

Committee against Torture

Concluding observations on the seventh periodic report of Canada*

1. The Committee against Torture considered the seventh periodic report of Canada (CAT/C/CAN/7) at its 1695th and 1698th meetings, held on 21 and 22 November 2018 (CAT/C/SR.1695 and 1698), and adopted the following concluding observations at its 1715th and 1716th meetings, held on 5 December 2018.

A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the simplified reporting procedure, as this allows for a more focused dialogue between the State party and the Committee.

3. The Committee appreciates having had the opportunity to engage in a constructive dialogue with the State party's delegation, and the responses provided to the questions and concerns raised during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the State party's accession to the Optional Protocol to the Convention on the Rights of Persons with Disabilities, on 3 December 2018;

5. The Committee commends the State party's initiatives to amend its policies and procedures in order to afford greater protection of human rights and to apply the Convention, in particular:

(a) The launch of the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (as successor to the Public Complaints Commission) and the establishment of Nova Scotia's Serious Incident Response Team in 2015 and 2012, respectively, as well as the start of operations of the British Columbia's Independent Investigations Office and the Bureau des enquêtes indépendantes (Quebec's Independent Investigation Bureau) in 2012 and 2016, respectively;

(b) The launching, on 5 December 2012, of the Refugee Appeal Division, which considers appeals against decisions of the Refugee Protection Division to allow or reject claims for refugee protection;

(c) The adoption of the Mental Health Action Plan for Federal Offenders, in May 2014;

(d) The implementation by the Correctional Service Canada of the National Indigenous Plan to respond to the needs of Indigenous offenders, including the creation of

* Adopted by the Committee at its sixty-fifth session (12 November – 7 December 2018).

Aboriginal Intervention Centres, which integrate programmes and interventions, and engage Indigenous communities to support offender release plans and support offender integration;

(e) The introduction of the expanded ‘Alternatives to Detention’ programme of the Canada Border Services Agency, in July 2018;

(f) The adoption of ‘It’s Time: Canada’s Strategy to Prevent and Address Gender-Based Violence’, in 2017;

(g) The adoption of the National Action Plan to Combat Human Trafficking, in June 2012.

6. The Committee also welcomes the convening for the first time in nearly 30 years of the meeting of federal, provincial and territorial ministers responsible for human rights, held in December 2017, to discuss key government priorities relating to Canada’s international human rights obligations,

7. The Committee commends the State party for its continuing engagement on the issue of refugee settlement. Canada has planned to resettle 31,700 refugees in 2020.

8. The Committee appreciates that the State party maintains a standing invitation to the special procedure mechanisms of the Human Rights Council, which has allowed independent experts to carry out visits to the country during the reporting period.

C. Principal subjects of concern and recommendations

Pending follow-up issues from the previous reporting cycle

9. In paragraph 29 of its previous concluding observations (CAT/C/CAN/CO/6), the Committee requested the State party to inform it of the steps taken in pursuance of recommendations whose implementation it considered a matter of priority, as contained in paragraphs 12 on security certificates under the Immigration and Refugee Protection Act, paragraph 13 on immigration detention, paragraph 16 on torture and ill-treatment of Canadians detained abroad, and paragraph 17 on intelligence information obtained by torture. The Committee appreciates the State party’s replies in this regard received on 20 August 2013 under the follow-up procedure (CAT/C/CAN/CO/6/Add.1). In the light of the information provided, the Committee finds that the recommendations in paragraphs 12, 13 and 17 have not been implemented (see paras. 46-47, 34-35 and 42-43, respectively, of the present document) and that the recommendations contained in paragraph 16 have been partially implemented (see paragraphs 38-39 of the present document).

Fundamental legal safeguards

10. The Committee takes note of the procedural safeguards set out in article 10 of the Canadian Charter of Rights and Freedoms, mainly the right of detainees to be informed promptly of the reasons for their arrest, to retain and instruct counsel without delay and to be informed of that right, and to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful. It regrets, however, the scant information provided on the measures and procedures in place to ensure the practical application of these and other fundamental safeguards to prevent torture and ill-treatment. In that respect, it has been reported that detainees occasionally had difficulty gaining access to an interpreter or family members (art. 2).

11. The State party should ensure that all persons who are arrested or detained are afforded, by law and in practice, all fundamental legal safeguards against torture from the very outset of their deprivation of liberty, including the rights to be assisted by a lawyer without delay, to have the assistance of an interpreter if necessary, to request and receive an independent medical examination, to inform promptly a close relative or any other person of their choice concerning their arrest and to be brought promptly before a judge.

Conditions of detention

12. While appreciating the measures taken by the State party to improve conditions of detention in general and reduce prison overcrowding in some detention facilities, the Committee remains concerned about reports of deplorable conditions in some police stations and other detention facilities, as well as insufficient food. It is also concerned at reported arbitrary practices, in particular extended questioning, sleep deprivation and abusive strip and body cavity searches. Moreover, the Committee observes with concern the almost constant increase in the number of persons being held in pretrial detention during the period under review, with an increase of 18 per cent from 2013 to 2016. As stated by the delegation, delays in the delivery of justice have to be addressed. The Committee also echoes the concerns raised by both the Canadian Human Rights Commission and the Office of the Correctional Investigator that the recent inmate population growth has been exclusively driven by increases in the incarceration of members of Indigenous peoples and other minority groups, including Asian, Latin American and black offenders, leading to their overrepresentation in the prison population. In this respect, the Committee notes that the delegation acknowledged that a transformational change is required to reverse this trend and that in order to achieve it the State party has started to implement comprehensive measures that include, inter alia, legislative and policy reforms. The above-mentioned institutions also reported a marked increase in the number of inmates with disabilities, in particular mental health disabilities, in federal prisons. The Committee appreciates the information on the new procedures implemented by the Correctional Service of Canada (CSC) to improve the response to offenders with complex mental health needs, including enhancing intervention strategies for offenders with suicidal and self-injurious behaviour. However, while noting that in 2017 and 2018 authorities increased funding for mental health issues in correctional facilities, the Committee remains concerned at reports indicating the excessive use of means of restraint and that correctional institutions lack the appropriate capacity, resources and infrastructure to manage serious mental health conditions—a problem particularly acute in women’s institutions (arts. 11 and 16).

13. The State party should:

(a) **Continue its efforts to improve conditions of detention and alleviate the overcrowding of penitentiary institutions and other detention facilities, including through the application of non-custodial measures. In that connection, the Committee draws the State party’s attention to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);**

(b) **Urgently adopt practical measures to remedy any deficiencies related to general living conditions in police and other detention facilities, including those related to sanitation and hygiene standards and access to sufficient food;**

(c) **Ensure, in law and practice, that pretrial detention is not excessively applied and prolonged;**

(d) **Increase its efforts to address the overrepresentation of Indigenous peoples and other minority groups in prisons and its underlying causes;**

(e) **Allocate the resources required for adapting detention facilities and their staffing to prisoners with physical disabilities, in accordance with international standards;**

(f) **Improve the provision of gender and age-specific medical services to prisoners, particularly for those with psychosocial disabilities;**

(g) **Ensure that means of restraint are only used as a last resort to prevent the risk of harm to the individual or others and only when all the other reasonable options would fail to satisfactorily contain the risk;**

(h) **Ensure that body searches on persons deprived of their liberty are performed in a manner that respects the inmate’s dignity. Invasive body searches should be conducted only when absolutely necessary and should be performed in**

private by an appropriately trained staff members of the same sex as the inmate. Search and admission procedures for visitors should not be degrading and should be subject, at a minimum to the same rules as those applied to inmates (see rules 50-53 and 60 of the Nelson Mandela Rules).

Solitary confinement

14. The Committee is concerned by the continued use of prolonged and indefinite solitary confinement, in the form of disciplinary and administrative segregation. Pursuant to sections 31 to 37 of the Corrections and Conditional Release Act (CCRA), an inmate may be placed in involuntary administrative segregation at the discretion of the institutional head, as a means of preventing altercations, harm or interference with internal investigations. The Committee considers that such regulations give rise to issues of interpretation, especially with regard to the distinction between cases that would lead to involuntary administrative segregation and disciplinary segregation. Furthermore, the CCRA does not specify the maximum length of time that an offender can be held in administrative segregation. Other information before the Committee indicates that the use of administrative segregation disproportionately affects Indigenous inmates, especially women, and black inmates. It also notes with concern that solitary confinement as a disciplinary measure may be imposed for up to 30 days for one offence, or 45 days for multiple offences, with or without restrictions on visits by family and other persons from outside the penitentiary (Section 44(1)(f) CCRA). The Committee appreciates the explanations provided by the State party's delegation regarding the content and current status of Bill C-83, which would eliminate administrative and disciplinary segregation in the federal correctional system, and would establish a new model for correctional interventions called "structured intervention units" (SIUs), in which inmates would be kept in social isolation for up to 20 hours a day. The Committee notes, however, that the proposed regime: gives wide discretion to the head of the detention facility in imposing isolation; does not provide for a maximum length of stay in the SIUs; does not prohibit the placement of inmates with mental disabilities in such units; does not contain measures to limit disproportionate impacts on Indigenous inmates, women or other prisoners with special needs; and, that there is no provision requiring independent external review and oversight (arts. 11 and 16).

15. The State party should ensure that solitary confinement, in both federal and provincial correctional facilities, is used only in exceptional cases as a last resort, for as short a time as possible (no more than 15 consecutive days), subject to independent review, and only pursuant to the authorization by a competent authority, in accordance with rules 43 to 46 of the Nelson Mandela Rules. It should also ensure that administrative segregation is only used as a preventive measure. The Committee wishes to draw the State party's attention to rule 45 (2) of the Nelson Mandela Rules, which prohibits solitary confinement in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. In addition, rule 43 (3) of the Nelson Mandela Rules provides that disciplinary sanctions or restrictive measures shall not include the prohibition of family contact and that the means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.

Internal prison complaint mechanisms

16. The Committee is concerned at the fact that the State party has not furnished complete information on the number of complaints of torture and ill-treatment made to existing prison complaints mechanisms, such as the Correctional Service of Canada's (CSC) offender complaint and grievance process and the Office of the Correctional Investigator, during the period examined. It also regrets the lack of detailed information on the results of those investigations, whether proceedings were initiated at the penal and/or disciplinary levels, and their outcomes. In addition, the Committee is concerned at reports describing the CSC offender complaint and grievance process as slow, complex and dysfunctional (art. 2, 11 and 16).

17. The State party should:

(a) Establish an independent and effective mechanism for addressing complaints of torture and ill-treatment in all places of deprivation of liberty;

(b) Provide the Committee with detailed statistical data, disaggregated by sex, age, ethnic origin or nationality and place of detention, on complaints of torture and ill-treatment, as well as information on investigations, disciplinary and criminal proceedings, convictions and the criminal or disciplinary sanctions applied.

Deaths in custody

18. The Committee regrets the death of Mr. Michael Ryan, who died of drug overdose while in police custody in Saskatoon on 26 February 2016. In addition, it takes note with concern of the findings of the final report, dated 15 February 2017, of the Office of the Correctional Investigator into the preventable death of Mr. Matthew Ryan Hines, who died unexpectedly in federal custody following a series of use of force incidents at the Dorchester Penitentiary on 26 May 2015. In its final report, the OCI states that “while the family was initially informed by CSC that Matthew died of a seizure, it is not clear on what basis or on whose authority such a claim could have been substantiated. The family has, until very recently, been led to believe that Matthew’s death could not have been prevented”. The Committee notes that the CSC agreed with all recommendations included in the OCI final report and that a number of initiatives to prevent deaths in custody associated with the use of force have been implemented, including enhanced training for staff, improved responses to medical emergencies and the implementation of a new use-of-force model (arts. 2, 11 and 16).

19. **The State party should:**

(a) Ensure that all instances of death in custody are promptly and impartially investigated by an independent entity;

(b) Provide the Committee with detailed information regarding cases of death in custody;

(c) Ensure the implementation of the recommendations included in the final report of the Office of the Correctional Investigator into the death of Matthew Ryan Hines, as well as the recommendations of the Coroner’s Inquest jury in the death of Michael Ryan.

Inspection of detention centres

20. While taking note of the existing prison monitoring bodies, including the Office of the Correctional Investigator and the Canadian Human Rights Commission, the Committee observes with concern the absence of independent oversight bodies to inspect other places of deprivation of liberty, in particular psychiatric institutions. It also notes with concern that during the period under review several non-governmental organizations were denied access to the provincial detention centre Leclerc Institution in Laval (Quebec) following the transfer of female prisoners from Maison Tanguay prison in February 2016. The Committee appreciates the information provided by the delegation regarding the consultations held with territorial and provincial Governments and within the federal Government in the framework of the review process of the potential accession of Canada to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It also welcomes the assurances of the delegation that civil society and Indigenous groups will be consulted as soon as the federal, provincial and territorial government consultations are finished, but remains concerned that no fixed time frame was specified for the completion of the overall process (arts. 2, 11 and 16).

21. **The State party should:**

(a) Ensure an effective and independent monitoring and reporting system for mental health institutions;

(b) Ensure the effective follow-up of recommendations arising from monitoring activities at detention centres and systematically collect data on the outcome

of any complaints of ill-treatment received by monitors, including on any investigations undertaken and criminal or disciplinary proceedings resulting from such complaints;

(c) Ensure that non-governmental organizations have unhindered access to all places of detention through, in particular, unannounced visits and the ability to speak with detainees in private;

(d) Complete the process towards accession to the Optional Protocol to the Convention, while introducing mechanisms to ensure the participation of civil society, Indigenous groups and other stakeholders in the entire process.

Prompt, thorough and impartial investigations

22. With reference to its previous concluding observations (para. 22), the Committee notes that the internal review conducted by the Ontario Provincial Police (OPP) into the handling of incidents during land-related protests at Tyendinaga in April 2008 did not find any evidence to support that the prisoners were in any way discriminated against on any grounds. Nevertheless, the Committee remains concerned about the absence of an independent inquiry into the allegation of ill-treatment and excessive use of force against Mohawk men detained by the OPP during the protests (arts. 11, 12 and 16).

23. The State party should conduct an independent inquiry into the Ontario Provincial Police's handling of the incidents at Tyendinaga in 2008.

Asylum and non-refoulement

24. The Committee remains concerned about exceptions to the principle of non-refoulement in the Immigration and Refugee Protection Act (subsection 115 (2)). In this regard, the Committee recalls that article 3 of the Convention affords absolute protection against torture to anyone in the territory of the State party, regardless of the person's character or the danger the person may pose to society (art. 3).

25. The State party should:

a) Ensure that no one may be expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would run a personal and foreseeable risk of being subjected to torture;

b) Consider amending subsection 115 (2) of the Immigration and Refugee Protection Act to fully comply with the principle of non-refoulement.

Interim measures

26. Regarding its requests for interim measures in individual cases under article 22 of the Convention, the Committee notes with concern the delegation's statement that although the State party had respected them in the majority of the cases during the period examined, in some exceptional cases it could not agree with the Committee's view that a request is warranted, because domestic processes had concluded that the individual in question would not face a real and personal risk or irreparable harm upon removal from Canada (arts. 3 and 22).

27. The Committee recalls its previous concluding recommendations (see CAT/C/CAN/CO/6, para. 10 and CAT/C/CR/34/CAN, para. 4 (f)), as well as its recurring decisions confirming the mandatory nature of interim measures (e.g. CAT/C/63/D/488/2012) and calls once again upon the State party to fully cooperate with the Committee under the procedure for the consideration of communications received under article 22 of the Convention, in particular by respecting in every instance the requests for interim measures.

Diplomatic assurances

28. While taking note of the delegation's statement that the State party rarely resorts to diplomatic assurances, and that when it does so Canadian authorities could decide to establish a post-return monitoring mechanism, the Committee regrets that the State party did not provide any examples of post-return monitoring arrangements between Canada and the

receiving states. According to the information included in its periodic report, the State party has sought diplomatic assurances in 23 extradition cases since May 2012. In most of these cases, the assurances involved either protection against the death penalty or protection against prosecution for offences not covered by the surrender order. During the same period, the State party also sought assurances relevant to the specific treatment of the individual in 11 extradition cases. Lastly, the Committee notes that the State party categorically rejected any implication that diplomatic guarantees run counter to article 3 of the Convention (art. 3).

29. The State party should under no circumstances expel, return or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. Moreover, as indicated in paragraphs 19-20 of the Committee's general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, diplomatic assurances should not be used as a loophole to undermine the principle of non-refoulement as set out in article 3 of the Convention. The State party should thoroughly consider the merits of each individual case, including the overall situation with regard to torture in the country of return.

Transfer of detainees to Afghanistan

30. The Committee regrets not having received a clear response from the delegation on whether the Government is considering to launch a full inquiry into the State party's handling of the transfer of hundreds of detainees to Afghan National Security Forces during its decade-long military mission in Afghanistan (art. 3, 11 and 16).

31. Recalling the Committee's previous recommendation (CAT/C/CAN/CO/6, para. 11), the State party should:

(a) Launch a transparent and impartial investigation into the actions of Canadian officials relating to the transfer of Afghan detainees;

(b) Adopt a policy for military operations that clearly prohibits prisoner transfers to another country when there are substantial grounds for believing that the individuals to be transferred would be in danger of being subjected to torture, and that clearly recognizes that diplomatic assurances and monitoring arrangements will not be relied upon to justify transfers when such substantial risk of torture exists.

Canada-United States of America Safe Third Country Agreement

32. Regarding the Agreement between the Government of Canada and the Government of the United States of America for cooperation in the examination of refugee status claims from nationals of third countries (the so-called 'Safe Third Country' Agreement), the Committee notes the delegation's statement made during the dialogue that Canada believes that the United States of America remains a safe country for asylum claimants to seek and obtain protection when they meet the definition of a refugee. However, the Committee remains concerned at reports indicating a notable recent increase in the number of individuals in the United States of America wishing to seek asylum in Canada in an attempt to flee aggressive anti-immigration policies, and that because of the Safe Third Country Agreement most such individuals enter the State party at unofficial border crossings, making often dangerous border-crossings, since they would be turned back at official ones (art. 3).

33. The State party should consider undertaking an assessment of the impact of the Safe Third Country Agreement on potential asylum seekers arriving from the United States of America who currently fear deportation and may have well-founded grounds with regard to their personal circumstances.

Immigration detention

34. The Committee notes with concern that the State party continues to use mandatory detention for arriving non-citizens designated part of an "irregular arrival", and that the time limit for such detention is not defined by law. Also of concern is the absence of an effective mechanism to review the lawfulness of the detention; the inadequate medical and mental health care services in federal immigration detention facilities; and, the reliance on provincial

correctional centres. Furthermore, and while noting that the existing directives provide that minors are not to be detained, except in exceptional circumstances, the information before the Committee indicates that during the period under review children continued to be placed in immigration detention, in many cases as “guests” with their parents or adult siblings. According to reports before the Committee, these children who are not officially detained have no independent right of review of their detention. The Committee takes note of the detention monitoring services provided by the Canadian Red Cross, through a two-year contract signed between the Canada Borders Services Agency (CBSA) and this organization on 27 July 2017, although it remains concerned at the lack of an independent mechanism for oversight of the CBSA. It also takes note of the measures adopted by the State party to reduce the number of individuals held in detention for immigration related reasons, especially the new non-custodial measures introduced through the expanded CBSA Alternatives to Detention programme, such as the use of community case management and supervision services, voice reporting and electronic monitoring (art. 11).

35. The State party should:

(a) Review its legislation with a view to repeal provisions in the Immigration and Refugee Protection Act requiring the mandatory detention of any designated groups of ‘irregular arrivals’;

(b) Refrain from detaining irregular migrants and asylum seekers for prolonged periods, use detention as a measure of last resort only and for as short a period as possible, and continue the application of non-custodial measures;

(c) Establish a reasonable time limit on the duration of administrative immigration detention;

(d) Guarantee the judicial review or other meaningful and effective avenues to challenge the legality of administrative immigration detention, including of all children detained or ‘housed’ in CBSA detention facilities;

(e) Ensure that children and families with children are not detained solely because of their immigration status;

(f) Strengthen its efforts to ensure adequate living conditions in all immigration centres;

(g) Ensure that irregular migrants and asylum seekers held in detention are provided with adequate medical and mental health care, including routine assessments;

(h) End the practice of detaining irregular migrants and asylum seekers in provincial correctional centres;

(i) Establish an effective and independent oversight mechanism of the CBSA to which individuals held in immigration detention can bring complaints.

Redress

36. The Committee regrets not having received sufficient information on the redress and compensation measures ordered by courts and other State bodies and actually provided to the victims of torture and ill-treatment, including excessive use of force, or their families since the consideration of the previous periodic report (art. 14).

37. The State party should:

(a) Ensure, in law and in practice, that all victims of torture and ill-treatment obtain redress, including an enforceable right to fair and adequate compensation and the means for as full a rehabilitation as possible;

(b) Compile information on redress and on compensation measures, including means of rehabilitation, ordered by the courts or other State bodies and actually provided to victims of torture or ill-treatment.

Adequate redress for the torture and ill-treatment of Canadians detained abroad

38. In the light of its previous concluding observations (CAT/C/CAN/CO/6, para. 16), the Committee takes note of the compensation and the Government's formal apology of 7 March 2017 to Messrs. Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin for any role that Canadian officials may have played in their detention and mistreatment in Syria and Egypt between 2001 and 2004. It regrets, however, the absence of prosecutions related to Canadian involvement in these alleged offences. The Committee also takes note of the Government's statement of apology of 7 July 2017 to Mr. Omar Khadr, although it notes with concern that while a settlement was reached, details remain confidential for privacy reasons, including any information with respect to psychological rehabilitation or assistance provided. While noting the explanations provided by the delegation concerning the confidentiality of the agreements reached in each case, the Committee finds itself unable to properly evaluate the actions of the State in the light of article 14 of the Convention. Moreover, the Committee is concerned at reports that the State party is obstructing the efforts of Mr. Abousfian Abdelrazik, a Canadian citizen who alleges that he was unlawfully imprisoned and tortured in Sudan between September 2003-July 2004 and October 2005-2006, to obtain redress for the alleged complicity of Canadian officials in his treatment, particularly the Canadian Security and Intelligence Service. According to the information before the Committee, on 18 September 2018 Mr. Abdelrazik's lawsuit regarding Canada's role in his unlawful imprisonment and torture was indefinitely delayed after a judge agreed to the federal government's plea for postponement (arts. 2, 12-14 and 16).

39. The Committee draws the State party's attention to paragraphs 5 and 16 of its general comment No. 3 (2012) on the implementation of article 14 by State parties, in which it elaborates on the nature and scope of the obligations of States parties under article 14 of the Convention to provide full redress to victims of torture. In particular, paragraph 16 of this general comment states that satisfaction should include, by way of and in addition to the obligations of investigation and criminal prosecution under articles 12 and 13 of the Convention, inter alia, the following remedies: verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; an official declaration or judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; and, judicial and administrative sanctions against persons liable for the violations. The State party should provide information on specific measures taken in the above-mentioned cases.

Civil redress and state immunity

40. The Committee regrets that the State party has not taken any measures to review its legislation in order to ensure that all victims of torture are able to access remedy and obtain redress whenever acts of torture have occurred and regardless of the nationality of the perpetrator or victim, as recommended by the Committee in its previous concluding observations (CAT/C/CAN/CO/6, para. 15). In this regard, the Committee regrets the State party's reluctance to amend the State Immunity Act with a view to provide an exception to state immunity for acts of torture committed outside Canada by foreign states or their representatives. As pointed out during the dialogue with the delegation, in view of the 'forum of necessity' provisions and related jurisprudence in Québec (*for de nécessité*), British Columbia and Nova Scotia jurisdictions, the Committee considers that the incorporation of this principle at the federal level could provide significant avenues of redress for victims pursuing lawsuits against foreign governments for torture (art. 14).

41. The Committee once again calls upon the State party to consider amending the State Immunity Act in order to ensure that all victims of torture or ill-treatment have access to remedy and obtain redress, in line with the provisions of the Convention. A supplementary possibility would be for the State party to consider the recognition of the 'forum of necessity' principle at the federal level. As indicated in paragraph 22 of its general comment No. 3 (2012) on the implementation of article 14 by State parties, "[t]he Committee has commended the efforts of State parties for providing civil

remedies for victims who were subjected to torture or ill-treatment outside their territory. This is particularly important when a victim is unable to exercise the rights guaranteed under article 14 in the territory where the violation took place”.

Coerced confessions and intelligence information obtained by torture

42. The Committee takes note of the guarantees set forth in subsection 269.1(4) of the Criminal Code which bars the admission into evidence of any statement obtained by torture for any purpose, except as evidence that the statement was in fact obtained by torture. Nevertheless, and bearing in mind its previous concluding observations (CAT/C/CAN/CO/6, para. 17), the Committee notes with concern that three ministerial directives published in 2017 for various Canadian security services indicate that information potentially obtained through mistreatment may not be used to deprive someone of their rights or freedoms, save for cases where the competent authority has authorized such use because it is necessary to prevent loss of life or significant personal injury. As for the measures introduced by the State party to enhance accountability and transparency in areas of national security and intelligence, the Committee notes that the new National Security and Intelligence Committee of Parliamentarians created in 2017 with special access to highly classified information, reports to the prime minister and its reports are vetted by the government before they are released (art. 2 ,15 and 16).

43. The State party should take effective steps to ensure in practice that confessions obtained under torture or ill-treatment are ruled inadmissible. It should also repeal, revoke or amend any directive, order or regulation allowing for the use of information by law enforcement agencies that is known or believed to have been obtained through torture and/or ill-treatment by a third country. The State party should ensure that the principle of absolute prohibition of torture is strictly applied in accordance with article 2 (2) of the Convention, which stipulates that no exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. In that connection, the Committee draws the State party’s attention to paragraph 5 of its general comment No. 2 (2007) on the implementation of article 2, in which it states, inter alia, that exceptional circumstances that cannot be invoked as a justification of torture also include any threat of terrorist acts or violent crime. The State party should also ensure that its counter-terrorism legislation provides for an independent mechanism to review counter-terrorism activities undertaken by the executive.

Counter-terrorism

44. While taking note of the contents of Bill C-59, which was introduced to address the human rights shortcomings in the *Anti-Terrorism Act, 2015*, the Committee is concerned that under the proposed amendments, the Government would still be able to bar special advocates –court-appointed lawyers who have security clearance– from reviewing classified evidence on the grounds of national security.

45. The State party should take the necessary legislative or other measures to ensure that all counter-terrorism legislation, policies and practices are in full compliance with the Convention and that adequate and effective legal safeguards are in place.

Security certificates

46. While noting the decline in its use, the Committee reiterates its concern about the continued practice of issuance and referral of “certificates”, as provided under Division 9 of the Immigration and Refugee Protection Act (IRPA) –a procedure activated in exceptional circumstances when a permanent resident or foreign national is believed to be inadmissible on security grounds. While taking note of the judgement of the Supreme Court of Canada of 14 May 2014 in *Canada (Citizenship and Immigration) v. Harkat*, the Committee remains concerned that the security certificate system allows individuals to be detained in proceedings which deny them access to the full evidence against them, including intelligence information from foreign countries. Despite the explanations given by the delegation, the Committee notes that ‘special advocates’ continue to have very limited ability to conduct cross-examination or to independently and properly seek evidence on behalf of the individual

named in the certificate. The application of the security certificate procedure may therefore result in breaches of the Convention, including indefinite detention, the use of forced confessions as evidence in court and deportations and refoulement despite the risk of torture. Finally, the Committee regrets that the State party did not provide the up-to-date information requested on the cases of Messrs. Mahjoub, Jaballah and Harkat (arts. 2, 3, 15 and 16).

47. Recalling its previous recommendation (CAT/C/CAN/CO/6, para. 12), the Committee recommends that all measures to restrict or limit fair trial guarantees based on security grounds be fully compliant with the Convention. In particular, the State party should:

(a) Ensure that intelligence and other sensitive material be subject to possible disclosure if a court determines that it contains evidence of human rights violations, such as torture or cruel, inhuman or degrading treatment;

(b) Ensure that the application of security procedure does not result in indefinite detention or deportations and violations of the principle of non-refoulement;

(c) Provide an update on the above-mentioned cases.

Gender-based violence, including violence against Indigenous women and girls

48. While commending the State party for establishing in September 2016 a national inquiry into missing and murdered Indigenous women and girls, the Committee remains seriously concerned about the continued and consistent reports of disproportionate levels of violence against members of this group overall. Furthermore, the Committee regrets that the State party has not provided information on the number of investigations, prosecutions, convictions and sentences imposed on cases of gender-based violence, including murders and disappearances, in particular against Indigenous women and girls, during the period under review. In this regard, the Committee notes the measures taken by the Government of Quebec to deal with police violence against Indigenous peoples through a specific investigative unit, and that British Columbia's provincial domestic violence initiatives provide funding to support indigenous associations to deal with domestic violence (arts. 2, 12, 13, 14 and 16).

49. The State party should:

(a) Ensure that all cases of gender-based violence, in particular against Indigenous women and girls, and especially those involving actions or omissions by State authorities or other entities that engage the international responsibility of the State party under the Convention, are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, are punished appropriately and that the victims or their families receive redress, including adequate compensation;

(b) Establish a mechanism for the independent review of all cases in which there are allegations of inadequate or partial police investigations, as recommended by the Committee on the Elimination of Discrimination against Women (CEDAW/C/CAN/CO/8-9, para. 27 (c) (iii); see also all relevant recommendations included in the CEDAW report of the inquiry concerning Canada under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/OP.8/CAN/1, paras. 216-220);

(c) Provide mandatory training on the prosecution of gender-based violence to all justice officials and law enforcement personnel and continue awareness-raising campaigns on all forms of violence against women, especially Indigenous women and girls;

(d) Ensure that survivors of gender based-violence are able to access shelters and receive the necessary medical care, psychological support and legal assistance they require;

(e) Consider acceding to the International Convention on the Protection of All Persons from Enforced Disappearances;

(f) Compile statistical data, disaggregated by the age and ethnicity or nationality of the victim, on the number of complaints, investigations, prosecutions, convictions and sentences recorded in cases of gender-based violence.

Involuntary sterilization of Indigenous women

50. The Committee is concerned at reports of extensive forced or coerced sterilization of Indigenous women and girls dating back to the 1970s and including recent cases in the province of Saskatchewan between 2008 and 2012. According to the information before the Committee, at least 55 women have contacted lawyers representing Indigenous women who have filed a pending class action lawsuit against doctors and health officials at a Saskatchewan public hospital for undergoing tubal ligation procedures without proper consent. The Committee takes note of the information provided by the delegation on the external review on this matter launched by the Saskatchewan Health Authority (formerly Saskatoon Health Region) in January 2017, but remains concerned at the lack of information regarding the implementation of the ‘calls of action’ included in the final report, especially those related to reparations (arts. 2, 12, 13, 14 and 16).

51. **The State party should:**

(a) Ensure that all allegations of forced or coerced sterilization are impartially investigated, that the persons responsible are held accountable and that adequate redress is provided to the victims;

(b) Adopt legislative and policy measures to prevent and criminalize the forced or coerced involuntary sterilization of women, particularly by clearly defining the requirements of free, prior and informed consent with regard to sterilization and by raising awareness among Indigenous women and medical personnel of that requirement.

Training

52. While taking note of the existing general training programmes on human rights for police officers and members of the armed forces, the Committee remains concerned by the lack of information on the impact of the training provided. While noting that Nova Scotia has developed initiatives to educate officials to recognize and prevent torture and ill-treatment, the Committee regrets the limited information available on training provided to law enforcement officials, judges, prosecutors, forensic doctors and medical personnel on how to detect and document physical and psychological sequelae of torture and other cruel, inhuman or degrading treatment or punishment (art. 10).

53. **The State party should:**

(a) Further develop mandatory training programmes to ensure that all public officials, in particular law enforcement officials, military personnel, prison staff and medical personnel employed in prisons, are well acquainted with the provisions of the Convention and are fully aware that violations will not be tolerated and will be investigated and that those responsible will be prosecuted;

(b) Develop a methodology for assessing the effectiveness of training programmes in reducing the number of cases of torture and ill-treatment and in ensuring the identification, documentation, investigation and prosecution of these acts;

(c) Ensure that all relevant staff, including medical personnel, are specifically trained to identify cases of torture and ill-treatment, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

Follow-up procedure

54. The Committee requests the State party to provide, by 7 December 2019 information on follow-up to the Committee’s recommendations on diplomatic assurances; adequate redress for the torture and ill-treatment of Canadians detained abroad; security certificates; and involuntary sterilization of Indigenous women (see paragraphs 29, 39 *in fine*, 47 c) and

51 a) above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.

Other issues

55. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations, and to inform the Committee about its disseminating activities.

56. The Committee requests the State party to submit its next periodic report, which will be its eighth, by 7 December 2022. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting.
