

A web of complex and intersecting factors lie at the root of the "pipeline to prison" or to other places of detention, and the over-incarceration of certain segments of the population. These factors include, amongst others: historical disadvantage; systemic and institutional racism; colonization and the residential school system; discrimination and violence; racial bias and stereotyping that perpetuate everyday racial injustices; socio-economic disparity, including rising levels of homelessness and encampments, inadequate housing, and a lack of educational and employment opportunities; a lack of appropriate and culturally-relevant health and community services and supports; and

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<sup>2</sup> See for example the following 2018 UPR recommendations made by 27 different countries: 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20.

<sup>3</sup> The CHRC notes that this section does not include a comprehensive or exhaustive list of all issues concerning people deprived of their liberty in Canada. Rather, this section provides an overview of some issues and areas of concern.

over-policing of certain groups including Indigenous, Black and other racialized individuals, people with mental health disabilities, and those experiencing homelessness.

Across Canada, concerns continue to be raised that racial profiling and over-surveillance by police, security agencies, and other authority figures is a daily reality, reducing public trust, and having harmful impacts on Indigenous, Black and other racialized communities. This includes reports that these communities are over-policed through traditional means and through the use of new technologies such as facial recognition technology.<sup>4</sup> Of further concern are an increasing number of reports of injurious and deadly interactions between police and Indigenous, Black and other racialized individuals, often with mental health disabilities. Police are often first responders in situations involving people with mental health disabilities and have considerable discretion around how to respond, which can lead to the criminalization – and subsequently the institutionalization – of people with mental health disabilities and those in vulnerable circumstances. This has led to recent calls for systemic reform to policing services across Canada.

There are a number of concerns with respect to prison conditions and the disproportionate or unique impacts experienced by certain groups within the prison population. The recent prison population growth has been exclusively driven by increases in the composition of racially, ethnically and culturally diverse prisoners, and the situation of overrepresentation for certain groups, such as Indigenous prisoners, has deteriorated further. Of notable concern is the proportion of incarcerated Indigenous women, which has continued to increase, and is nearing half of all federally-sentenced women.

Beyond overrepresentation, certain segments of the populations also experience discrimination in relation to their conditions of confinement, including with respect to classification and treatment. Indigenous and Black prisoners are more likely to be over-classified as maximum security and to be involved in incidents of use of force. Culturally-relevant programming and services are both limited for Indigenous and Black prisoners, and not reflective of their lived experiences and rehabilitative needs. Without access to these programs and services, Indigenous and Black prisoners are less likely to be granted conditional release, and in some cases, are ill-prepared to reintegrate in their communities, placing them at a higher risk of reoffending and further contributing to their overrepresentation in prisons.<sup>5</sup>

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<sup>4</sup> See: Report of the House of Commons Standing Committee on Access to Information, Privacy and Ethics, *Facial Recognition Technology and the Growing Power of Artificial Intelligence*, October 2022, at: <https://www.ourcommons.ca/DocumentViewer/en/44-1/ETHI/report-6/>; CHRC Submission to the House of Commons Standing Committee on Access to Information, Privacy and Ethics, *Facial Recognition Technology use in Policing*, April 2022, at: <https://www.ourcommons.ca/Content/Committee/441/ETHI/Brief/BR11713948/br-external/CanadianHumanRightsCommission-e.pdf>.

<sup>5</sup> See: Report of the Standing Senate Committee on Human Rights, *Human Rights of Federally-Sentenced Persons*, June 2021, at: <https://sencanada.ca/en/info-page/parl-43-2/ridr-federally-sentenced-persons/>; Interim Report of the Standing Senate Committee on Human Rights, *Interim Report – Study on*

Mental health disabilities are more prevalent in Canadian prisons than in the general population, and those with mental health disabilities are amongst the most vulnerable populations within prisons. It has been repeatedly noted that prisons lack the appropriate capacity, resources and infrastructure to manage serious mental health conditions. As a result, many prisoners are incarcerated in settings that are ill-equipped to respond appropriately to their symptoms and behaviours, which can often exacerbate their mental health disabilities. Prisoners with other disabilities, as well as aging and older prisoners, are also vulnerable to victimization, and often reside in facilities that are inaccessible and ill-equipped to manage their health care needs. This has serious impacts on their health, safety, dignity and human rights.<sup>6</sup>

The issue of sexual coercion and violence in Canada's prisons is a top concern. This includes allegations of coercion, violence, bullying and harassment by other prisoners and by staff, and is an issue of particular concern for women, as well as trans, non-binary and gender-diverse prisoners. Prisoners may not report incidents of sexual coercion and violence due to a fear of reprisal, making systems for effective reporting and accountability measures particularly important in ensuring that prisons are not environments for perpetuating the violence and abuse that were a part of many prisoners' lives prior to incarceration.

The CHRC remains deeply concerned by reports that prisoners being held in "Structured Intervention Units" (SIUs) continue to experience conditions of solitary confinement. Of further concern are the disproportionate number of Indigenous prisoners, as well as the high prevalence of mental health disabilities, among those admitted to and held in SIUs.<sup>7</sup> The SIU regime gives wide discretion to the Correctional Service of Canada to decide whether, when and for how long a prisoner should be confined in isolated and restrictive conditions. The failure to achieve four (4) hours out of the cell and two (2) hours of meaningful human contact is of particular concern, as is the fact that the mandate of the current oversight body expires in the summer of 2023, with no firm commitment for renewal or replacement with a permanent structure. Ongoing systematic monitoring and independent oversight of the SIU regime is crucial.<sup>8</sup>

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*the Human Rights of Federally-Sentenced Persons: The Most Basic Human Right is to be Treated as a Human Being*, February 2019, at:

[https://sencanada.ca/content/sen/committee/421/RIDR/Reports/RIDR\\_Report\\_Prisoners\\_e.pdf](https://sencanada.ca/content/sen/committee/421/RIDR/Reports/RIDR_Report_Prisoners_e.pdf).

<sup>6</sup> See: OCI and CHRC, *Aging and Dying in Prison: An Investigation into the Experiences of Older Individuals in Federal Custody*, February 2019, available at: <https://www.chrc-ccdp.gc.ca/sites/default/files/publication-pdfs/oth-aut20190228-eng.pdf>.

<sup>7</sup> See: Structured Intervention Unit Implementation Advisory Panel, *2021/22 Annual Report*, September 2022, at: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2022-siu-iap-nnlrpt/2022-siu-iap-nnlrpt-en.pdf>.

<sup>8</sup> The current oversight body – which is the SIU Implementation Advisory Panel – has highlighted a number of ongoing concerns in relation to SIUs, including conditions of confinement, length of stay and the limited impact of the independent external decision making process. Despite this body's recommendation for ongoing operational oversight, the CHRC notes that there has been no commitment to renew this body's mandate or to replace this body with a more permanent oversight body. It is crucial that the Correctional Service of Canada implement effective and timely data collection and public reporting practices to facilitate the analysis and monitoring of the experiences of prisoners placed in SIUs, so that such an oversight body is able to effectively fulfill its mandate. It is also crucial for

Extending beyond the prison system, there is also the broader issue of the institutionalization of people with disabilities, their treatment in these institutions, and the lack of access to adequate and appropriate supports and services that people with disabilities require to realize their right to live independently and with dignity in their communities. Due to the lack of adequate community-based supports, many people with disabilities, including young people with disabilities, continue to be institutionalized in inappropriate facilities such as hospitals, nursing/seniors' homes and other long-term care facilities. Underpinning these concerns is the lack of comprehensive data on the situations of persons living in institutions across the country, as well as related gaps in monitoring and oversight. Issues regarding the involuntary and forcible treatment of people with disabilities, including the involuntary hospitalization of people with psychosocial and intellectual disabilities, are especially concerning given the lack of independent monitoring of mental health facilities in Canada. People with disabilities living in such institutions were also particularly vulnerable during the COVID-19 pandemic, further contributing to calls for the accelerated deinstitutionalization of people with disabilities.

Older persons in institutions such as long-term care residences and nursing homes were also disproportionately impacted by COVID-19, resulting in a number of outbreaks and deaths. Many pre-existing inequalities and systemic issues within these institutions were amplified by the pandemic, including inadequate conditions, maltreatment, neglect and abuse, and poor levels of care, further highlighting the need for increased oversight and better inspection processes, as well as lasting solutions that ensure the health, care and dignity of older persons are protected.

Every year, thousands of migrants who are not serving a criminal sentence are detained in Canada. The CHRC remains deeply concerned by the conditions of confinement of those detained. A significant portion of migrants are held in institutions intended for those convicted of crimes rather than immigration holding centers, sometimes for significant periods of time or indefinitely. Limited services are available to these detainees. Independent oversight is urgently needed in this area.

Finally, the apprehension of Indigenous and Black children by child welfare agencies, and their subsequent overrepresentation in modern-day institutions such as the child welfare system, is both concerning and reminiscent of Canada's history of institutionalized child neglect, abuse and discrimination in residential schools. In addition to the trauma of being removed from one's family and the loss of connection to both culture and identity, there are also many other negative and long-term effects

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recommendations and decisions that are made through such a review, and which are related to conditions and duration of confinement, to be transparent, timely, binding and open to examination. Given that various groups within the prison population experience intersectional vulnerabilities, special attention must be given to how the following specific groups are experiencing conditions of isolation: Indigenous and racialized prisoners, women, trans and gender-diverse prisoners, and those with mental health disabilities.

associated with being placed in this system. For instance, youth from the child welfare system are at much greater risk of becoming involved in the juvenile criminal justice system – a process sometimes referred to as the “child-welfare-to-prison pipeline” – leading to intergenerational institutionalization and certain populations being deprived of their liberty throughout their lifetimes.

All of these realities have been repeatedly recognized by international and regional human rights mechanisms, by civil society and Indigenous organizations, by domestic human rights institutions, by Parliamentary Committee studies and reports, and – in many cases – by government. Nevertheless, substantive progress in these areas remains largely elusive.

## **2. Addressing these concerns through ratification of the Optional Protocol to the Convention against Torture (OPCAT)**

The CHRC is of the view that having transparent and independent oversight and accountability mechanisms in all places of detention lessens the risk of abuse and ill-treatment, reduces corruption, and restores dignity and human rights for those in the most vulnerable circumstances. However, many places of deprivation of liberty in Canada – or aspects of detention in those places – are not subject to such ongoing independent oversight. The CHRC believes that the ratification of the OPCAT and the subsequent designation of an appropriate National Preventive Mechanism (NPM) is an important and necessary step that Canada needs to take.

In compliance with the requirements of the OPCAT, an appropriate NPM should be identified by an open, transparent and inclusive process involving a wide range of stakeholders, and should operate in compliance with the Paris Principles. In order for the OPCAT to be effective in strengthening human rights protections for people deprived of their liberty across Canada, its implementation must be planned, resourced and coordinated across different jurisdictions and sectors of society, including the federal government, provinces and territories, human rights commissions, oversight bodies, civil society, Indigenous governments and organizations, and other rights holders.

In May 2016, Canada announced its intention to ratify the OPCAT. Despite numerous calls for Canada to ratify the OPCAT made by the CHRC, oversight bodies including the Office of the Correctional Investigator, various stakeholders, and international human rights experts and mechanisms,<sup>9</sup> at present the status of this commitment is unclear, and further details or updates have yet to be provided.

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<sup>9</sup> The CHRC continues to call for an update on the status of Canada’s ratification of the OPCAT in its various submissions to UN treaty bodies, including most recently in its submission to the Committee against Torture. See also the OCI 2020-2021 Annual Report, section 6, *Canada’s Ratification of the Optional Protocol to the Convention against Torture (OPCAT)*, available at: <https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20202021-eng.aspx#s9>.



**Recommendation: The CHRC recommends that Canada ratify the OPCAT without delay in order to strengthen human rights protections for people deprived of their liberty across Canada. This includes designating an appropriate NPM to ensure ongoing and enhanced independent oversight, monitoring and reporting in all places of detention. Steps should also be taken to develop a clear and time-bound implementation plan in full collaboration and coordination with the federal government, provinces and territories, human rights commissions, oversight bodies, civil society, Indigenous governments and organizations, and other rights holders.**