



Canadian
human rights
commission

Commission
canadienne des
droits de la personne



OCI
Office of the
Correctional
Investigator

BEC
Bureau de
l'enquêteur
correctionnel

November 1st, 2023

BY EMAIL

The Honourable Mélanie Joly, P.C., M.P.
Minister of Foreign Affairs

The Honourable Pascale St-Onge, P.C., M.P.
Minister of Canadian Heritage

The Honourable Arif Virani, P.C., M.P.
Minister of Justice and
Attorney General of Canada

The Honourable Dominic LeBlanc, P.C., M.P.
Minister of Public Safety, Democratic Institutions
and Intergovernmental Affairs

Subject: Open letter calling for Canada's ratification of the Optional Protocol to the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

Dear Ministers:

The Canadian Human Rights Commission (CHRC) and the Office of the Correctional Investigator of Canada (OCI) are writing to you on a subject of utmost concern with important human rights implications for individuals deprived of their liberty in this country: the lack of progress towards Canada's ratification of the United Nations Optional Protocol to the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

The OPCAT has now been open for ratification for over 20 years. As of today, there are 92 State parties and an additional 13 signatories. We were encouraged in May 2016 when Canada had announced its intention to ratify the OPCAT. However, despite political will and numerous calls by domestic and international stakeholders for Canada to follow through on this commitment¹, the public record on Canada's ratification of OPCAT remains unclear.

¹ The CHRC continues to advocate for Canada's ratification of the OPCAT in its various submissions to international bodies, including to the Committee against Torture, to Special Procedures mandate holders, and through the Human Rights Council's Universal Periodic Review process. In addition, during Canada's 3rd Universal Periodic Review, 27 different countries made recommendations to Canada that it ratify the OPCAT. See also the OCI 2020-2021 Annual Report, section 6, Canada's Ratification of the Optional Protocol to the Convention against Torture (OPCAT), available [here](#). See also this article from the John Howard Society of Canada, supporting our calls to ratify the OPCAT, available [here](#).

For instance, we are aware that in its response to the 2020/2021 Annual Report of the Correctional Investigator (February 2022), Canada had indicated that consideration of potential accession to the OPCAT was ongoing, and that this process had involved extensive consultation with provincial and territorial governments. It was further indicated that additional consultations and analysis were required to ensure an effective and efficient system of independent monitoring. However, we have not been provided with any updates regarding the status of this consultation process, including what, if any, gaps and obstacles towards OPCAT implementation have been identified.

We remain steadfast in our calls for Canada to ratify the OPCAT and believe that ratifying the OPCAT is a necessary step that Canada must take in order to bring about positive change for those deprived of their liberty across the country. This is an issue that extends far beyond the prison system and affects those in the most vulnerable circumstances including: migrant detainees; people with disabilities who are institutionalized in inappropriate facilities due to a lack of adequate community-based supports; people confined to long-term care residences; and children institutionalized through the child welfare system, in particular Indigenous and Black children who continue to be over-represented in this system.²

Canada's current oversight and monitoring system is inadequate. Many places of deprivation of liberty – or aspects of detention in those places – are not currently subject to independent oversight as envisioned by international human rights standards. The system is predominantly reactive, and lacks a robust, coordinated and proactive framework of monitoring and inspection. Stronger and more consistent human rights protections are urgently needed. All people – regardless of who or where they are – deserve to be treated with dignity and respect, and must be afforded the same protections.

We believe that the OPCAT could offer a framework for more consistent and proactive human rights protections for people who are detained across all jurisdictions, including for those in non-prison environments.

Key to successful implementation of the OPCAT is the designation of an appropriate and sufficiently resourced National Preventive Mechanism (NPM). 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.

Accordingly, we call on Canada to sign the OPCAT without delay and ratify it in a timely manner 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. The federal government should also take steps to develop a clear and time-bound implementation plan in collaboration and coordination with provinces and territories, human rights commissions, oversight bodies, civil society, Indigenous governments and organizations, and other rights holders.

² More detailed information on this issue can be found in the CHRC's 2023 submission to the UN Human Rights Council, on the occasion of its review of Canada during the 4th Universal Periodic Review, available [here](#).

While we recognize that there are complexities to establishing an effective NPM in Canada, these complexities should not outweigh the human rights ramifications that have and will continue to transpire as a result of ongoing delays towards OPCAT ratification. For instance, globally, many federal states have ratified the OPCAT and navigated jurisdictional complexities. We would recommend engaging with the UN Subcommittee on the Prevention of Torture (SPT), who have indicated that they can be used as a helpful resource and provide assistance with ratification, including by providing guidance on how to address jurisdictional issues to ensure that Canada is in compliance with the OPCAT.

As Canada seeks to solidify its reputation as a human rights leader by pursuing a seat on the UN Human Rights Council, we believe that now is the time for Canada to follow through on the commitments it has made domestically and internationally. The totality of Canada's human rights record will also soon be reviewed during Canada's upcoming Universal Periodic Review at the United Nations this November, which will provide an opportunity to take stock of Canada's progress in this area. Signing the OPCAT would be an important symbol of Canada's commitment to human rights, and would send a strong signal to the human rights community at home and abroad that it takes these commitments seriously and that it remains dedicated to strengthening human rights protections for all.

We would recommend that your offices engage in conversations with the SPT and we would welcome a meeting with you or your senior officials to discuss this issue further, including how we can work together to advance ratification and ensure effective implementation of this important human rights instrument.

Yours sincerely,

Charlotte-Anne Malischewski
Interim Chief Commissioner

Ivan Zinger, J.D., Ph.D.
Correctional Investigator

c.c.: The Honourable Marc Miller, P.C., M.P.
Minister of Immigration, Refugees and Citizenship

The Honourable Kamal Khera, P.C., M.P.
Minister of Diversity, Inclusion and Persons with Disabilities

David Morrison
Deputy Minister of Foreign Affairs

Isabelle Mondou
Deputy Minister of Canadian Heritage

Shalene Curtis-Micallef
Deputy Minister of Justice and Deputy Attorney General of Canada

Shawn Tupper
Deputy Minister of Public Safety Canada