



Detention of Women in Canada

Report to the Human Rights Council on Canada's Third Universal
Periodic Review

Submitted in October 2017 by the Canadian Association of Elizabeth Fry Societies
(CAEFS)

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CAEFS Mission

This report is submitted by the Canadian Association of Elizabeth Fry Societies (CAEFS). CAEFS is an association of self-governing, community based Elizabeth Fry Societies in Canada that work with and for marginalized, victimized, criminalized and institutionalized women and girls, particularly those who are imprisoned. The Association exists to ensure substantive equality in the delivery and development of services and programs through public education, research, legislative and administrative reform, regionally, nationally and internationally.

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This submission was made possible by the support of the Canadian Feminist Alliance for International Action (FAFIA). The goal of FAFIA is to ensure that Canadian governments respect, protect, and fulfill the commitments to women that they have made under international human rights treaties and agreements.

Contact Information

Canadian Association of Elizabeth Fry Societies
Diana Majury, President
701-151 Slater Street
Ottawa, ON K1P 5H3
Tel: +1 (613) 238-2422
Web: www.caefs.ca
Email: diana.majury@carleton.ca

Shelagh Day, Chair, Human Rights Committee
Canadian Feminist Alliance for International Action
251 Bank Street, 2nd Floor
Ottawa, ON K1P 1X3
Tel: +1 (604) 872-0750
Web: www.fafia-afai.org // @fafiaafai
Email: shelagh.day@gmail.com

Indigenous and Racialized Women in Detention

I. UPR and Treaty Body Concerns and Previous Recommendations

At Canada's Second Universal Periodic Review (UPR) in 2013, Turkey recommended that Canada "closely monitor the situation of other disadvantaged groups such as women migrant workers and women prisoners".¹ Canada accepted this recommendation.² CAEFS asserts that in 2018 at Canada's Third UPR, the Human Rights Council must make more targeted, forceful recommendations to Canada on its treatment of Indigenous and racialized women and women with disabling mental health issues in prison, specifically on issues of segregation, male prison staff, and access to mental health services. CAEFS urges the Human Rights Council to look to the recommendations made to Canada by the Committee on the Elimination of Racial Discrimination (CERD Committee) in August 2017 as a guide.

In 2007³, 2012,⁴ and again in 2017,⁵ the CERD Committee expressed concerns and made recommendations regarding the disproportionately high rates of incarceration of Indigenous and racialized people, including the disproportionately high rates of segregation of Indigenous women prisoners.⁶

Other UN committees, such as the Human Rights Committee, have also expressed concerns about Canada's prison system, noting the unacceptably high rates of incarcerated Indigenous women,⁷ the over-crowding of detention facilities, the segregation of prisoners, lack of medical support for prisoners with mental health issues, and suicides of prisoners.⁸

CAEFS submits that Canada has failed to meaningfully implement the CERD Committee or Human Rights Committee recommendations and has done little to address the underlying conditions related to the over-incarceration of Indigenous and racialized women.

¹ Human Rights Council, Report of the Working Group on the Universal Periodic Review Canada, UN Doc A/HRC/24/11 (2013) at para 128.26.

² Human Rights Council, Report of the Working Group on the Universal Periodic Review Canada Addendum, UN Doc A/HRC/24/11/Add.1 (2013) at para 20.

³ UNCERD, 70th Sess, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada, UN Doc CERD/C/CAN/CO/18 (2007) at para 19.

⁴ UNCERD, 80th Sess, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada, UN Doc CERD/C/CAN/CO/19-20 (2012) at para 12.

⁵ UN Doc CERD/C/CAN/CO/21-23 at paras 15-16

⁶ See *Ibid* at para 15.

⁷ Human Rights Committee, *Concluding observations on the sixth periodic report of Canada*, UN Doc CCPR/C/CAN/CO/6, (13 August 2015), at para 18.

⁸ *Ibid* at para 14.

II. Liberty and Security of the Person

The number of women imprisoned in Canada is increasing at an alarming rate. The overall population of women in prison increased 60% since 2003.⁹ Between 2003 and 2013, the number of federally imprisoned women increased by 13.9%.¹⁰ This is happening at a time when Canada's national crime rate is at its lowest since 1969.¹¹ Indigenous and other racialized women,¹² as well as women with disabling mental health issues,¹³ are disproportionately incarcerated. Indigenous women are now 39% of federally sentenced women.¹⁴

The overwhelming majority of women in prison have histories of abuse and suffer from post-traumatic stress.¹⁵ 85.7% of all incarcerated women and 91% of Indigenous incarcerated women have experienced physical and/or sexual abuse.¹⁶ Many have never received therapeutic support; rather, they are likely to be medicated and pathologized.

Imprisoned women are more likely to be impoverished, under-educated¹⁷ and unemployed¹⁸ than the general public. 64.2% of federally incarcerated women are single mothers;¹⁹ 57.1% had primary responsibility for their children before they were imprisoned;²⁰ and the majority of their children end up in the care of the state.

Most women are criminalized for behaviour occasioned by their attempts to negotiate poverty,²¹ violent racism, and other forms of discrimination related to their marginalization and

⁹ Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2012-2013*, prepared by Howard Sapers (28 June 2013), online: <<http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20122013-eng.aspx>> [Office of the Correctional Investigator, *2013 Annual Report*].

¹⁰ Public Safety Canada, *2013 Annual Report Corrections and Conditional Release Statistical Overview* (2013) at 39, online: <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ccrso-2013/index-en.aspx>>.

¹¹ Statistics Canada, *Police-reported crime statistics, 2013* (23 July 2014) at 1, online: StatsCan <<http://www.statcan.gc.ca/daily-quotidien/140723/dq140723b-eng.pdf>>.

¹² Mandy Wesley, "Marginalized: The Aboriginal Women's Experience in Federal Corrections", *Public Safety Canada* (2012) at 33-34, online: <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/mrgnlzd/index-en.aspx>>.

¹³ Correctional Services Canada, *File #394-2-88 Evaluation Report: Intensive Intervention Strategy for Women Offenders* (March 2010) at 21-22, online: <<http://www.csc-scc.gc.ca/publications/092/005007-2006-eng.pdf>>.

¹⁴ Statistics Canada, *Study: Women in Canada: Women and the Criminal Justice System* (6 June 2017) at 2, online: StatsCan <<http://www.statcan.gc.ca/daily-quotidien/170606/dq170606a-eng.pdf>>

¹⁵ Canadian Association of Elizabeth Fry Societies, "Long Term Effects of Abuse and Trauma" Elizabeth Fry Society Resources, online: <<http://www.caefs.ca/feature/fact-sheets/>> [CAEFS, "Long Term Effects of Abuse and Trauma"].

¹⁶ *Ibid.*

¹⁷ Correctional Service Canada, *Twenty Years Later: Revisiting the Task Force on Federally Sentenced Women*, prepared by Meredith Robeson Barrett et al (July 2010) at 49, online: <<http://www.csc-scc.gc.ca/research/005008-0222-eng.shtml>> [CSC, *Twenty Years Later*].

¹⁸ *Ibid* at 51.

¹⁹ *Ibid* at 39.

²⁰ *Ibid* at 41.

²¹ Margaret Beare, *Women and Organized Crime*, Catalogue No PS4-106/2010EPDF, Department of Public Safety, (2010) at 10, 24, 29, online: <http://publications.gc.ca/collections/collection_2012/sp-ps/PS4-106-2010-eng.pdf>.

victimization.²² So slight is the risk that women pose to public safety that this risk can and should be managed in the community.

III. Over-incarceration of Indigenous and Racialized Women

A recent report commissioned by Public Safety Canada revealed that the over-incarceration of Indigenous women is nothing short of a crisis.²³ Across Canada, the over-incarceration of Indigenous women is a form of systemic discrimination within Canada's justice system.²⁴ Increases in marginalization, victimization, criminalization and imprisonment are directly related to the systemic discrimination, poverty, violence and isolation faced by Indigenous and other racialized women.

- I. Indigenous women prisoners represent the fastest growing prison populations in Canada. Between 2003 and 2013, their numbers increased by over 83.7%.²⁵
- II. In September 2007, Indigenous women were 45% of women classified as "maximum security";²⁶ they also account for 75% of reported incidents of self-injury.²⁷
- III. The classification system used by the Correctional Service of Canada (CSC), which administers federal prisons, was designed for a predominantly white male population. Although CSC claims it has adjusted the classification system, it still fails to take into account cultural or gender specific issues.²⁸ Indigenous women are more likely to be classified as medium or maximum security than non-Indigenous women.²⁹

²² Canadian Feminist Alliance for International Action, *Women's Inequality in Canada* (2008) at 42, online: <<http://socialrightscura.ca/documents/CEDAW/FAFIACanadaCEDAW2008.pdf>>.

²³ Mandy Wesley, "Marginalized: The Aboriginal Women's Experience in Federal Corrections", *Public Safety Canada* (2012) at 33-34, online: <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/mrgnlzd/index-en.aspx>>.

²⁴ Office of the Correctional Investigator, *Spirit Matters: Aboriginal People and the Corrections and Conditions Release Act*, Catalogue No PS104-6/2013E-PDF (October 2012) at para 79.

²⁵ Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2012-2013*, prepared by Howard Sapers (28 June 2013), online: <<http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20122013-eng.aspx>>. See also "Aboriginal Women Now Make up One-Third of Canadian Female Prison Population", *CBC News* (27 May 2015), online: <<http://www.cbc.ca/news/canada/thunder-bay/aboriginal-women-now-make-up-one-third-of-canadian-female-prison-population-1.3089050>>.

²⁶ Mandy Wesley, "Marginalized: The Aboriginal Women's Experience in Federal Corrections", *Public Safety Canada* (2012) at 33-34, online: <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/mrgnlzd/index-en.aspx>>.

²⁷ Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2012-2013*, prepared by Howard Sapers (28 June 2013), online: <<http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20122013-eng.aspx>>.

²⁸ Mandy Wesley, "Marginalized: The Aboriginal Women's Experience in Federal Corrections", *Public Safety Canada* (2012) at 33-34, online: <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/mrgnlzd/index-en.aspx>>.

²⁹ Correctional Service Canada, *Twenty years later: Revisiting The Task Force on Federally Sentenced Women*, (July 2010), online: <<http://www.csc-scc.gc.ca/research/005008-0222-eng.shtml>>.

- IV. Prisoners of African Canadian heritage represented 2.9% of the Canadian population in 2011, yet Black women represented 9.12% of the federal prisoner population in 2011-2012.³⁰
- V. The majority of African Canadian women in federal penitentiaries are incarcerated for drug trafficking. Many of these prisoners were caught carrying drugs across international borders. All were poor, and most had been coerced or forced into trafficking under threats of violence.³¹

The over-representation of Indigenous women within the justice system in Canada is an increasing problem, and is directly related to women's inequality, marginalization and victimization, including the relative lack of economic support, housing and services, such as therapeutic and mental health services, available to women, particularly in non-urban and northern Canada.³² Further, the lack of available community-based services results in women being geographically and culturally dislocated from their families and/or communities of support, to serve prison sentences.³³

IV. Treatment of Women Prisoners

Although the Task Force on Federally Sentenced Women,³⁴ the Arbour Commission,³⁵ the Auditor General, the Public Accounts Committee, the Correctional Investigator and the Canadian Human Rights Commission³⁶ have consistently concluded³⁷ that women prisoners pose a low risk to public safety and that they are less likely than men to return to prison on new charges, the Correctional Service of Canada (CSC) continues to use the same risk and needs assessment tools for both men and women.³⁸

³⁰ Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2012-2013*, prepared by Howard Sapers (28 June 2013), online: <<http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20122013-eng.aspx>>.

³¹ *Ibid.*

³² Jesse Winter, "Talking prisons and human rights", *Yukon News* (7 October 2013), online: <<http://www.yukon-news.com/news/talking-prisons-and-human-rights/>>.

³³ Yukon, Department of Justice, "Sentencing" *Yukon Government* (6 March 2014), online: <<http://www.justice.gov.yk.ca/prog/cor/sentencing.html>>.

³⁴ Correctional Services Canada, "Creating Choices: The Report of the Task Force on Federally Sentenced Women" (April 1990), online: CSC <<http://www.csc-scc.gc.ca/women/toce-eng.shtml>>.

³⁵ Solicitor General of Canada, *Commission of Inquiry into certain events at the Prison for Women in Kingston* (Ottawa: Public Works and Government Services Canada, 1996), online: <http://www.justicebehindthewalls.net/resources/arbour_report/arbour_rpt.htm>.

³⁶ Canadian Human Rights Commission, *Protecting Their Rights A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women* (December 2003) at 31, online: <<http://www.chrc-ccdp.ca/sites/default/files/fswen.pdf>>.

³⁷ The Société Elizabeth Fry du Québec, "Fact Sheets About Criminal Justice Criminalized & Imprisoned Women", online: <http://www.elizabethfry.qc.ca/en/fact_sheets/>.

³⁸ Colleen Anne Dell & Roger Boe, "Research Reports: An Examination of Aboriginal and Caucasian Women Offender Risk and Needs Factors" (2000) *Correctional Service of Canada* at "Need", online: <<http://www.csc-scc.gc.ca/research/r94-eng.shtml>>.

Women prisoners are over-classified which exacerbates their already limited access to less diverse programming, fewer choices for employment related training, and less access to services overall.³⁹ Sections 77 and 80 of the *Corrections and Conditional Release Act*⁴⁰ stipulate that the CSC must provide gender specific and culturally appropriate programming. However, women continue to be provided with programs and services designed for a predominately white, male prison population.⁴¹

V. Male Prison Staff

In its 2006 Concluding Observations, after reviewing Canada's fifth report, the United Nations Human Rights Committee recommended: "The State party should put an end to the practice of employing male staff working in direct contact with women in women's institutions."⁴²

The Government of Canada continues to employ male front line staff in its women's prisons.⁴³ Despite the reality that 91% of federally imprisoned Indigenous women and the overwhelming majority of all federally sentenced women have histories of physical and/or sexual abuse,⁴⁴ since 1995, CSC has employed men as front line workers in women's prisons. In addition, many of the men are inadequately trained and have not been screened to work with women.⁴⁵ Women prisoners regularly complain of inappropriate comments and even sexual harassment and assault by male staff, but refuse to file formal complaints against staff for fear of retaliation.⁴⁶

VI. Segregation (Solitary Confinement)

In 2006, the Human Rights Committee requested that Canada provide information "regarding the establishment of an independent external redress body for federally sentenced prisoners and independent adjudication for decisions related to involuntary segregation, or alternative

³⁹ Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2012-2013*, prepared by Howard Sapers (28 June 2013), online: <<http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20122013-eng.aspx>>; Mandy Wesley, "Marginalized: The Aboriginal Women's Experience in Federal Corrections", *Public Safety Canada* (2012), online: <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/mrgnlzd/index-en.aspx>>.

⁴⁰ *Corrections and Conditional Release Act*, SC 1992, c 20.

⁴¹ Mandy Wesley, "Marginalized: The Aboriginal Women's Experience in Federal Corrections", *Public Safety Canada* (2012), online: <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/mrgnlzd/index-en.aspx>>.

⁴² Human Rights Committee, *Concluding Observations of the Human Rights Committee* (2006) UN doc CCPR/C/CAN/CO/5 at para 18 [Human Rights Committee, 2006 Concluding Observations].

⁴³ CSC, *Twenty Years Later* at 20; see Committee on the Elimination of Discrimination against Women, Combined eighth and ninth periodic reports of States parties due in 2014, Canada, UN Doc CEDAW/C/CAN/8-9 (13 April 2015) at paras 236-244.

⁴⁴ CAEFS, "Long Term Effects of Abuse and Trauma".

⁴⁵ CSC, *Twenty Years Later*, at 60-1; Correctional Services Canada, *The Cross Gender Monitoring Project 3rd and Final Annual Report*, 2013, online: CSC <<http://www.csc-scc.gc.ca/publications/fsw/gender3/cg-22-eng.shtml>>.

⁴⁶ *Ibid.*

models.”⁴⁷ In 2015, the Human Rights Committee recommended that Canada “effectively limit the use of administrative or disciplinary segregation as a measure of last resort and for as short a time as possible and avoid such confinement for inmates with serious mental illness”.⁴⁸ The Government of Canada has not developed an external redress body,⁴⁹ and women in Canadian prisons continue to be disproportionately segregated. The 1996 Arbour Commission documented how women are affected by the isolation of segregation.⁵⁰ Segregation aggravates and/or creates mental health issues,⁵¹ reduces motivation and opportunities to participate in reintegration activities,⁵² and has been defined as an act of torture by the United Nations.⁵³

- Segregation is a status and a place. Women who are segregated from the general prison population are subjected to overly restrictive conditions of confinement, including being placed in segregation and being isolated for 18+ hours a day and may have no human interaction other than with correctional staff, when they are physically restrained, or when they are being counted, or when food or medication are passed through a slot in the door.⁵⁴
- In 2012-2013, there were 390 women in involuntary segregation.⁵⁵ 18.2% of the women stayed in segregation for longer than 30 days.⁵⁶
- Indigenous women are more likely to be involuntarily segregated and are held in segregation for longer periods than non-Indigenous women.⁵⁷

⁴⁷ Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, UN Doc CCPR/C/CAN/CO/5, (20 April 2006), at para 18.

⁴⁸ Human Rights Committee, *Concluding observations on the sixth periodic report of Canada*, UN Doc CCPR/C/CAN/CO/6, (13 August 2015), at para 14.

⁴⁹ Correctional Services Canada, “Response to the Coroner’s Inquest Touching the Death of Ashley Smith”, December 2014 at 3.2-3, online: CSC <<http://www.csc-scc.gc.ca/publications/005007-9011-eng.shtml#5.1>> (where the Government affirms its current law and policy surrounding segregation) [CSC, “Response to the Coroner’s Inquest”].

⁵⁰ Jena McGill, “An Institutional Suicide Machine Discrimination Against Federally Sentenced Aboriginal Women by the Correctional Service of Canada in Violation of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women” (2008) 2:1 *Race/Ethnicity: Multidisciplinary Global Contexts* 89.

⁵¹ Mandy Wesley, “Marginalized: The Aboriginal Women’s Experience in Federal Corrections”, *Public Safety Canada* (2012), online: <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/mrgnlzd/index-en.aspx>>.

⁵² *Ibid.*

⁵³ “Solitary confinement should be banned in most cases, UN expert says”, *UN News Centre* (18 October 2011), online: <<http://www.un.org/apps/news/story.asp?NewsID=40097#.VwdnYuchxpk>>.

⁵⁴ Kim Pate, “Why are women and girls Canada’s fastest growing prison population; and, why should you care?” (Grant Lowery Lecture delivered at the Annual Defence for Children International – Canada Grant Lowery Lecture, 26 April 2011) at 5, online: CAEFS <http://www.caefs.ca/wp-content/uploads/2013/05/Women_are_the_fastest_growing_prison_population_and_why_should_you_care.pdf> [Kim Pate, “Why are women and girls Canada’s”]; British Columbia Civil Liberties Association, “Solitary Confinement Backgrounder” (January 2015), online: <<https://bccla.org/wp-content/uploads/2015/01/Solitary-Confinement-Backgrounder-FINAL1.pdf>>.

⁵⁵ Public Safety Canada, *2013 Annual Report Corrections and Conditional Release Statistical Overview* (2013) at 65, online: <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ccrso-2013/index-en.aspx>>.

⁵⁶ *Ibid.*

- It is typical for the reactions of women who are held in segregation to result in additional criminal charges and therefore longer sentences.⁵⁸
 - The Canadian Medical Association and the UN Special Rapporteur on torture have labeled solitary confinement “cruel and unusual punishment,” and the Special Rapporteur has called for an absolute ban on solitary confinement for youth and those with mental health issues.⁵⁹
 - The jury at the inquest into the death of Ashley Smith recommended that prisoners with mental health issues never be placed in segregation.⁶⁰
 - Since that time, the Honourable Louise Arbour, the Canadian Association of Elizabeth Fry Societies, Native Women’s Association of Canada, the DisAbled Women’s Network of Canada, and the Canadian and Ontario Human Rights Commissions have recommended an end to the use of solitary confinement and related forms of isolation, whether labeled as ‘segregation’, ‘intensive psychiatric care’, ‘medical observation’ or other euphemisms used to label the segregation and isolation of women prisoners, particularly Indigenous women and those with disabling mental health issues.⁶¹
 - Since attention has been placed on the particular treatment of women, the Correctional Service of Canada has vastly reduced its use⁶² and CAEFS has offered to work with CSC to eliminate its use entirely.
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⁵⁷ Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2012-2013*, prepared by Howard Sapers (28 June 2013), online: <<http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20122013-eng.aspx>>; Correctional Services Canada, *Profile of Women in Segregation*, (December 2013), online: CSC <<http://www.csc-scc.gc.ca/research/005008-r320-eng.shtml>>.

⁵⁸ Correctional Services Canada, “Response to the Coroner’s Inquest Touching the Death of Ashley Smith”, December 2014, online: CSC <<http://www.csc-scc.gc.ca/publications/005007-9011-eng.shtml#5.1>>; Kim Pate, “Why are Women and Girls Canada’s Fastest Growing Prison Population; And, Why Should You Care?” (Grant Lowery Lecture delivered at the Annual Defence for Children International – Canada Grant Lowery Lecture, 26 April 2011) at 5, online: CAEFS <http://www.caefs.ca/wp-content/uploads/2013/05/Women_are_the_fastest_growing_prison_population_and_why_should_you_care.pdf>; Marion Botsford Fraser, “Life on the Instalment Plan”, *The Walrus* (March 2010), online: <<http://thewalrus.ca/life-on-the-instalment-plan/>>.

⁵⁹ Kim Pate, “Why are Women and Girls Canada’s Fastest Growing Prison Population; And, Why Should You Care?” (Grant Lowery Lecture delivered at the Annual Defence for Children International – Canada Grant Lowery Lecture, 26 April 2011), online: CAEFS <http://www.caefs.ca/wp-content/uploads/2013/05/Women_are_the_fastest_growing_prison_population_and_why_should_you_care.pdf>; British Columbia Civil Liberties Association, “Solitary Confinement Backgrounder” (January 2015), online: <<https://bccla.org/wp-content/uploads/2015/01/Solitary-Confinement-Backgrounder-FINAL1.pdf>>.

⁶⁰ Correctional Services Canada, “Response to the Coroner’s Inquest Touching the Death of Ashley Smith”, December 2014, online: CSC <<http://www.csc-scc.gc.ca/publications/005007-9011-eng.shtml#5.1>>.

⁶¹ Louise Arbour took this position at the 2016 CAEFS Conference -- *The A Word: Reclaiming Advocacy*.

⁶² At the end of fiscal year 2015-16, CSC reported there were 434 individuals in administrative segregation. Of these, 422 were men and 12 were women.

- Between 2011 and 2014 nearly half of suicides in federal prisons occurred in segregation cells. Most prisoners who have died in segregation had a documented history of mental health problems. Yet, few, if any, had access to therapeutic intervention.⁶³

Given the profound and disproportionate impact of segregation on women, particularly Indigenous women and women with mental health issues, the use of solitary confinement and segregation/separation of women prisoners must end. Placing limits on the duration of time that a woman may be placed in segregation is not enough. As the most recently proposed legislative response⁶⁴ and history reveal, such limits have only proven to be arbitrary and do little to protect those who are most vulnerable.

VII. Imprisoned Women with Mental Health Issues

Cuts to health and social services, including social housing, have contributed to the increasing numbers of women with disabling mental health issues in prisons and detention centres. The lack of services for women in the community contributes to the burgeoning population of women in prison, particularly Indigenous women, poor women and those with disabling mental health issues and intellectual disabilities. In what has been dubbed a “revolving door”⁶⁵ syndrome, there is ample evidence that homeless women with mental health issues are more likely to be imprisoned, and if released find it almost impossible to find housing, so too often find themselves re-incarcerated.⁶⁶

In its 2006 Concluding Observations, after reviewing Canada’s fifth report, the United Nations Human Rights Committee recommended that:

The State party, including all governments at the provincial and territorial level, should increase its efforts to ensure that sufficient and adequate community based housing is provided to people with mental disabilities, and

⁶³ Kim Pate, “Why are Women and Girls Canada's Fastest Growing Prison Population; And, Why Should You Care?” (Grant Lowery Lecture delivered at the Annual Defence for Children International – Canada Grant Lowery Lecture, 26 April 2011) at 5, online: CAEFS <http://www.caefs.ca/wp-content/uploads/2013/05/Women_are_the_fastest_growing_prison_population_and_why_should_you_care.pdf>; British Columbia Civil Liberties Association, “Solitary Confinement Backgrounder” (January 2015), online: <<https://bccla.org/wp-content/uploads/2015/01/Solitary-Confinement-Backgrounder-FINAL1.pdf>>.

⁶⁴ Bill C-56, *An Act to amend the Corrections and Conditional Release Act and the Abolition of Early Parole Act*, 1st sess, 42nd Parl, 2017 First Reading, online: <<http://www.parl.ca/DocumentViewer/en/42-1/bill/C-56/first-reading>>.

⁶⁵ Stephen Gaetz & Bill O’Grady, “Homelessness, Incarceration, and the Challenge of Effective Discharge Planning: A Canadian Case” in J. David Hulchani et al, eds, *Finding Home Policy Option for Addressing Homelessness in Canada* (e-book, Toronto: Cities Centre University of Toronto 2009) at 2, online: <<http://www.samhsa.gov/homelessness-programs-resources> > [Gaetz et al, Homelessness, Incarceration].

⁶⁶ Elizabeth Fry Toronto, *Housing Needs Assessment Facilitating Access to Housing for Criminalized Women in Toronto*, prepared by Snmanagement (April 2014), online: <http://www.efrytoronto.org/userfiles/files/efry_Housing%20Needs%20Assessment_WEB.pdf>.

ensure that the latter are not under continued detention when there is no longer a legally based medical reason for such detention.⁶⁷

In its 2015 Concluding Observations, the Human Rights Committee noted its concern about the “insufficient medical support to detainees with serious mental illness” and called on Canada to take appropriate measures to “effectively improve access to, and capacity of, treatment centres for prisoners with mental health issues at all levels.”⁶⁸

This is a double-faceted problem: women with mental health issues are at particular risk of being imprisoned and, inside prisons, they do not receive treatment or appropriate care.

- Federally sentenced women are twice as likely as men to have a mental health disorder upon being admitted to prison;⁶⁹ and in 2012/2013 approximately 75% of women prisoners received a CSC-based mental health service.⁷⁰
- The Office of the Correctional Investigator (OCI) has assessed that CSC cannot adequately deal with mental health issues, especially when it comes to federally sentenced women. The OCI found that CSC has an over reliance on force, physical restraints, restriction on movement, limitations on interaction with other prisoners, and limitations on access to transfers to appropriate psychiatric or mental health resources.⁷¹
- There are significantly fewer transition options for women released from prisons, particularly those with mental health issues.⁷²

In the November 2015 mandate letter to the Minister of Public Safety, Prime Minister Trudeau recognized the need to improve services for incarcerated people with mental health issues. The Prime Minister called on the Minister to “address gaps in services to Indigenous Peoples and those with mental illness throughout the criminal justice system.”⁷³

No action has been taken on this yet. Worse still, existing provisions, such as sections 29, 76, 77, 80, 81 and 84 of the *Corrections and Conditional Release Act*, which provide for transfers out of prisons to mental health, women’s and Indigenous rehabilitative resources and communities respectively, remain unavailable due to excessively restrictive corrections policies and practices.

⁶⁷ Human Rights Committee, *2006 Concluding observations*, at para 17.

⁶⁸ HRC 2015 Concluding Observations, at para 14.

⁶⁹ Correctional Services Canada, *File #394-2-88 Evaluation Report: Intensive Intervention Strategy for Women Offenders* (March 2011) at 21-2, online: CSC <<http://www.csc-scc.gc.ca/publications/092/005007-2006-eng.pdf>>.

⁷⁰ Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2013-2014*, prepared by Howard Sapers (27 June 2014), online: <<http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20132014-eng.aspx#sV>>.

⁷¹ Office of the Correctional Investigator, *2013 Annual Report*.

⁷² Gaetz et al, “Homelessness, Incarceration”.

⁷³ Prime Minister of Canada, “Minister of Public Safety and Emergency Preparedness Mandate Letter” (13 November 2015), online: <<http://pm.gc.ca/eng/minister-public-safety-and-emergency-preparedness-mandate-letter>>.

VIII. Conclusion

Many women and girl prisoners in Canada are unnecessarily imprisoned as they pose no threat to public safety and would be better dealt with in and by the community. This is particularly true for Indigenous women, who are disproportionately incarcerated and often imprisoned far from their home communities. Those who commit acts of violence generally are responding – often defensively – to acts of violence committed against them or others in their care and/or for whom they feel responsible.

Women who are incarcerated in Canada are often over classified, face inhumane segregation, and lack mental health supports and access to programming. Canada has not made significant improvements to the living conditions of prisons for women and the number of imprisoned women and girls is increasing, despite their low risk to society.

Research accumulated in the last 50 years shows that the most beneficial and cost-effective way to deal with preventing victimization and criminalization is to remedy social, racial, gender and economic marginalization and promote social determinants of health.

IX. Recommendations

The Government of Canada should:

- **Restrict the use of imprisonment for women and develop new protocols to decarcerate women, particularly Indigenous women and those with disabling mental health issues.**
- **Increase income security, health and educational measures such as income assistance, adequate housing, and community supports for women with mental health issues to address the reality that women are being criminalized and incarcerated because of poverty, previous abuse, social disadvantage, racialization, and disabling mental health and intellectual capacity issues.**
- **Put an end to the practice of employing male staff working in front-line contact with women in prisons for women.**
- **Establish independent judicial oversight as the external redress for federally sentenced prisoners.**
- **Put an end to the practice of placing women prisoners in segregation or solitary confinement.**