



CANADA

SUBMISSION TO UN COMMITTEE AGAINST TORTURE

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1. INTRODUCTION

Amnesty International submits this briefing to the United Nations (UN) Committee Against Torture, in advance of the adoption of the List of Issues Prior to Reporting for Canada's 8th periodic report under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in November-December 2021. This submission is not an exhaustive account of Amnesty International's concerns but highlights several of the organization's key concerns in relation to implementation of the Convention in Canada.

2. CANADIANS DETAINED AND MISTREATED ABROAD

2.1 POLICY FRAMEWORK

Canada's policy with respect to instances where citizens allege that they have been tortured or otherwise ill-treated abroad has been the subject of multiple reviews, but implementation has been unclear. In 2018, Canada's Auditor General issued a report indicating that consular officials took between one and six months to formally assess such allegations, and additional time to report substantiated cases to the Minister or Deputy Minister.¹ In November 2018, the House of Commons Standing Committee on Foreign Affairs and International Development recommended that Canada "set out concrete timelines for the formal assessment of allegations of torture or mistreatment of Canadians detained abroad."² Global Affairs Canada agreed with this recommendation.³

2.2 CANADIANS DETAINED IN SYRIA

Implementation of Canada's policy surrounding citizens tortured or mistreated abroad remains opaque, as highlighted in the cases of at least 47 Canadian citizens with alleged links to the armed group calling itself 'Islamic State' (IS) who were detained in North East Syria (NES) following the March 2019 defeat of the IS in Baghouz, Syria.⁴ Those who remain in detention are held in conditions that UN experts have stipulated "may well amount to torture or other cruel, inhuman or degrading treatment or punishment."⁵

Although Canada repatriated one orphan child to Canada in October 2020 and allowed another to return in March 2021, the government has not developed a plan to address the human rights abuses of the remaining Canadians who are being arbitrarily and indefinitely detained in NES in conditions that UN Special Rapporteurs declared may amount to torture or other cruel, inhuman or degrading treatment or punishment. When asked in a joint communication by several UN Special Procedures mandate holders to comment on actions to protect the rights of Canadian children, women and girls, and the rights

¹ Office of the Auditor General of Canada, "[Report 7—Consular Services to Canadians Abroad—Global Affairs Canada](#)," paras. 7.47-7.52.

² House of Commons Standing Committee on Foreign Affairs and International Development, "[Strengthening the Canadian Consular Service Today and for the Future](#)," (42nd Parliament, 1st Session), p. 48-49.

³ House of Commons, "[Government Response to the Twenty First Report of the House of Commons Standing Committee on Foreign Affairs and International Development](#)," p. 8-9.

⁴ Human Rights Watch, "[Plight of Canadians Held in Northeast Syria for Alleged ISIS Links](#)," 29 June 2020.

⁵ OHCHR, "[Syria: UN experts urge 57 States to repatriate women and children from squalid camps](#)," 8 February 2021.

of Canadian detainees to an effective remedy, Canada responded by noting its advocacy with the detaining authority and its assistance in repatriating one orphan child.⁶

Amnesty International has requested information about formal reporting timelines generally, and about the outcome of the assessment in the case of Canadians detained in Syria specifically. As of June 2021, this information has not been disclosed. Furthermore, a March 2020 access to information request about the provision of consular services to the detained Canadians in Syria remains unanswered.

Amnesty International calls on Canada to:

- Take every lawful action to end the human rights abuses of Canadians detained in Northeast Syria (NES), while ensuring that such action does not discriminate on the basis of gender, political views or religion, and that it must respect the rights of the child and the principle of family unity.
- Provide robust and active consular assistance to Canadian citizens detained in NES, including by issuing any necessary travel documents and providing support necessary to ensure people can exercise their right to return safely to Canada.
- Press for accountability for any international crimes that may have been committed by detainees, including by Canadians, in a manner consistent with international human rights law, international criminal law, and international humanitarian law.
- Release its assessment about the alleged torture and mistreatment of Canadians detained in NES.
- Work together with the international community to ensure a human rights compliant response for all of those arbitrarily detained in NES, regardless of their nationality.

3. JUSTICE AND ACCOUNTABILITY (ARTICLES 12 AND 14)

In August 2020, the Committee expressed regret that no action had been taken with respect to its recommendations concerning the cases of Ahmad Abou-Elmaati, Abdullah Almalki, Muayyed Nureddin, Omar Khadr and Abousfian Abdelrazik.⁷ As of June 2021, there has been little change with respect to the status of these cases. Mr. Abdelrazik's counsel has noted that no hearing dates have been scheduled for the review application and that limited further information has been provided by the government. The civil trial has not begun. Media reports indicate that Canada has spent \$9.3 million CAD opposing the legal claim.⁸

Hassan Diab is a Canadian citizen accused by France of bombing a synagogue in Paris in 1980. He was extradited to France in 2014 – despite a Canadian judge finding that the evidence against him was “very problematic,” “convoluted,” “illogical,” and “suspect”⁹ – where he spent over three years in solitary confinement while awaiting trial. He was released in 2018,¹⁰ and returned to Canada. On 19 May 2021, the

⁶ Permanent Mission of Canada to the United Nations and the World Trade Organization, “[Response by the Government of Canada to the Joint Communication from Special Procedures, reference AL CAN 1/2021](#),” 14 April 2021.

⁷ Rapporteur a.i. for follow up to concluding observations Committee Against Torture (Bakhtiyar Tuzmukhamedov), “[CAT/Follow-up](#),” 12 August 2020, p. 2.

⁸ Steven Chase, “[Ottawa has spent \\$9.3-million fighting legal claims over Canadian’s alleged torture in Sudan](#),” The Globe and Mail, 15 February 2021.

⁹ *Attorney General of Canada (The Republic of France) v. Diab*, 2011 ONSC 337.

¹⁰ [Amnesty International, “Hassan Diab’s Release a Long Overdue Victory for Human Rights.” 12 January 2018.](#)

French Court of Cassation upheld a decision of the French Court of Appeal requiring that Mr. Diab stand trial.¹¹

Amnesty International calls on Canada to:

- Ensure that officials complicit in the torture and other human rights violations experienced by Ahmad Abou-Elmaati, Abdullah Almalki, Muayyed Nureddin, and Omar Khadr are held accountable.
- Provide redress, including compensation and an official apology, to Abusifian Abdelrazik.
- Intervene on behalf of Hassan Diab to prevent his extradition to France, to ensure justice and accountability for his torture or other ill treatment by French authorities.

4. REFUGEE PROTECTION

4.1 SAFE THIRD COUNTRY AGREEMENT

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* (Safe Third Country Agreement, STCA) is a bilateral treaty that came into effect in 2004. Subject to narrow exceptions, individuals seeking asylum after entering Canada from the US at land ports of entry are deemed ineligible to have their claims referred to the Immigration and Refugee Board and are returned to the US. In December 2019, the Prime Minister issued a mandate letter to the Minister of Public Safety, instructing him to “work with the United States to modernize the Safe Third Country Agreement.”¹²

In July 2020, the Federal Court of Canada determined that the STCA violates s. 7 of Canada’s Charter of Rights and Freedoms, which protects the right to life, liberty and security of the person. The decision deemed that those returned under the STCA face arbitrary immigration detention in conditions that “shock the conscience,” and the judge expressed concern about the heightened risk of *refoulement* for those who are returned to the US under the STCA.¹³ In April 2021, the Federal Court of Appeal overturned the lower court’s decision.¹⁴

Despite the Committee’s 2018 Concluding Observation that Canada assess the impact of the STCA on potential asylum seekers,¹⁵ no such assessment appears to have been published.

4.2 ORDERS IN COUNCIL

On 20 March 2020, Canada enacted Order in Council (OIC) 2020-0161.¹⁶ Premised as a temporary measure in response to Covid-19, the OIC prohibits foreign nationals from entering Canada from the United States (US) to claim refugee protection. Canada has renewed the measure 19 times.¹⁷ It applies to all persons entering Canada from the US between official ports of entry along the land border, and at air and marine ports of entry, subject to narrow exceptions.¹⁸ Those who do not meet an exception are pushed back to the US.

¹¹ Amnesty International, “[French court ruling in Hassan Diab case deals a devastating blow to justice](#),” 27 January 2021.

¹² Prime Minister of Canada Justin Trudeau, “[Minister of Public Safety and Emergency Preparedness Mandate Letter](#),” 13 December 2019.

¹³ *Canadian Council for Refugees v. Canada (Immigration, Refugees and Citizenship)*, 2020 FC 770, para. 94, 137.

¹⁴ *Canada (Citizenship and Immigration) v. Canadian Council for Refugees*, 2021 FCA 72.

¹⁵ UN Committee against Torture, “[Concluding observations on the seventh periodic report of Canada](#)”, CCPR/C/CAN/CO/7, 21 December 2018, para. 33 [“Concluding observations 2018”].

¹⁶ Government of Canada, [Order in Council 2020-0161](#), 20 March 2020.

¹⁷ Government of Canada, Orders in Council: [2020-0185](#); [2020-0263](#); [2020-0370](#); [2020-0442](#); [2020-0469](#); [2020-0538](#); [2020-0565](#); [2020-0672](#); [2020-0795](#); [2020-0810](#); [2020-0838](#); [2020-0886](#); [2020-0968](#); [2020-1128](#); [2021-0009](#); [2021-0076](#); [2021-0173](#); [2021-0314](#); [2021-0419](#).

¹⁸ Government of Canada, “[Coronavirus disease \(COVID-19\): Refugees, asylum claimants, sponsors and PRRA applicants](#).” At land ports of entry, the Safe Third Country Agreement applies.

Although Canadian authorities indicate they have an “agreement” with US authorities governing how those pushed back are to be processed,¹⁹ the details have not been made public and its legal authority has not been established. The agreement is akin to the diplomatic assurances, which the Committee’s 2018 Concluding Observations stipulated “should not be used as a loophole to undermine the principle of non-refoulement.”²⁰

The concerns about a heightened risk of *refoulement* expressed by the Federal Court are equally applicable to those who are pushed back to the US under the Orders in Council. The measure is contrary to the UN High Commissioner for Refugee’s guidance on legal considerations surrounding refugee protection in the context of Covid-19, notably that “blanket measures to preclude the admission of refugees or asylum-seekers, or of those of a particular nationality or nationalities, without evidence of a health risk and without measures to protect against refoulement, would be discriminatory and would not meet international standards.”²¹

Over 200 people were subjected to the measure as of November 2020.²² According to media reports, at least eight of these people were detained upon return to the US, and at least one person subject to the measure was subsequently deported from the US.²³

Amnesty International calls on Canada to:

- Rescind the Safe Third Country Agreement.
- Rescind the Covid-19 Order in Council prohibiting people from entering Canada from the US for the purpose of making a claim for refugee protection.

5. IMMIGRATION DETENTION

5.1 CONDITIONS OF DETENTION

In the 2019-2020 fiscal year, the Canadian Border Services Agency (CBSA) placed 8,825 people in immigration detention.²⁴ Immigration detainees are held at facilities dedicated to immigration detention (immigration holding centres), in temporary facilities (local police cells, cells at ports of entry, etc.) and in provincial jails.

The 2018 Concluding Observations called on Canada to “end the practice of irregular migrants and asylum seekers in provincial correctional centers,”²⁵ however this continues to take place. When in provincial jails, immigration detainees are routinely comingled with persons accused or convicted of criminal offences. This contravenes the UN Working Group on Arbitrary Detention’s determination that immigration detention “must not take place in facilities...designed for those within the realm of the criminal justice system,” and that “the mixing of migrant and other detainees who are held under the remit of the criminal justice system must not take place.”²⁶

In the 2018 Concluding Observations, the Committee further recommended that Canada “strengthen its efforts to ensure adequate living conditions in all immigration centres” and “ensure that irregular migrants and asylum seekers held in detention are provided with adequate medical and mental health care, including

¹⁹ Public Safety Canada, “[Special Committee on the COVID-19 Pandemic - Hot Issues Notes – May 2020](#),” 5 May 2020.

²⁰ Concluding observations 2018, para 29.

²¹ UNHCR, “[Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response](#),” 16 March 2020.

²² Emma Jacobs, “[Asylum seekers turned back from Canada face detention, deportation](#),” WBFO, 30 December 2020.

²³ Amanda Coletta, “[Canada is turning asylum seekers away at the border. In the U.S., they face deportation](#),” The Washington Post, 29 December 2020.

²⁴ Canada Border Services Agency, “[Arrests, detentions and removals - Annual detention, fiscal year 2019 to 2020](#).”

²⁵ Concluding observations 2018, para. 35.

²⁶ UN Working Group on Arbitrary Detention, “[Revised Deliberation No. 5 on deprivation of liberty of migrants](#),” 7 February 2018, para. 44.

routine assessments.²⁷ However, Canada's use of immigration detention during the Covid-19 pandemic has raised significant concerns regarding the rights to health and security of the person. In February 2021, detainees at the Immigration Holding Centre in Laval, Quebec, engaged in a hunger strike to protest their conditions of detention, particularly considering the Covid-19 pandemic. They alleged that they were provided inadequate healthcare, held in unsanitary conditions, and subjected to solitary confinement.²⁸

5.2 INDEFINITE DETENTION

In its concluding observations during Canada's 6th periodic review, the Committee expressed its concern that "individuals who enter onto the territory of the State party irregularly may be detained for an unlimited period of time" and urged Canada to set a "reasonable time limit for detention."²⁹ Similarly, in the 2018 Concluding Observations, this Committee noted with concern that the time limit for immigration detention is not defined by law.³⁰

This remains the case as of June 2021. In 2020, 144 people had been in detention between three and six months, 82 had been in detention for six months to one year, and 34 people had been in detention for over one year.³¹ A case seeking to challenge the absence of a time limit was denied leave to appeal by the Supreme Court of Canada on 11 March 2021.³²

5.3 CHILDREN IN DETENTION

Despite Canada's commitment to reducing the rates of children in immigration detention "except in extremely limited circumstance,"³³ government statistics reveal there was a 17% increase in the number of detained minors in 2019-2020 compared to the previous fiscal year.³⁴

5.4 CANADA BORDER SERVICES AGENCY OVERSIGHT

In the 2018 Concluding Observations, the Committee urged Canada to "establish an effective and independent oversight mechanism of the Canada Borders Services Agency to which individuals held in immigration detention can bring complaints."³⁵ Although the government has twice introduced legislation to create an oversight body,³⁶ the bills were never enacted, and the government has failed to re-introduce the legislation in the current session of Parliament.

Amnesty International calls on Canada to:

- Gradually abolish immigration detention. Under no circumstances should a person for immigration-related reasons be treated in a punitive manner, including being subjected to solitary confinement, or detained in facilities used for criminal law enforcement, such as jails, prisons, or police stations, or in jail-like facilities.
- Amend the Immigration and Refugee Protection Act to provide for a limit to the length of detention.

²⁷ Concluding observations 2018, para. 35.

²⁸ Justin Mohammed and Marisa Berry Méndez, "[Hunger strikes in Laval immigration detention centre highlight dire conditions, COVID-19 risks](#)," Rabble, 23 March 2021; and Canadian Press, "[Advocates say seven detainees on hunger strike against conditions in Laval immigrant holding centre](#)," CTV, 5 March 2021.

²⁹ Human Rights Committee, "[Concluding observations on the sixth periodic report of Canada](#)," CCPR/C/CAN/CO/6, 13 August 2015, para. 12.

³⁰ Concluding observations 2018, para. 34.

³¹ Immigration and Refugee Board, "[Detention Reviews by Length of Detention](#)."

³² *Alvin Brown, et al. v. Minister of Citizenship and Immigration, et al.*, SCC Case No. 39408, 11 March 2021.

³³ Canada Border Services Agency, "[National Directive for the Detention or Housing of Minors](#)," 6 November 2017.

³⁴ Canada Border Services Agency, "[Annual detention, fiscal year 2019 to 2020](#)," 13 April 2021.

³⁵ Concluding observations 2018, para. 35.

³⁶ Government of Canada, "[C-98: An act to amend the Royal Canadian Mounted Police Act and the Canada Border Services Agency Act and to make consequential amendments to other Acts](#)," 42nd Parliament, 1st Session; and Government of Canada, "[C-3: An act to amend the Royal Canadian Mounted Police Act and the Canada Border Services Agency Act and to make consequential amendments to other Acts](#)," 43rd Parliament, 1st Session.

- Amend the Immigration and Refugee Protection Act to prohibit the detention of children and the separation of children from their detained parents, guided by the principle that neither detention nor family separation is ever in the best interests of children.
- Establish an independent body responsible for overseeing and investigating the CBSA, with which immigration detainees can lodge complaints in the event of allegations of abuse, neglect, or other human rights concerns, to hold the government accountable.

6. VIOLENCE AGAINST INDIGENOUS WOMEN, GIRLS, AND TWO-SPIRIT PERSONS (ARTICLES 1 AND 16)

6.1 VIOLENCE AGAINST INDIGENOUS WOMEN, GIRLS, AND TWO-SPIRIT PERSONS

Indigenous women, girls, and two-spirit persons are more likely to experience violence than non-Indigenous women and girls in Canada. Canada's failure to prevent, address, and redress this violence remains one of the country's most egregious human rights concerns. The release of the National Inquiry into Missing and Murdered Indigenous Women and Girls' final report on 3 June 2019 supplemented an extensive body of knowledge about the threats facing Indigenous women, girls, and two-spirit persons, and the measures necessary to end the violence and ensure justice for survivors.³⁷

Canada must take urgent, concrete action using a human rights-based approach and centring the needs, voices, and expertise of Indigenous women, girls, and two-spirit persons, to effectively address the systemic and root causes of violence. This involves addressing the impacts of colonization, intersectional discrimination, inherent biases, and continued social and economic marginalization, including the heightened risks of violence in situations of overcrowded housing, homelessness, and commercial sex,³⁸ and the failure to publicly condemn, investigate, and punish acts that normalize violence and discrimination against Indigenous peoples in Canada.³⁹

The National Inquiry into Missing and Murdered Indigenous Women and Girls called for a National Action Plan on violence against Indigenous women, girls, and two-spirit persons. Prime Minister Justin Trudeau accepted this recommendation when the National Inquiry's report was released on 3 June 2019,⁴ and on 3 June 2021, Canada released its National Action Plan (NAP).⁴⁰

The NAP was expected to outline how all levels of government will transform the National Inquiry's 231 Calls for Justice into concrete actions to end the staggeringly high rates of violence against First Nations, Inuit, and Métis women, girls, and two-spirit people. The plan includes some high-level commitments but falls short of

³⁷ National Inquiry into Missing and Murdered Indigenous Women and Girls, "Final Report," June 2019.

³⁸ Amnesty International, *No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence against Indigenous Women in Canada*, AMR 20/012/2009.

³⁹ Final Written Submission to the National Inquiry, *supra* note 4.

⁴⁰ Government of Canada, "2021 Missing and Murdered Indigenous Women, Girls, and 2SLGBTQIA+ People National Action Plan: Ending Violence Against Indigenous Women, Girls, and 2SLGBTQIA+ People," 3 June 2021, <https://mmiwg2splus-nationalactionplan.ca/>.

articulating a comprehensive list of government priorities, with associated goals, objectives, and implementation timelines clearly connected to each of the Calls for Justice.

Indigenous organizations had a broad spectrum of responses to the NAP. Some organizations applauded the plan's distinctions-based approach and commitment to co-creating action plans with Indigenous peoples. Some cautiously welcomed the NAP, calling for further details and concrete action without delay. Finally, some organizations condemned the plan for being so delayed and short on action, and were concerned about the exclusion of some Indigenous activists and organizations in the plan's creation.⁴¹

Amnesty International calls on Canada to:

- Include Indigenous activists and organizations who were left out of the process to develop the National Action Plan in this process moving forward.
- Develop robust, detailed implementation plans responding to the 231 Calls for Justice that are locally adapted and distinctions-based, while also ensuring that all Indigenous women, girls, and two-spirit people have access to the same level of services no matter where in Canada they live.
- Make timelines, implementation plans, and monitoring and accountability tools and reporting publicly available.

6.2 FORCED AND COERCED STERILIZATION OF INDIGENOUS WOMEN

Racial bias against Indigenous peoples in the provision of public services in Canada is well-known.⁴² This discrimination has led to medically unnecessary sterilizations – mostly tubal ligations – without the informed consent of Indigenous patients. Forced or coerced sterilization of Indigenous women in Canada has been documented since the 1800s,⁴³ and while the total number of those sterilized without their consent is unknown, there is compelling evidence that the practice continues.⁴⁴ In the 1970s, there were about 1,200 cases, reportedly intended to reduce the numbers of Indigenous persons in Canada.⁴⁵ In July 2017, the Saskatoon Regional Health Authority released the report of an external review commissioned after at least four Indigenous women reported that they had been coercively sterilized in a Saskatoon hospital, primarily between 2008 and 2012.⁴⁶ As of February 2019, a lawyer leading a class action lawsuit in Saskatchewan had received over 100 disclosures from women that they had been sterilized without providing informed consent.⁴⁷ All but one of these women were Indigenous.⁴⁸

In December 2018, this Committee affirmed that forced and coerced sterilization of women in Canada is a form of torture – because this practice is intentional, committed by state officials, causes serious harm, and is rooted in discrimination – and called on Canada to take steps to investigate the issue, halt the practice, ensure justice for survivors, and report back to the Committee on progress made within a year.⁴⁹

In March 2019, the Senate Human Rights Committee initiated a study on forced and coerced sterilization in Canada, releasing its final report on 3 June 2021.⁵⁰ In August 2019, the House of Commons Health Committee called on the federal government to take urgent action on forced and coerced sterilization in

⁴¹ Amnesty International, "Moving from rhetoric to action to end violence against First Nations, Métis, and Inuit women, girls, and two-spirit people, 9 June 2021, <https://www.amnesty.ca/blog/moving-rhetoric-action-end-violence-against-first-nations-m%C3%A9tis-and-inuit-women-girls-and-two>

⁴² Dr. Judith Bartlett and Dr. Yvonne Boyer, *External Review: Tubal Ligation in the Saskatoon Health Region: The Lived Experience of Aboriginal Women*, Saskatoon Regional Health Authority, 2017, p.31.

⁴³ Maurice Law, "Request for a thematic hearing on the forced sterilization of Indigenous women in Canada, File no. 434.01," Submission to Inter-American Commission on Human Rights, 6 December 2017; and Dr. Judith Bartlett and Dr. Yvonne Boyer, *External Review: Tubal Ligation in the Saskatoon Health Region: The Lived Experience of Aboriginal Women*, Saskatoon Regional Health Authority, 2017.

⁴⁴ "Indigenous women kept from seeing their newborn babies until agreeing to sterilization, says lawyer," CBC, 13 November 2018.

⁴⁵ Roger Collier, "Reports of Forced Sterilization of Indigenous Women in Canada Mirror Shameful Past," *Canadian Medical Association Journal*, Vol. 21, Issue 33, August 2017.

⁴⁶ "Saskatoon health region apologies after aboriginal women felt pressured by staff to have tubed tied," *National Post*, 17 November 2015; and "Another Saskatoon Woman Says She Was Sterilized Against Her Will," *CBC*, 16 December 2015.

⁴⁷ Interview with Alisa Lombard, Maurice Law, 27 February 2019.

⁴⁸ *Ibid.*

⁴⁹ Amnesty International, "Sterilizing Indigenous Women without Consent is Torture, says UN Committee," 7 December 2018.

⁵⁰ Standing Senate Committee on Human Rights, "Forced and Coerced Sterilization of Persons in Canada," 3 June 2021, <https://sencanada.ca/en/Committees/report/94746/>.

Canada.⁵¹ While expressing concern that the practice continues, the federal government has yet to take concrete action to implement the UNCAT recommendations.⁵²

In January 2020, the National Collaborating Centre for Indigenous Health, with support from the government of Canada, hosted “Culturally Informed Choice and Consent in Indigenous Women’s Health Services,” a conference held in Ottawa which brought together the federal government, provincial and territorial governments, healthcare professionals and associations, and civil society organizations to discuss the issue of forced and coerced sterilization.⁵³ The government of Canada provided support to Indigenous women’s organizations to create resources on this issue.⁵⁴

In September 2020, Joyce Echaquan, an Atikamekw woman, live-streamed racist taunts from healthcare workers before her death at a Quebec hospital, prompting calls to address racism in healthcare.¹⁷ Renewed attention to the need to address racism in healthcare across Canada is welcome and necessary, but is not a substitute for specific actions to address forced and coerced sterilization in Canada.

As of June 2021, the government of Canada had failed to implement this Committee’s 2018 recommendations. It had not initiated an investigation into the forced and coerced sterilization of Indigenous women in Canada. In its interim report to the Committee, Canada outlined its plan to encourage victims to report incidents of forced or coerced sterilization to police for criminal investigations, as a substitute for a federal investigation into the issue. This plan fails to recognize the mistrust between Indigenous peoples and police and is inappropriate and inadequate.⁵⁵

The *2021 Missing and Murdered Indigenous Women, Girls, and 2SLGBTQIA+ People National Action Plan: Ending Violence Against Indigenous Women, Girls, and 2SLGBTQIA+ People*, released on 3 June 2021 by Canada, failed to list any planned actions to specifically address forced or coerced sterilization.⁵⁶

In addition, Canada has not met with survivors to discuss options for redress and justice. It had taken some steps to study and better understand the issue, but it lacks a coordinated, comprehensive, transparent, and survivor-centred approach to fully address the issue.

In its response to the Concluding Observations of Canada’s seventh periodic review by this Committee, Canada stated it was still “engaging with provincial and territorial governments, associations and health professionals, and Indigenous partners on next steps to address this issue.”⁵⁷ Amnesty International is unaware of progress made towards implementing this Committee’s recommendations as a result of these engagements.

Canada has ultimately failed to implement the Committee’s very specific and concrete recommendations to investigate the issue of forced and coerced sterilization, ensure non-repetition, and provide justice to survivors and their families, an egregious breach of its obligations under the Convention.

Amnesty International calls on Canada to:

- Ensure implementation plans connected to the *2021 Missing and Murdered Indigenous Women, Girls, and 2SLGBTQIA+ People National Action Plan: Ending Violence Against Indigenous Women, Girls, and 2SLGBTQIA+ Peoples* specifically address forced and coerced sterilization.
- Conduct a formal investigation into allegations of forced or coerced sterilizations, with particular attention to cases involving Indigenous women, girls, and two-spirit people.
- Ensure the formal investigation is centred on survivors of forced and coerced sterilization, is trauma-informed, culturally relevant, and uses non-policing investigative tools.

⁵¹ House of Commons, Standing Committee on Health, *Study on Forced Sterilization of Women in Canada*, 2019; and *Letter from Bill Casey, Member of Parliament and Chair of the House of Commons Standing Committee on Health, to the Ministers of Health, Public Safety and Emergency Preparedness, and Indigenous Services*, 2 August 2019.

⁵² Kristy Kirkup, “Committee ‘deeply disturbed’ by reports of coerced, forced sterilization,” *CBC*, 7 August 2019.

⁵³ Senator Yvonne Boyer, “Our Fights Against Coerced and Forced Sterilization: The first step in eradicating this unthinkable crime is to listen and hear the voices of Indigenous women who have been sterilized,” May 2020, p. 4.

⁵⁴ See, for example, Native Women’s Association of Canada, “*Knowing Your Rights Toolkit, “Sexual and Reproductive Health Booklet,”* 28 October 2020.

⁵⁵ Amnesty International, “*Canada: Submission to the United Nations Committee Against Torture, Follow-up, April 2020,*” April 2020, p. 8.

⁵⁶ Government of Canada, “*2021 Missing and Murdered Indigenous Women, Girls, and 2SLGBTQIA+ People National Action Plan: Ending Violence Against Indigenous Women, Girls, and 2SLGBTQIA+ People,*” 3 June 2021, <https://mmiwg2splus-nationalactionplan.ca/>.

⁵⁷ UN Committee Against Torture, “*Information received from Canada on follow-up to the concluding observations on its seventh periodic report,*” CAT/C/CAN/FCO/7, 16 April 2020, p. 4.

- Create a trauma-informed, culturally relevant mechanisms for survivors to report allegations of forced or coerced sterilizations, with reporting options that do not involve police.
- Ensure that appropriate and long-term health and healing supports are provided to all survivors who report that they were sterilized without their consent.
- Task the Canadian Institute for Health Information with compiling all relevant information about sterilization.
- Clarify the process by which free, full, and informed consent must be obtained prior to any medical procedure, to ensure that women and healthcare providers across Canada are clear on the process for obtaining consent.
- Ensure that medical bodies make accountability mechanisms transparent and accessible to the public.
- Support healthcare providers in promoting a full range of sexual and reproductive health information, goods and services across Canada.
- Ensure that Indigenous people who are pregnant have access to birthing facilities and practitioners of their choosing.
- Apply existing criminal legislation on torture and aggravated assault as warranted for investigating and prosecuting cases of forced or coerced sterilization.
- Explore amending the Criminal Code to make forced and coerced sterilization a specific offence to increase its visibility and better support prosecution of cases of sterilization without consent.
- Implement Truth and Reconciliation Commission Calls to Action 23 and 24 on increasing the number of Indigenous healthcare professionals and providing cultural competency training to all healthcare professionals.
- Appoint a special representative to meet with survivors and their families, to hear their requests and proposals for justice and reparations.

7. OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE

The Committee has called on Canada to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment during its reviews of Canada's periodic reports in 2005⁵⁸, 2012⁵⁹ and 2018.⁶⁰ In May 2016, Canada's then Minister of Foreign Affairs committed Canada to accession to the Optional Protocol, noting that for Canada it would not be "optional" any longer, and announced that consultations towards that outcome would be initiated with provincial and territorial governments.⁶¹

While the Committee acknowledged in their 2018 Concluding Observations the information provided by Canada regarding consultations held with territorial and provincial governments by that time⁶², meaningful consultation remains unfinished with no clear timeline for completing the overall process, and accession has not yet occurred. Canada must complete the process towards accession and introduce mechanisms to ensure the meaningful participation of civil society, Indigenous groups and other stakeholders throughout this process.

⁵⁸ Concluding observations 2005, supra note 61, para. 5(j).

⁵⁹ Concluding observations 2012, supra note 10, para. 25.

⁶⁰ Concluding observations 2018, para. 21(d).

⁶¹ Amnesty International, "[Amnesty International welcomes Canada's commitment to join torture prevention treaty](#)," 3 May 2016.

⁶² Concluding observations 2018, para. 20.

Amnesty International calls on Canada to:

- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

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info@amnesty.org



+44 (0)20 7413 5500

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CANADA

SUBMISSION TO THE UN COMMITTEE AGAINST TORTURE

72ND SESSION, 8 NOVEMBER-3 DECEMBER 2021, LIST OF ISSUES PRIOR TO REPORTING

Amnesty International submits this briefing to the United Nations (UN) Committee Against Torture, in advance of the adoption of the List of Issues Prior to Reporting for Canada's 8th periodic report under the Convention Against Torture and Other Inhuman or Degrading Treatment or Punishment, in November-December 2021. This submission is not an exhaustive account of Amnesty International's concerns but highlights several of the organization's key concerns in relation to implementation of the Convention in Canada.