



association pour la prévention de la torture
asociación para la prevención de la tortura
association for the prevention of torture

UN Committee against Torture

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APT submission on Canada

12 October 2018

Alternative report from the Association for the Prevention of Torture (APT) to the UN Committee against Torture providing background information and suggested questions and recommendations for **Canada**, whose seventh periodic report will be reviewed by the Committee during its 65th session in Geneva.

The Association for the Prevention of Torture (APT) is an independent NGO based in Geneva. We work for a world free from torture, where the rights and dignity of all persons deprived of liberty are respected.

To achieve this vision we:

- ***Advocate for strengthened legal and policy frameworks,***
- ***Promote improved detention practices, and***
- ***Advise on effective public oversight.***

1. OPCAT ratification process: key developments since the last CAT review

During Canada's last review by the UN Committee against Torture (CAT) in May 2012, the Committee urged the authorities "to accelerate the current domestic discussions and to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as possible."¹

The need for Canada to ratify the Optional Protocol to the UN Convention against Torture (OPCAT) to further protect the human rights of all individuals deprived of their liberty has been emphasised for a number of years by national institutions, in particular the Canadian Human Rights Commission (Canada's National Human Rights Institution) and the Office for the Correctional Investigator (the Ombudsman for federally sentenced offenders). In its submission to the CAT in April 2012 already, the Canadian Human Rights Commission had recommended that Canada ratify the OPCAT, arguing that existing monitoring mechanisms at the national level did not meet many of the fundamental requirements provided under the OPCAT.² In its 2016-2017 annual report, the Office for the Correctional Investigator also reiterated the call on the Government to ratify the OPCAT.³

In May 2016, the Federal Government announced, through its Minister of Foreign Affairs, that it would formally start engaging with provinces and territories on possible ratification of the OPCAT.⁴ This public commitment was confirmed in the seventh periodic report submitted by the State to the CAT and published in September 2016.⁵

A very positive signal was sent by Canada when, in mid-2016, the Federal Government, led by the Department of Justice, initiated consultations with other federal departments, local provinces and territories on the implications of OPCAT ratification. Such consultations are essential, as ratification will have an impact on all levels of government, in particular provincial governments that have jurisdiction over most of the places of deprivation of liberty contemplated in the OPCAT. It is also worth noting that, in early 2017, the Department of Justice started a formal consultation process with civil society organisations on the possible options for fulfilling the functions of the future National Preventive Mechanism (NPM).

More recently, during its review by the UPR Working Group in May 2018, Canada stated that it was considering ratifying the OPCAT and that the Government was analysing the different options for implementing the treaty.⁶ In September 2018, Canada accepted the

¹ See Concluding observations of the UN Committee against Torture, Canada, UN Doc. CAT/C/CAN/CO/6, § 25.

² See https://www.chrc-ccdp.gc.ca/sites/default/files/cat_cct-eng.pdf, p. 20.

³ See Office of the Correctional Investigator, *Correctional Investigator's Outlook for 2017-18* in Annual Report 2016-2017, available at: <http://www.ocibec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20162017-eng.pdf>, p. 68.

⁴ See <http://www.theglobeandmail.com/news/politics/canada-to-join-un-anti-torture-protocol-after-years-of-delay-foreign-affairs/article29827536/>; <https://ici.radio-canada.ca/nouvelle/779249/canada-onu-torture-protocole-convention-stephane-dion-justin-trudeau>

⁵ See UN Committee against Torture, *Seventh periodic report of Canada*, UN Doc. CAT/C/CAN/7 (13 September 2016), § 5.

⁶ See Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Canada*, UN Doc. A/HRC/39/11 (11 July 2018), § 84.

recommendations made by several States during the UPR and reiterated that federal, provincial and territorial governments would continue considering OPCAT ratification,⁷ referring to *"the commitment made in December 2017 by governments in Canada to pursue their consideration of Canada's possible accession to the OPCAT"*.⁸

The APT welcomes Canada's expressed political will to ratify the OPCAT. The APT also appreciates Canada's decision to examine the implications of ratification and to assess - including through extensive consultations- the best model for Canada's NPM, before proceeding with ratification. An inclusive and sustained consultation process, with a clear timeframe and a thorough examination of all NPM options, is essential to ensure broad support for ratification, promote a common understanding of the OPCAT, and build support for the future NPM to carry out its preventive work effectively, as also recommended by the UN Subcommittee on Prevention of Torture.⁹

In this context, the APT would like to emphasise the importance of Canada's taking steps to set up a comprehensive system to protect the rights of all persons deprived of liberty in all settings, by designating or establishing one or more independent institution(s) as NPM(s). The Government should grant the future NPM(s) all the powers set out by the OPCAT and a mandate that can cover the entire range of places of deprivation of liberty under Canada's jurisdiction, as per article 4 of the OPCAT (definition of place of detention).

2. Suggested questions and recommendations

In light of the above information, the APT suggests that the CAT make the following questions and recommendations during the review of Canada's seventh periodic report:

2.1 Suggested questions

- Can the Government provide more information on the status of the OPCAT consultation process with federal, provincial and territorial governments, as well as with indigenous governments and civil society organisations?
- Can the Government provide information on the expected timeframe for the completion of the consultation process on possible ratification of the OPCAT and NPM options?

⁷ See Human Rights Council, Report of the Working Group on the Universal Periodic Review, Canada, *Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, UN Doc. A/HRC/39/11/Add.1 (18 September 2018), § 5.

⁸ See Opening Remarks by the Permanent Representative of Canada to the United Nations in Geneva, at the 39th session of the Human Rights Council, Item 6 - Consideration of UPR outcome of Canada, 20 September 2018.

⁹ See UN Subcommittee on Prevention of Torture, *Guidelines on national preventive mechanisms*, UN Doc. CAT/OP/12/5 (9 December 2010), § 16.

2.2 Suggested recommendations

- **Accelerate the current consultation process** with all relevant stakeholders on the implications of OPCAT ratification.
- Based on those consultations, **ratify the OPCAT** and **designate or establish** one or several NPMs, ensuring that those mechanisms are independent and granted with the legal mandate and necessary financial and human resources to effectively carry out their work, in accordance with the OPCAT.