**Submission to the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement**

**Call for input on justice, accountability and redress**

**May 2024**

## Introduction

The Canadian Human Rights Commission (CHRC) welcomes the opportunity to provide this submission to the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement to inform its annual report to the UN Human Rights Council on the topics of justice, accountability and redress.

The CHRC is Canada’s national human rights institution (NHRI), and in 2023 was re-accredited “A-status” by the Global Alliance of National Human Rights Institutions. The CHRC was established by Parliament through the Canadian Human Rights Act (CHRA) in 1977. It has a broad mandate to promote and protect human rights.

As Canada’s NHRI, the CHRC is committed to working with the Government of Canada as well as domestic and international partners and stakeholders to ensure continued progress in the protection of human rights, including Canada’s implementation of the rights and obligations enshrined in the various human rights treaties to which Canada is a party.

## Context

As stated in the CHRC’s June 2021 submission to the working group of experts on people of African descent,[[1]](#footnote-1) the realities of systemic and institutionalized racism and discrimination in Canada’s justice system have been repeatedly recognized by international and regional human rights mechanisms, by civil society, and by domestic human rights institutions. Substantive progress towards addressing these realities remains largely elusive.

Rates of use of force by law enforcement against Indigenous, Black and racialized people are higher than the general population. This is true of police interactions with the public, as well as among people in prison. Detainees, many of whom are racialized, are also vulnerable to abuse and discrimination by officials while being held in immigration detention without adequate oversight, recourse or accountability.

### Representation within the criminal justice system

Among the many underlying factors that contribute to, and perpetuate, systemic racism in law enforcement is the lack of diversity and representation of Indigenous, Black and other racialized people in the legal process – including amongst judges[[2]](#footnote-2), lawyers[[3]](#footnote-3) and juries[[4]](#footnote-4). Limited familiarity and consideration of the unique circumstances and social histories of these groups by individuals within the legal profession, can reinforce racial bias and unfair treatment by law enforcement.

Among police forces across Canada, the diversity of officers is not consistent with the communities they are engaged to serve. According to a 2023 Statistics Canada report, fewer than 1 in 10 police officers in Canada are part of a racialized group, which stands in contrast to 2021 Census data showing that 26.5 per cent of Canada’s population is racialized. Indigenous representation in police forces varies across the country, standing at 4 per cent overall. Representation is lowest in municipal police services (2%) and provincial forces in Ontario (1%) and Québec (2%), Canada’s two largest provinces.[[5]](#footnote-5) Indigenous peoples make up 5 per cent of Canada’s total population.

## Policing Indigenous, Black and racialized communities

The CHRC notes that, across Canada, concerns continue to be raised that racial profiling by police, security agencies, and other authority figures is a daily reality, reducing public trust, and having harmful impacts on Indigenous, Black and other racialized communities.

These concerns have been expressed by the UN Working Group of Experts on People of African Descent. For instance, following an October 2016 visit to Canada, the Working Group indicated that “there is clear evidence that racial profiling is endemic in the strategies and practices used by law enforcement,” and further expressed concern over the “excessive use of force and police-involved deaths, especially when responding to cases involving vulnerable people of African descent, such as those who are mentally ill.”[[6]](#footnote-6)

In June 2021, following extensive testimony by rights holders, advocates and representatives of law enforcement agencies, the House of Commons Standing Committee on Public Safety and National Security (the Committee) released its report on Systemic Racism in Policing in Canada.[[7]](#footnote-7)

The Committee heard a variety of concerns about systemic racism in policing and calls for accountability, oversight and transparency in order to restore trust with Indigenous, Black and racialized communities. We encourage the Expert Mechanism to review this report, which addresses a wide variety of issues, including use of force and other discriminatory policing practices.

Several provincial human rights commissions in Canada have also raised these concerns through various inquiries, reports and recommendations related to racial profiling and harmful policing practices.[[8]](#footnote-8) For example, a December 2023 report from the Ontario Human Rights Commission (OHRC) on racial profiling and racial discrimination of Black persons by the Toronto Police Service[[9]](#footnote-9) found that Black people are more likely to be proactively arrested, charged and subjected to uses of force in a wide range of police interactions. In addition, the data obtained by the OHRC further confirmed that Black communities are subjected to a disproportionate burden of law enforcement in a way that is consistent with systemic racism and anti-Black racial bias. All of these findings have added considerable weight to the groundswell of calls for systemic reform to policing services across Canada.

### Use of force data

In the absence of a publicly available, verified, sustained, and comprehensive source for data on police use of force, police-involved deaths, and deaths in custody in Canada, a group of advocates and researchers initiated a project to track such incidents. Described as a “law enforcement and criminal justice data and transparency project,” Tracking (In)Justice[[10]](#footnote-10) provides academics, researchers, victims, families of victims, communities, and advocates with a comprehensive database of information to answer basic questions and to support analysis, policy work and systemic change.

The Tracking (In)Justice database reveals that the rate of police involved deaths where force was used is increasing disproportionately in relation to population growth, with Black and Indigenous individuals over-represented in the total numbers.[[11]](#footnote-11)

## Indigenous, Black and Racialized prisoners

The CHRC remains deeply concerned by reports that recent prison population growth has been exclusively driven by increases in the composition of racially, ethnically and culturally diverse prisoners, and that the situation for certain groups, such as Indigenous prisoners, has deteriorated further.

The Office of the Correctional Investigator (OCI) has repeatedly highlighted that Indigenous overrepresentation in federal custody continues to worsen. In its recent report on Indigenous corrections the OCI notes that “[o]ver the last decade alone, the total Indigenous offender population (incarcerated and community) has increased by 40.8%”[[12]](#footnote-12) despite the overall federal prison population decreasing by 16.5 per cent over the same period. Across federal prisons designated for men and women, Indigenous people make up 32 per cent of the total population despite making up just 5 per cent of the country’s overall population. Overrepresentation of Indigenous individuals is even higher in prisons designated for women at nearly 50 per cent. Black individuals are also overrepresented in federal prisons, accounting for 8.1% of the federally-incarcerated population, while making up only 2.9% of the general population.[[13]](#footnote-13) In contrast, there has been a relative and proportional decline in the number of white prisoners, which has steadily decreased over the past 10 years.[[14]](#footnote-14)

Beyond overrepresentation, these populations also experience discrimination in relation to their conditions of confinement, including with respect to security classification and treatment. For instance, Indigenous and Black prisoners are more likely to be over-classified as maximum security and are more likely to be involved in incidents of use of force.[[15]](#footnote-15)

The CHRC also wishes to highlight a 2021 report[[16]](#footnote-16) from the Standing Senate Committee on Human Rights echoing the above-mentioned concerns about Canada’s correctional system.

## Immigration detention

The CHRC remains deeply concerned by Canada’s immigration detention regime, including the treatment of individuals who are detained, as well as the associated conditions of confinement. Every year, thousands of migrants who are not serving a criminal sentence are detained in Canada at the direction of the Canada Border Services Agency (CBSA). In a March 2024 article, Human Rights Watch noted that “over the past five years the [CBSA] has incarcerated thousands of people on immigration grounds in dozens of provincial jails.”[[17]](#footnote-17) A 2021 report from the same organization documented that “racialized people, and in particular Black men, are confined in more restrictive conditions and for longer periods […] than other detainees.”[[18]](#footnote-18) These detainees do not have access to recourse mechanisms to address mistreatment by law enforcement officials in the facilities in which they are held.

Although the government has introduced legislation that proposes to introduce an oversight body for the CBSA, including a complaint mechanism for detainees, progress on this legislation has stalled. Beyond oversight and monitoring, a significant gap exists in the human rights protections afforded to migrants detained in Canada. Currently, to file a complaint under the CHRA about a situation or practice occurring in Canada, an individual must be either “lawfully present” in Canada or, if temporarily absent, entitled to return to Canada.[[19]](#footnote-19) By virtue of their immigration status, detainees do not have access to human rights protections. The CHRC believes that human rights protections should be available to all individuals present in Canada – lawfully or not – and has highlighted the need for Parliament to repeal these provisions of the CHRA.

## Oversight and Accountability

## Independent oversight and complaint mechanisms

#### Civilian Complaints and Review Commission (CRCC)

The CRCC is an independent agency created by the Canadian parliament in 1988 to review public complaints made about the conduct of Royal Canadian Mounted Police (RCMP) members.

In the aforementioned June 2021 House of Commons Standing Committee Report on systemic racism in policing, the Committee’s first recommendation was to “clarify and strengthen the mandate, independence and efficacy of the Civilian Review and Complaints Commission.”[[20]](#footnote-20) Among the recommended improvements was to empower the CRCC to refer cases for criminal investigation of police conduct and recommend the filing of criminal charges against officers where there is a reasonable belief that the matter involves criminal conduct.

Legislation introduced by the government in May 2022 to replace the current CCRC with the Public Complaints Review Commission (PCRC) would “require the PCRC to collect and publish disaggregated race-based data, in consultation with the RCMP and the CBSA, to increase knowledge about systemic racism in law enforcement and inform solutions to better respond to it.”[[21]](#footnote-21) As of the date of this submission, the proposed legislation is still being studied by Parliament.

#### Office of the Correctional Investigator

The Office of the Correctional Investigator, Canada’s federal prison ombuds, has conducted a number of investigations and produced reports highlighting the situations of Indigenous, Black and racialized prisoners housed in federal correctional facilities. These reports include important quantitative and qualitative data on use of force incidents involving members of these prison sub-populations. The CHRC encourages the Working Group to review the findings of these investigations, which have been cited above on page 5 of this submission.

#### Optional Protocol to the Convention Against Torture (OPCAT) advocacy

The CHRC’s position is that having transparent and independent oversight and accountability mechanisms in all places of detention lessens the risk of abuse and ill-treatment, reduces corruption, and restores dignity and human rights for those in the most vulnerable circumstances. However, many places of deprivation of liberty in Canada – or aspects of detention in those places – are not subject to such ongoing independent oversight. The CHRC believes that the ratification of the OPCAT and the subsequent designation of an appropriate National Preventive Mechanism (NPM) is an important and necessary step that Canada needs to take.

In May 2016, Canada announced its intention to ratify the OPCAT*.* Since then, there have been numerous calls for Canada to ratify the OPCAT including most recently by the CHRC during Canada’s Fourth Universal Periodic Review.[[22]](#footnote-22)

#### Ontario Human Rights Commission’s ‘Framework for change to address systemic racism in policing’

In a July 2021 publication, the Ontario Human Rights Commission (OHRC) called on the Ontario government “to establish a legislative and regulatory framework to directly address systemic racial discrimination in policing across the province.”[[23]](#footnote-23) To support this work, the OHRC developed the ‘Framework for change to address systemic racism in policing’ comprised of ten (10) steps to address systemic racism, a number of which are related to preventing, tracking and dealing with incidents of police use of force. The CHRC encourages the Working Group to consult this valuable resource.

1. CHRC Submission to the working group of experts on people of African descent in Advance of the Working Group’s Annual Report to the UN General Assembly (June2021), available at: <https://www.chrc-ccdp.gc.ca/en/resources/publications/submission-the-working-group-experts-people-african-descent> [↑](#footnote-ref-1)
2. Beg, Samreen and Lorne Sossin. "Diversity, Transparency & Inclusion in Canada’s Judiciary." In Debating Judicial Appointments in an Age of Diversity, eds. Graham Gee and Erika Rackley (London: Routledge 2017), available at: <https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?referer=&httpsredir=1&article=3595&context=scholarly_works> [↑](#footnote-ref-2)
3. Morris J. Wosk Centre for Dialogue, Simon Fraser University, ‘Experiences of Indigenous families in the family justice system: A literature review and perspectives from legal and frontline family justice professionals’ published by Justice Canada (May 2023), see Section 3.2.1 Racism and Cultural Safety, available at: <https://www.justice.gc.ca/eng/rp-pr/jr/eiffjs-efasjf/p4.html#s2_1> See also: Canadian Centre for Diversity and Inclusion, ‘Power, privilege and inequities in the legal profession,’ (January 2018), available at: <https://ccdi.ca/media/2020/20180125-report-power-privilege-and-inequities-in-the-legal-profession.pdf> [↑](#footnote-ref-3)
4. Afilalo, Nathan, Jury Representation in Canada – Systemic Barriers and Biases in the “Conscience of the Community”, Report of the Canadian Institute for the Administration of Justice (July 2018), available at: <https://ciaj-icaj.ca/wp-content/uploads/page/2019/02/r83_preliminary-report_jury-representation-in-canada.pdf> [↑](#footnote-ref-4)
5. Statistics Canada, ‘Police resources in Canada, 2023’ available at: <https://www150.statcan.gc.ca/n1/daily-quotidien/240326/dq240326a-eng.htm> [↑](#footnote-ref-5)
6. UNGA, ‘Report of the Working Group of Experts on People of African Descent on its mission to Canada’, 36th Sess, Item 9, UN Doc A/HRC/36/60/Add.1, (16 August 2017), para. 78, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/239/60/PDF/G1723960.pdf?OpenElement>. [↑](#footnote-ref-6)
7. House of Commons Standing Committee on Public Safety and National Security, Systemic Racism in Policing in Canada (June 2021), available at: <https://www.ourcommons.ca/Content/Committee/432/SECU/Reports/RP11434998/securp06/securp06-e.pdf> [↑](#footnote-ref-7)
8. See: Commission des droits de la personne et des droits de la jeunesse, Review of Implementation of the Recommendations Issued in the Report of the Consultation on Racial Profiling and its Consequences, 2020, available at: <https://cdpdj.qc.ca/storage/app/media/publications/bilan-profilage-racial_synthese_EN.pdf>; See: Nova Scotia Human Rights Commission, Halifax, Nova Scotia: Street Checks Report, 2019, at: <https://humanrights.novascotia.ca/sites/default/files/editor-uploads/halifax_street_checks_report_march_2019_0.pdf>; See: Ontario Human Rights Commission, Under Suspicion: Research and Consultation Report on Racial Profiling in Ontario, 2017, at: <http://www3.ohrc.on.ca/sites/default/files/Under%20suspicion_research%20and%20consultation%20report%20on%20racial%20profiling%20in%20Ontario_2017.pdf>. [↑](#footnote-ref-8)
9. See: Ontario Human Rights Commission, From Impact to Action - Final report into anti-Black racism by the Toronto Police Service, available at: <https://www.ohrc.on.ca/en/impact-action-final-report-anti-black-racism-toronto-police-service>. [↑](#footnote-ref-9)
10. <https://trackinginjustice.ca/> [↑](#footnote-ref-10)
11. Tracking (In)Justice, Police-involved Deaths are on the Rise, as are Racial Disparities in Canada (February 2023), available at <https://trackinginjustice.ca/analysis-increase-in-deaths-and-racial-disparities/> [↑](#footnote-ref-11)
12. Office of the Correctional Investigator, ‘Ten Years since Spirit Matters: A Roadmap for the Reform of Indigenous Corrections in Canada’ (November 2023), available at: <https://oci-bec.gc.ca/en/content/ten-years-spirit-matters-roadmap-reform-indigenous-corrections-canada#fn5-rf> [↑](#footnote-ref-12)
13. Public Safety Canada. (2022 Jan.), ‘2020 Corrections and Conditional Release Statistical Overview (CCRSO)’, available at: <https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/ccrso-2020/index-en.aspx#sc> [↑](#footnote-ref-13)
14. Supra, Note 12. [↑](#footnote-ref-14)
15. OCI, Annual Report 2020-21, ‘Investigation into Uses of Force Involving Federally Incarcerated Black, Indigenous, Peoples of Colour (BIPOC) and Other Vulnerable Populations’, available at <https://oci-bec.gc.ca/en/content/office-correctional-investigator-annual-report-2020-2021#s4> [↑](#footnote-ref-15)
16. See: Report of the Standing Senate Committee on Human Rights, *Human Rights of Federally-Sentenced Persons*, June 2021, available at: <https://sencanada.ca/en/info-page/parl-43-2/ridr-federally-sentenced-persons/>. [↑](#footnote-ref-16)
17. Human Rights Watch, Canada: All 10 Provinces To End Immigration Detention in Jails (March 2024), available at: <https://www.hrw.org/news/2024/03/21/canada-all-10-provinces-end-immigration-detention-jails#:~:text=People%20in%20immigration%20detention%20are,with%20no%20end%20in%20sight> [↑](#footnote-ref-17)
18. Human Rights Watch, “I Didn’t Feel Like a Human in There” - Immigration Detention in Canada and its Impact on Mental Health (June 2021), available at: <https://www.hrw.org/report/2021/06/17/i-didnt-feel-human-there/immigration-detention-canada-and-its-impact-mental> [↑](#footnote-ref-18)
19. Section 40(5). [↑](#footnote-ref-19)
20. House of Commons Standing Committee on Public Safety and National Security, Systemic Racism in Policing in Canada (June 2021) at page 3, available at: <https://www.ourcommons.ca/Content/Committee/432/SECU/Reports/RP11434998/securp06/securp06-e.pdf> [↑](#footnote-ref-20)
21. Bill C-20 – An Act establishing the Public Complaints and Review Commission and amending certain Acts and statutory instruments, Backgrounder, available at: <https://www.canada.ca/en/public-safety-canada/news/2022/05/bill-c-20--an-act-establishing-the-public-complaints-and-review-commission-and-amending-certain-acts-and-statutory-instruments.html> [↑](#footnote-ref-21)
22. CHRC Submission to the United Nations Human Rights Council on the occasion of its review of Canada during the 4th cycle of the Universal Periodic Review (April 2023) available at: <https://www.chrc-ccdp.gc.ca/en/resources/publications/submission-the-united-nations-human-rights-council> [↑](#footnote-ref-22)
23. Ontario Human Rights Commission, ‘Framework for change to address systemic racism in policing’ (July 2021), <https://www.ohrc.on.ca/en/framework-change-address-systemic-racism-policing> [↑](#footnote-ref-23)