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Universal periodic review

Written statement* submitted by International Committee for the Indigenous Peoples of the Americas, a non- governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[8 February 2024]

* Issued as received, in the language of submission only.



Submission to the United Nations Human Rights Council regarding the Situation of Human Rights in Canada's

Prisoners' Legal Services ("PLS") is a non-profit legal clinic that serves people incarcerated in federal and provincial prisons in British Columbia. The BC First Nations Justice Council represents First Nations in BC on justice-related issues to bring about transformative change to the legal system. The BC Assembly of First Nations is a Provincial Territorial Organization representing and advocating for the 203 First Nations in British Columbia. The Union of BC Indian Chiefs works towards the recognition, implementation and exercise of our inherent Indigenous title, rights and treaty rights. The First Nations Summit is comprised of a majority of First Nations and Tribal Councils in British Columbia and provides a forum for First Nations in BC to address issues related to Treaty negotiations as well as other issues of common concern.

Several states have made recommendations to Canada related to human rights violations in Canada's prisons during its fourth Universal Periodic Review ("UPR"). Recommendations include that Canada:

- address the over representation of Indigenous people in the prisons system, especially of women (Pakistan);
- strengthen efforts to address the overrepresentation of persons of African descent, Indigenous people and minority groups in prison (Trinidad and Tobago);
- invest in community-based, Indigenous-led policies to disrupt the Indigenous incarceration pipeline and adequately finance Indigenous-operated correctional facilities (Ireland);
- adopt legislation to restrict the use of prolonged solitary confinement and adhere to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (Libya);
- ensure that solitary confinement is in line with the UN Mandela Rules and redouble efforts to address the overrepresentation of Indigenous people and other minority groups in prisons, as well as its underlying causes (Costa Rica); and
- ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (numerous states).

Our organizations have made the following recommendations to Canada as part of its fourth UPR:

- Commit to fully eliminating solitary confinement and solitary-like conditions in all federal prisons.
- Ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).
- Recognize Indigenous self-determination by shifting significant funding and authority from CSC to Indigenous governments and organizations to decarcerate Indigenous people in a manner consistent with the United Nations Declaration on the Rights of Indigenous Peoples.
- Accept the UN Special Rapporteur on the Rights of Indigenous Peoples' invitation to "invest in community-based, Indigenous-led policies with the aim of disrupting the poverty-to- prison 'pipeline' and embracing a justice strategy that includes recognition of Indigenous legal systems", and "implement Section 81 of the [Corrections and Conditional Release Act] in consultation with Indigenous Peoples to create alternatives to incarceration based on Indigenous legal orders."

We are concerned that Canada's report to the Human Rights Council does not adequately address these recommendations. We urge Canada to make concrete plans to end its mass incarceration of Indigenous and Black people and its continued use of isolation in its prisons.

Mass Incarceration of Indigenous People in Prison

Canada has ignored decades of calls to action to end the mass incarceration of Indigenous people in its prisons, which has continued to increase year after year. Now, Indigenous people represent 5% of the total population in Canada, but 32% of people in federal prisons. Fifty percent of women in prison are Indigenous. Indigenous people spend more of their sentences in custody than non-Indigenous people.

Joey Toutsaint is a Dene man incarcerated by CSC for approximately 18 years. He frequently reports to us his feelings of hopelessness living in such a toxic environment, where he has experienced over 2,000 days of solitary confinement, and frequent violence from prison officers. He wants Canada and the Human Rights Council to hear his pleas for help, and to be able to live in a culturally safe environment.

Canada has highlighted its creation of a new Deputy Commissioner for Indigenous Corrections in the Correctional Service Canada (“CSC”) as its main action to address the mass-incarceration of Indigenous people in its prisons. Other actions related to justice reform highlighted in Canada’s report were initiatives brought by provinces. Although Canada has initiated more consultations on addressing over-representation of Indigenous and Black people in prison, it has refused to take any concrete action to date.

We are deeply concerned that Canada’s response to the human rights crisis of mass-incarceration of Indigenous people is only to create a staff position to bring “attention and accountability” to “Indigenous issues”. This will not reduce the number of Indigenous people in prison or address the over-representation of Indigenous people in the most punishing and harmful aspects of incarceration, including isolation, force by officers and placement in maximum security. Much more significant reforms are required by Canada to end the mass-incarceration of Indigenous people in Canada, which is part of Canada’s ongoing genocide against Indigenous people.

Canada has failed to give life to s. 81 of the Corrections and Conditional Release Act (“CCRA”), which provides the Minister of Public Safety the ability to transfer authority over correctional services to Indigenous governments and organizations. The Minister has delegated the administration of s. 81 of the CCRA to CSC, which has under-funded Indigenous-operated healing lodges, and has refused to approve applications for more than six Indigenous-operated healing lodges across Canada in over 30 years. Indigenous-run healing lodges are funded to provide beds to accommodate only 3% of Indigenous people in federal prisons in Canada.

CSC maintains control over the form and structure that CCRA s. 81 alternatives to prison take, and to date, has required them to mirror colonial prisons, rather than allowing them to take on other forms based on Indigenous law, such as land-based initiatives. Canada has made no commitment to remedy this issue, and has not committed to the shift in resources to Indigenous governments and organizations that is urgently needed.

CSC is not an appropriate body to administer s. 81 of the Corrections and Conditional Release Act. These agreements should be made through the Ministry of Public Safety, based on nation-to-nation relationships.

We hope Canada will not white wash the action plans that come out of its consultations related to the Indigenous and Black Justice Strategies, and that Canada will meaningfully implement and resource them in a way that recognizes Indigenous self-determination.

Solitary Confinement

Canada reports that it has “eliminated both administrative and disciplinary segregation” and has implementing Structured Intervention Units to temporarily house people who pose a risk to others or themselves. We commend Canada for abolishing disciplinary segregation.

However, we are concerned that Canada continues its practice of isolating people in Structured Intervention Units (“SIU”) at levels that meet or come close to the United Nations’ definition of solitary confinement, and continues to use solitary confinement through other practices that are outside of legislative authority, such as suicide observation cells, dry cells, institutional movement routines and lockdowns.

Isolating people as a means of protecting them from self-harm or suicide is contrary to the well accepted evidence that solitary confinement causes suicide and self-harm.

Canada points to its implementation of Independent External Decision Makers (“IEDM”) as a means of providing oversight of conditions of confinement and the appropriateness of continued confinement in SIUs. In most cases, IEDMs lack authority to order a person to be removed from SIU other than to a maximum-security prison, where the person will generally face similar levels of isolation and other abuses. We are also concerned that CSC’s obstruction of the right to counsel negates the effectiveness of IEDM reviews of SIU placements.

We encourage Canada to address the use of solitary in all of its forms by adopting legislation similar to the United States of America “End Solitary Confinement Act,” a Bill that would require 14 hours per day out of cell including at least seven hours of programs and education. Under this Bill, cell confinement for de-escalation or lockdowns is limited to four hours per day and 12 hours per week.

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9903 <https://fns.bc.ca/>, NGO(s) without consultative status, also share the views expressed in this
statement.