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Совет по правам человека
Шестидесятая сессия
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Пункт 3 повестки дня
Поощрение и защита всех прав человека, гражданских, политических, экономических, социальных и культурных прав, включая право на развитие

Посещение Канады

Доклад Рабочей группы по произвольным задержаниям* **

Резюме

Рабочая группа по произвольным задержаниям посетила Канаду 13–24 мая 2024 года по приглашению правительства. Рабочая группа отметила позитивные изменения, в том числе соблюдение процедур ареста в большинстве случаев, низкую распространенность чрезмерного применения силы при арестах, значительное снижение как общего показателя лишения свободы, так и показателя лишения свободы среди молодежи, принятие нормативных реформ и принципов, приоритет в которых отдается альтернативам содержанию под стражей, не предполагающим тюремного заключения, а также использование механизмов восстановительного правосудия, альтернативных путей, несудебных средств и программ общинного правосудия. Реализуются «принцип лестницы», законодательные меры по снижению зависимости от поручительства и денежного залога, а также более широкое использование надзора за программами. Кроме того, существуют различные схемы юридической помощи, а для реабилитации правонарушителей из числа коренных народов с учетом их культурных особенностей созданы «целительные центры».

В то же время Рабочая группа отметила проблемы в системе уголовного правосудия, в том числе неэффективность и системные проблемы процесса освобождения под залог, которые создают замкнутый круг повторных арестов и содержания под стражей, несоразмерно затрагивающий маргинализированные группы, полицейские допросы без присутствия адвоката, практику в системе заключения сделки со следствием, вызывающую обеспокоенность с этической и правовой точек зрения, системы общественного надзора с недостаточными сетями поддержки и ограниченным участием общины в процессе реинтеграции, условия содержания в исправительных учреждениях, не отвечающие международным

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** Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен, и на французском языке.

стандартам, и практику внедрения блоков структурированного вмешательства, в результате которой заключенные оказываются в изоляции и лишены полноценного общения. Рабочая группа с обеспокоенностью отметила также перепредставленность коренных народов и лиц африканского происхождения в системах уголовного правосудия и уголовного правосудия в отношении несовершеннолетних. Канадские политики признали, что это отражает системную дискриминацию. Рабочая группа с обеспокоенностью отметила далее отсутствие легкодоступных дезагрегированных данных и вынесение подросткам приговоров, предназначенных для взрослых. В контексте медико-санитарного обслуживания Рабочая группа отметила такие проблемы, как фактическое бессрочное содержание под стражей лиц с психосоциальной инвалидностью и растущее число предложений о принудительной медикаментозной терапии для взрослых и молодежи. Наконец, в контексте миграции она отметила отсутствие максимального срока содержания под стражей, условия содержания под стражей, напоминающие тюремные, отсутствие юридического представительства и ограниченный доступ к юридической помощи, а также отсутствие независимого надзорного механизма. Рабочая группа выносит рекомендации, призывающие Канаду внедрить конкретную практику, обеспечивающую более надежные гарантии против произвольных задержаний.

Приложение

Доклад Рабочей группы по произвольным задержаниям о посещении ею Канады

I. Introduction

1. At the invitation of the Government of Canada, the Working Group on Arbitrary Detention conducted an official visit to Canada from 13 to 24 May 2024. The Working Group was represented by Matthew Gillett (New Zealand), Ganna Yudkivska (Ukraine) and Priya Gopalan (Malaysia) and was accompanied by staff of the Office of the United Nations High Commissioner for Human Rights.

2. The Working Group first visited Canada in 2005, approximately 20 years before this second visit of 2024. The Working Group expresses its gratitude to the Government of Canada for its invitation to undertake the country visit and for its cooperation. During the visit, the Working Group met with officials of the following federal authorities: Public Safety Canada, Global Affairs Canada, Department of Justice Canada, Canadian Heritage, Women and Gender Equality Canada, Employment and Social Development Canada, the Correctional Service of Canada, the Parole Board of Canada, the Canada Border Services Agency, the Public Health Agency of Canada, the Canadian Human Rights Commission and the Office of the Correctional Investigator. It also met with Members of Parliament and with authorities in the Provinces of Alberta, British Columbia, Ontario and Quebec.

3. The Working Group acknowledges the numerous stakeholders, including representatives from civil society, members of the legal profession and interviewees, who shared their perspectives on the arbitrary deprivation of liberty. The Working Group thanks all of them for the information and assistance they provided.

4. During the country visit, the Working Group was provided with access to a range of facilities. While it was largely able to conduct its work without impediment, occasional restrictions did impede the Working Group. The Working Group went to seven federal, six provincial, two municipal and two Indigenous facilities. These included correctional facilities (both men's and women's facilities, at the federal and provincial levels), police stations, immigration holding centres, youth detention centres, community-run Indigenous healing lodges, and mental health facilities. It confidentially interviewed around 103 persons deprived of their liberty. The Working Group expresses its appreciation to the federal and provincial governments for the cooperation it received during the country visit.

5. The Working Group shared its preliminary findings on 24 May 2024. It intends to continue its constructive dialogue with the Government on the issues discussed in the present report.

II. Overview of the institutional and legal framework

A. Ratification of international and regional human rights instruments

6. Canada is a Party to the International Covenant on Civil and Political Rights and its two Optional Protocols, the International Covenant on Economic, Social and Cultural Rights, the Committee against Torture, the Committee on the Elimination of Discrimination against Women and its Optional Protocol, the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the Convention on the Rights of Persons with Disabilities and its Optional Protocol and the Convention on the Reduction of Statelessness.

7. Canada is not a Party to the Optional Protocol to the Convention against Torture, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, the International Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the 1954 Convention relating to the Status of Stateless Persons and its 1967 Protocol.

8. Canada has participated in four cycles of the universal periodic review – in 2009, 2013, 2018 and 2023.

B. National legal framework

Constitutional protections

9. The current Constitution of Canada consists of two main Constitution Acts: the Constitution Act 1867, which primarily addresses institutional organization, and the Constitution Act 1982, which includes the Canadian Charter of Rights and Freedoms. As part of the country's "supreme law", the Charter applies to all laws and government actions, including those of federal, provincial and territorial governments.

10. The Canadian Charter of Rights and Freedoms was inspired by various international human rights treaties, and international human rights law is sometimes referred to in interpreting Charter rights. The Charter guarantees the rights to life, liberty and personal security, protects individuals from arbitrary detention or imprisonment, and ensures that, if arrested or detained, they are promptly informed of the reasons, have the right to consult legal counsel without delay, and can contest the legality of their detention through habeas corpus, leading to release if the detention is found to be unlawful (as outlined in sects. 7, 9 and 10). Furthermore, the Charter guarantees due process rights, including the rights to fair trial, to be tried within a reasonable time, to be presumed innocent until proven guilty according to law, and not to be denied reasonable bail without just cause (sect. 11). In its section 15, the Charter affirms that every individual is equal before and under the law and is entitled to equal protection and equal benefit of the law without discrimination. This includes protection from discrimination on the basis of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

11. The Constitution of Canada establishes a federal system, dividing legislative and executive powers by subject matter between the federal Government and the country's 13 provincial and territorial governments. Additionally, some Indigenous groups exercise forms of self-government through treaties, which may address areas typically under federal or provincial jurisdiction. In line with the federal structure of Canada, the responsibility for fulfilling the country's international human rights obligations is shared among the federal, provincial and territorial governments.

12. In regard to the country's court system, the Supreme Court of Canada acts as the final court of appeal for both provincial and federal courts. Provincial "superior courts" have inherent jurisdiction, which includes jurisdiction over criminal matters. Courts can declare laws inoperative or issue a wide range of remedies for government action on the basis of the Canadian Charter of Rights and Freedoms.

13. In the criminal justice system, detainees' rights are protected under several legal frameworks, including the Criminal Code and the Corrections and Conditional Release Act. Sentences of two years or more are served in federal penitentiaries, while sentences of under two years are served in provincial prisons. Canada has a distinct criminal justice system for youth aged 12 to 17, governed by the Youth Criminal Justice Act (see paras. 55–58 below).

14. For migration-related detention, the Immigration and Refugee Protection Act governs the process, which falls under federal jurisdiction.

15. In 2021, Canada enacted the United Nations Declaration of the Rights of Indigenous Peoples Act, signalling a commitment to implement the United Nations Declaration on the

Rights of Indigenous Peoples of 2007. An action plan was adopted in 2023, providing a road map for achieving the objectives of the Declaration.

16. Canada has robust human rights guarantees under its laws, as set out in the Canadian Charter of Rights and Freedoms. It also has a strong judiciary, which protects the rule of law. Nonetheless, the Working Group notes that shortcomings in the implementation of this regulatory framework continue to risk arbitrary detention occurring in a range of circumstances, particularly in relation to Indigenous Peoples, people of African descent, other groups facing racial discrimination and other marginalized groups, including persons detained in migration centres, in mental health facilities, and suffering from substance abuse.

III. Good practices and positive developments

A. Arrest procedure

17. The Canadian Criminal Code and the Canadian Charter of Rights and Freedoms set out protections governing arrest procedures. The Working Group learned that arrest procedures appear to be followed in most instances and excessive use of force by arresting officers is relatively rare. While these are broadly positive trends, the Working Group notes that any deviation from arrest procedures or excessive force risks causing arbitrary detention. It encourages Canada to ensure uniform adherence to protections governing arrests.

B. Decrease in the incarceration rate

18. The Working Group's 2005 country visit report highlighted the decrease in incarceration rates as a positive development. Recent data show that Canada has made further progress in this area. Between 2013 and 2022, the incarceration rate dropped by 28 per cent. While most Western countries and European countries saw increases from 2020 to 2022, the Canadian rate fell by 18.3 per cent. The Working Group encourages the Government of Canada to continue and strengthen measures to maintain this downward trend in incarceration rates.

19. Notwithstanding the positive trend towards a decreasing overall detention rate across all groups in Canada, serious concerns remain concerning the ongoing overrepresentation of Indigenous Peoples, people of African descent and other marginalized groups in the criminal justice system. This concern was raised by the Working Group in its 2005 country visit report, but despite efforts made to address it, the significant overrepresentation of these groups compared to their proportion in the Canadian population has persisted, indicating that further measures are urgently required. Bail system deficiencies also affect these groups excessively (see sect. IV below).

C. Youth criminal justice

20. The Working Group notes the significant decrease in total numbers of youths incarcerated in recent years. The youth incarceration rate declined by 88 per cent, from 20.22 per 10,000 youth population in 1997–1998 to 2.37 per 10,000 in 2021–2022. The largest year-on-year decrease was reported in 2003–2004, when the incarceration rate dropped by 39 per cent.[1] The decline in the youth incarceration rate is a major factor contributing to the overall decrease in the Canadian incarceration rate. Given the potentially enduring impact of detention on a young person's life, the successful reduction of this metric is welcome. However, many youths continue to be detained, and the Working Group learned of human rights concerns in this respect, including the overrepresentation of certain groups in the youth criminal justice system, particularly Indigenous youth, the imposition of adult sentences on youths, confinement in isolated conditions, and occasionally a lack of appropriate rehabilitative measures, as detailed below.

[1] See https://www.justice.gc.ca/eng/cj-jp/state-etat/2024rpt-rap2024/a3.html.

D. Alternatives to detention

21. The Working Group learned of regulatory reforms and principles, which have assisted in reducing the rates of detention in several respects. The principle of restraint requires sentencing judges to prioritize a range of non-carceral alternatives to detention. Restorative justice mechanisms are used in some instances, along with alternative pathways, diversion programmes and community justice programmes, all of which contribute to lessening the use of detention. The Working Group encourages the Canadian authorities to expand the use of, and funding for, such initiatives.

IV. Main findings concerning the right to personal liberty

22. In determining whether the information provided, including from persons interviewed during the visit, raised issues regarding arbitrary deprivation of liberty, the Working Group referred to the five categories of arbitrary deprivation of liberty outlined in its methods of work.[2]

A. Detention in the context of the criminal justice system

1. Arrest and bail procedure

23. The Working Group, having interviewed a significant number of detainees about the circumstances of their arrest and received a wide range of materials, is satisfied that, in the vast majority of cases, procedures are adhered to and arrestees are informed both about the reasons for their arrest and about their rights. Furthermore, the Working Group welcomes the information that the police normally do not resort to excessive force during arrests. Canadian criminal procedure generally allows for suspects to be detained for no longer than 24 hours before seeing a judge. This short period of time facilitates rapid access to judicial controls, reducing the risk of arbitrary detention.

24. Detention decisions are typically based on assessing the primary risk of flight, the secondary risk of reoffending, and, more rarely, tertiary concerns like public safety or potential harm to the justice system's reputation, such as in cases involving terrorism. With regard to bail, despite Canadian legislation guaranteeing the right not to be denied reasonable bail without just cause, inefficiencies and systemic issues continue to affect the bail process. The Working Group welcomes the requirement that courts impose "the least onerous form of release", which is reflected in the Criminal Code through the "ladder principle". Equally, it welcomes legislative measures aimed at reducing the overreliance on sureties and cash bail, which has led to a decrease in the reliance on sureties and an increase in the imposition of programme supervision in several provinces.

25. Despite these changes, it appears that many individuals granted bail are released with onerous bail conditions that are difficult to comply with, especially for vulnerable individuals, resulting in frequent breaches of bail. These breaches often lead to revocation of bail, thus criminalizing otherwise non-criminal behaviour, and fuelling a vicious cycle of rearrests and detentions. Furthermore, this systemic problem discourages many accused individuals from requesting bail, as they would prefer to accrue credit for the pretrial detention period instead of exposing themselves to the risk of additional charges.

26. The Working Group invites the authorities to avoid unnecessary criminalization of bail breaches and to address the unique challenges faced by different marginalized groups within the Canadian bail system: tailored reforms are essential to ensure fairness and mitigate systemic disparities.

2. Access to legal assistance

27. The Working Group learned that a variety of legal aid schemes operate across Canada, with responsibilities apportioned among federal, provincial and territorial governments.

[2] A/HRC/36/38, para. 8.

Typically, detainees are granted access to legal counsel via telephone immediately following their arrest or even immediately in the police car.

28. The Working Group welcomes that free legal services are generally provided to indigent detainees. A number of detainees who raised concerns about the ineffectiveness of their legal aid lawyer reported that they had been able to have their lawyer replaced. However, the Working Group also learned of detainees experiencing difficulties in contacting their lawyers to receive ongoing legal advice, including those in immigration detention.

29. Section 10 (b) of the Canadian Charter of Rights and Freedoms requires the police to facilitate detainees' access to legal counsel, stipulating that, as articulated by the Supreme Court of Canada in its seminal decision *R. v. Sinclair* of 2010, police are prohibited from interrogating a detainee until the detainee has had a reasonable opportunity to consult with a lawyer. This provision, however, does not extend to allowing a lawyer's presence during police interrogations (except for an interrogation of young persons, where a lawyer must be present during the interview unless the young person chooses otherwise). The Working Group has been made aware that this sometimes results in detainees being subjected to persistent police questioning after the initial legal consultation, despite invoking their right to silence. The Working Group observes that the lack of a lawyer's presence during police interviews compromises detainees' defence rights, and strongly recommends that questioning be suspended as soon as detainees assert their right to silence. The Working Group further welcomes video recording of all police interviews and emphasizes that records must be available for a trial court whenever requested.

3. Plea bargaining

30. During its visit, the Working Group identified significant issues with the plea-bargaining system in Canada. Plea bargaining is prevalent, with more than 90 per cent of cases being resolved by guilty plea. This system, essential for managing the financial and operational demands of the justice system, raises critical ethical and legal concerns.

31. The Working Group noted that in some cases, plea bargaining risked undermining rights protected under international human rights standards by bypassing the due process and burden of proof expected in criminal trials. Of particular concern is the possibility for unrepresented accused persons to enter guilty pleas.

32. Financial justifications for plea bargaining, given its role in mitigating the costs of the justice system, contrast with the lack of in-depth research into its origins and implications. The Working Group learned with concern about the common prosecutorial strategy of approving or continuing prosecutions that often involve an excessive number of charges. This tactic is ostensibly used to give the prosecution leverage in plea negotiations, allowing it to offer concessions by dropping the majority of the charges as part of the bargaining process. Such practices not only complicate the legal process but also place undue pressure on the accused, further skewing the power balance in favour of the prosecution during plea negotiations. This power imbalance calls for more stringent regulations and more transparency in plea-bargaining practices, alongside stronger protections for unrepresented defendants, in order to maintain public confidence and the integrity of the justice system. Moreover, the Working Group learned that accused individuals often opt for plea bargaining over a full trial because the significant delays associated with trials risk prolonged pretrial detention, and a longer period of uncertainty, compared to a known, shorter sentence in a correctional facility.

33. While plea bargaining expedites case resolution, it must not compromise justice. The Working Group emphasizes that although plea bargaining reduces judicial workload and costs, it requires careful ethical oversight to ensure fairness and protect all parties' rights within the criminal justice system.

4. Rehabilitation and reintegration into society

34. The problem of recidivism remains a crucial challenge in Canada. The Working Group notes that the community supervision system plays a critical role in the reintegration of offenders into society. There are also strategies employed in correctional facilities aimed

at engaging offenders in programmes designed to foster pro-social behaviours and skills essential for successful reintegration. However, the Working Group's findings underscore significant challenges within the system, particularly in ensuring effective rehabilitation and support for offenders released on parole, many of whom face displacement from their original communities, which is a particular concern in Canada, given its geographical size. This geographic dislocation often leaves them without any support networks, complicating their ability to reintegrate and increasing the risk of recidivism. Furthermore, many interviewed detainees initially released under community supervision complained about a lack of any community involvement in their reintegration process.

35. The Justice Centre Model operating in Ontario appeared to be a positive example of increasing the alternatives to detention. Co-developed with the Ontario Court of Justice, communities, police services and those with lived experience, these centres take a holistic, wrap-around approach to increasing community safety, by addressing mental health, education, employment, and other social determinants of health. Through this work, Ontario has seen significant reductions in days of incarceration and recidivism. The Working Group also learned about the existence of Indigenous courts in certain provinces, which provides a promising potential model for expansion but should not be contingent on guilty pleas for access. Adequate funding for all of these alternative institutions is imperative.

36. The Working Group strongly encourages more comprehensive efforts to address the specific challenges faced by released detainees. To reduce recidivism, it is imperative that the Government intensify support in critical areas such as housing, healthcare access, educational opportunities and employment assistance. Tailoring community supervision to address these pivotal areas can significantly improve the outcomes for released individuals and foster a more equitable and effective reintegration process.

5. Conditions of detention

37. Regarding conditions in detention, the Working Group observed positive practices and received information that violence by prison guards against detainees was not common. All detention facilities had programmes in place for sentenced persons, aimed at their rehabilitation for life after detention, although the adequacy of these programmes varied, particularly as programmes were not typically available for remand prisoners due to the unknown length of their stay in detention. Many prisons had video link rooms to facilitate court appearances, and some had video screens in cell areas permitting frequent virtual family visits. This increased access to virtual visits is welcome but should not replace in-person meeting opportunities. Minimum security facilities were accommodating, with external work options available for some detainees, increasing the chances of a successful transition from detention to release into the community.

38. However, throughout Canadian provincial correctional facilities, untried prisoners on remand shared units with convicted prisoners. Moreover, some prisons, especially provincial facilities, were overcrowded, sometimes with a third detainee sleeping on the floor next to the toilet, in a two-person cell, and prisoners lacked activities to keep them occupied. In some facilities, particularly men's, serious violence between inmates, and hospitalizations, were reportedly frequently. Gangs are present in many units, putting pressure on detainees housed with them to join or face persecution. These conditions pressure untried detainees to plead guilty in order to move to different facilities. Women's facilities sometimes lack proper separation between higher and lower risk profile prisoners and those with psychosocial disabilities.

39. In some federal and provincial prisons, detainees are regularly kept locked in their cells for long periods, including over weekends. Staff shortages in some facilities lead to prisoners being deprived of access to open air for extended periods, occasionally exceeding a month. A frequent complaint was collective lockdowns as a collective form of punishment for the actions of individual prisoners, which sometimes resulted in long periods without prisoners being afforded their usual time out of their cells. This also caused the individual prisoners considered responsible for the collective lockdowns to be subjected to severe beatings as a form of retribution by their fellow inmates. There were also repeat offenders, who correctional officers said were "known" to them; this increases the risks of a negative security assessment. The Working Group is concerned by the use of opaque security

classification assessments, which rely heavily on correctional officers' discretion, introducing space for discrimination. The Working Group recommends transparent data collection and analysis and public reporting on the impact of correctional decision-making, particularly in relation to Indigenous Peoples and other marginalized groups.

40. The Working Group observed that detention facilities across the country generally have a health unit with a team of professionals providing physical and mental health services to individuals detained. However, in numerous facilities that it visited, the Working Group was informed of difficulties in accessing prompt physical healthcare, with some individuals waiting for several days to be seen by a doctor despite requiring immediate attention. Furthermore, the Working Group received information about deaths in custody, including the extremely high suicide and attempted suicide rates among Indigenous detainees, and the acute need for mental health medication and support in certain instances. Detention can exacerbate psychosocial disabilities, and the Working Group calls on the authorities to ensure that treatment is available and promptly accessible to those detainees in need.

6. Structured intervention units and other forms of special confinement

41. The Working Group was informed that Bill C-83 had amended the Corrections and Conditional Release Act to eliminate solitary confinement. Under the new legislation, inmates who cannot be safely housed in the general prison population may be transferred to structured intervention units, a new correctional model designed for targeted interventions. However, during visits to prisons, the Working Group observed that solitary confinement appears to have been replaced by structured intervention units and other forms of social isolation. When visiting structured intervention units, the Working Group was concerned that these units, and special confinement regimes, can result in detainees being isolated and deprived of meaningful interpersonal contact. The Working Group received information about individuals who had not left their cell for several days. Although detainees in these conditions are in theory afforded two hours of "meaningful" contact with other humans each day, this was sometimes fulfilled by a short conversation through the meal slot, or by merely allowing access to common areas with other prisoners also in special confinement. Where only one detainee was held in a structured intervention unit, this effectively left them in solitary confinement, which risks violating the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), whereby such conditions should only be imposed in exceptional cases as a last resort, for as short a time as possible and no longer than 15 days in any case, subject to independent review, and only pursuant to the authorization of a competent authority. Such conditions should be prohibited if they would exacerbate a prisoner's mental or physical disabilities (see rules 44 and 45). These findings are consistent with the conclusions of the Structured Intervention Units Implementation Advisory Panel,[3] and the Working Group strongly urges the Government to address the concerns and implement the recommendations put forth by the Panel.

42. The Working Group witnessed the grim conditions of special confinement in jails, including particularly unhygienic conditions in a men's facility with uncleaned faeces-stained walls. Those conditions would be unacceptable for any prisoners, but were particularly concerning given that the detainees held there were vulnerable individuals reportedly in that wing for their own protection. These included individuals with psychosocial disabilities and some transgender persons. The Working Group urges the Government of Canada to take immediate action to ensure that conditions in all places of detention conform with the requirement to treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person, as enshrined in article 10 of the International Covenant on Civil and Political Rights.

[3] Final report of the Panel, available at https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/2024-siu-iap-sltry-cnfnmnt/index-en.aspx.

B. Detention and Indigenous Peoples, people of African descent and other groups facing discrimination

43. The overrepresentation of Indigenous Peoples in criminal justice detention, in particular women, was raised by the Working Group in its 2005 report. Recent data from 2023 indicate that Indigenous Peoples comprise approximately 5 per cent of the adult population of Canada and represent 32 per cent of detainees in federal custody and 50 per cent of all incarcerated women. In certain provincial detention facilities, up to 70 or 80 per cent of inmates are Indigenous. The Working Group received information that the disproportionately high rates of Indigenous Peoples in criminal justice detention were linked to systemic racism reflected in overpolicing, overprosecution and overincarceration. Higher rates of poverty, substance abuse, unemployment, homelessness, and family and community breakdown reflect intergenerational trauma and the legacies of racism and colonialism that include residential schools, the child welfare system and the Sixties Scoop. Although the authorities must ensure the protection of the public against violent crimes, they should also take into account these root contributing factors when formulating responses to the overrepresentation of Indigenous Peoples in the criminal justice system.

44. In the case of *R v. Gladue*, in 1999, the Supreme Court required judges to consider the background circumstances of Indigenous offenders prior to sentencing, noting that Indigenous overrepresentation reflected a "crisis" in the criminal justice system of Canada. "Social history reports" ("Gladue reports") give judges information on the lives of Indigenous offenders before sentencing. Although the Gladue Principles are meant to address the overrepresentation of Indigenous Peoples in detention, the Working Group received information that the criteria were sometimes misused as an additional risk factor. Concerns were also raised about retraumatization. According to information received, the process of producing such a Gladue report involves "telling someone you don't know over the phone about the worst experiences of your life", with no or limited support for such traumatic disclosure.

45. The Working Group spoke to numerous Indigenous detainees who shared personal stories of physical and sexual abuse, childhood neglect, substance abuse and psychosocial disabilities, which had led to their involvement in the criminal justice system from a young age. They expressed hopes of transitioning back into their communities and breaking the cycle of reoffending. However, a long history of repeated incarceration meant that some were ill-equipped to cope with life outside detention. In this regard, the Working Group underscores the importance of increasing the chances of a successful release and reducing recidivism. To that end, sections 81 and 84 of the Corrections and Conditional Release Act provide for alternatives to incarceration, allowing Indigenous offenders sentenced to federal custody to serve parts of their sentences in their communities or to apply for release to an Indigenous community. The Working Group visited two section 81 facilities in Alberta – the Buffalo Sage Healing Lodge, for women, and the Stan Daniels Healing Centre, for men, facilities within the purview of Correctional Services Canada – where residents develop independent living skills through daily chores, continuing education, culturally appropriate programming, job placements and established community connections. Positive information was received about the restorative value of the cultural practices and programmes offered, as well as about the presence of non-uniformed, plain-clothed staff, creating a safe and calming environment.

46. Despite the highly positive feedback, the Working Group was struck by the limited number of beds available in the facilities visited, compared to the high number of Indigenous detainees in Alberta, which was above the national average. The Working Group also received information about a serious nationwide shortage of healing lodge beds and the lack of healing lodges in certain parts of the country. The Working Group recommends much greater use of community-managed section 81 healing lodges and section 84 releases, and increased funding to maximize the impacts of these initiatives.

47. The Working Group received information that Indigenous detainees were disproportionately classified as higher security risks in prisons. Most maximum-security female detainees interviewed by the Working Group were Indigenous. A higher security classification significantly restricts an inmate's freedom of movement within detention

facilities and limits their access to education, vocational training and rehabilitative programmes. Additionally, the Working Group learned that Indigenous inmates were more often subjected to disciplinary measures, including placement in special confinement regimes.

48. The Working Group welcomes the federal Government's first Indigenous Justice Strategy with its partners – First Nations, Inuit and Métis – released in March 2025, which is aimed at addressing systemic discrimination against and overrepresentation of Indigenous Peoples in the criminal justice system. The Working Group urges the Government to implement the call of the Truth and Reconciliation Commission for action and justice, and the recommendations made by the Office of the Correctional Investigator, on this matter. It encourages the Government's emphasis on restorative justice, alternative pathways to reduce recidivism, and diversionary programmes. Federal detainees provided positive feedback on culturally sensitive programming, which included smudging, sweat lodges, drum circles and the Pathways initiative. Nonetheless, the Working Group also received information that Indigenous detainees sometimes suffered from insufficient access to elder reviews, Indigenous programming, and the healing components of correctional plans, which could have cascading negative consequences on security ratings, parole hearings, and section 81 transfers and section 84 discretionary releases. It urges the Government to remedy these deficiencies.

49. While encouraging the further participation of elders and funding for elders' services, the Working Group recommends, as it did before, the recruitment of more Indigenous individuals into the police, the judicial system, the corrections administration and the legal professions. It notes the appointment of the first person of colour to the Supreme Court of Canada in 2021 and the first Indigenous justice in 2022. Such structural changes, coupled with efforts to reduce the reported discriminatory biases that underlie systemic discrimination, are urgently needed, alongside initiatives to tackle the root causes that trap Indigenous Peoples in the criminal justice system.

50. The Working Group received information that in 2019, 46 per cent of persons of African descent aged 15 or over had reported experiencing discrimination in the past five years. The Working Group was informed of systemic discrimination contributing to disproportionate incarceration of people of African descent. This is one of the fastest-growing subpopulations in the federal corrections system, representing 9.2 per cent of the total incarcerated population while representing 4 per cent of the Canadian population.

51. The Working Group was informed of recent developments, including the creation of an external steering group in February 2023. This group, composed of nine experts and leaders from Afrodescendent communities across Canada, was established to advise the Government of Canada on the development of its Black Justice Strategy. In June 2024, the steering group released its report, entitled *A Roadmap for Transformative Change: Canada's Black Justice Strategy*. The report presents 114 recommendations to address anti-Black racism and systemic discrimination within the criminal justice system, which has contributed to the overrepresentation of Black individuals, including as victims of crime. In response, the federal Government introduced the *Canada's Black Justice Strategy Implementation Plan* in February 2025. This 10-year framework is aimed at reducing the overrepresentation of Black people in the criminal justice system. The Working Group acknowledges these positive steps and emphasizes the Government's commitments outlined in the plan: combating anti-Black racism and systemic discrimination, collecting disaggregated data, and removing barriers caused by racism and discrimination through collaboration with Black communities. It urges the Government to take concrete actions to turn these commitments into tangible results.

52. The Working Group also heard about community partnerships to implement rehabilitation programmes, and the passing of legislation to remove many mandatory minimum penalties that had led to the disproportionate incarceration of Indigenous persons, persons of African descent, and other people facing racial discrimination. It was alerted to ongoing concerns about impunity for police violence and racial profiling, which, although contrary to the regulatory instruments governing police activities, reportedly continue to occur, thereby contributing to the overincarceration of these communities. The Working Group observed disproportionate numbers of detainees of African descent in the highest security settings. It also received information about the differential treatment they faced in

detention (higher instances of special confinements and use of force) and during the legal process, leading to discriminatory outcomes. The Working Group was informed of the need to utilize class action litigation, due to failure to effect change through engagement with law enforcement authorities. It was told that law enforcement officials had undertaken racial bias training, but it received insufficient information about other efforts undertaken by law enforcement authorities. Establishing an effective and independent police oversight mechanism is essential in this respect.

53. The Working Group also received updates about the country's 2019–2022 Anti-Racism Strategy, and about the recently released Anti-Racism Strategy 2024–2028 which concerns combating racism and discrimination more broadly in respect of all groups. Effective implementation, data collection, and evaluation frameworks to assess progress, measure outcomes and determine the overall impact of these strategies, will be essential for combating systemic discrimination against and overrepresentation of Indigenous Peoples, people of African descent and other groups facing discrimination in the criminal system.

54. The Working Group was concerned at the lack of readily available disaggregated data at the federal, provincial and territorial levels regarding offending rates, incarceration rates and sentencing levels, and of data disaggregated on the criteria of race, marginalized groups and other relevant metrics. Such data are crucial for developing targeted strategies to remove any forms of discrimination. The Working Group welcomes initiatives in this respect, as envisaged in the newly adopted strategies and plans, and urges prompt implementation.

C. Youth criminal justice

55. In 2003, Canada introduced the Youth Criminal Justice Act for youths aged 12 to 17, offering various pre- and post-charge diversion measures, such as warnings, cautions and referrals to community programmes. If a charge is warranted and the young person is found guilty, sentencing options can include various community sentences such as probation or, in the most severe cases, youth detention. Amendments in 2012 and 2019 included stricter criteria in relation to pretrial detention and custody. Young people under the age of 18 are held in custody in provincial youth facilities; after 18, they may be moved to adult facilities if the court so orders. Typically, at 21, they transfer to adult prisons if more than two years remain on their sentence.

56. The Youth Criminal Justice Act, along with its predecessor, the Young Offenders Act, allows a judge to sentence a young person aged 14 or older as an adult in exceptional cases. The relevant provision was amended in 2012 to align with a 2008 Supreme Court decision.[4] Under the current regime, an adult sentence can only be imposed if the prosecutor can overcome the young person's constitutionally protected presumption of diminished moral blameworthiness and prove that a youth sentence would not be sufficient to hold the individual accountable given the circumstances. In line with general comment No. 24 (2019) of the Committee on the Rights of the Child [5] as well as the Committee's latest concluding observations on Canada,[6] the Working Group urges the Government to ensure that no individual under the age of 18 is sentenced as an adult, regardless of the circumstances or the severity of the offence.

57. Since its implementation, the Youth Criminal Justice Act has been linked to a decrease in youth crime rates and custody admissions. For instance, Ontario saw an 87 per cent reduction in youth custody admissions from 2004–2005 to 2022–2023. However, concerns persist about the overrepresentation of Indigenous youths and youths of African descent in detention. The Working Group calls for effective strategies to address this issue, noting the reported link between prisons and the child welfare and residential school systems, referred to as the school-to-prison pipeline.[7] Weaker family ties and community support systems also fuel recidivism. Additionally, the Working Group notes with concern recent upticks in youth

[4] The Supreme Court decision in *R. v. D.B.* [2008] 2 SCR 3.
[5] See para. 30.
[6] CRC/C/CAN/CO/5-6.
[7] See https://www.justice.gc.ca/eng/rp-pr/jr/bycjs-yncjs/engagement-resultat.html.

crime and incarceration in some provinces, as well as instances where young individuals were placed in isolation in youth correctional facilities. Incarceration and isolation can potentially have greater negative impacts on young individuals due to development considerations and their relative immaturity, when compared to adults.

58. The Working Group commends the efforts focused on prevention, diversion and community support. However, it notes that, in some cases, young individuals were not provided with sufficient rehabilitative and reintegration measures, which contributed to recidivism or violations of bail conditions. The Working Group encourages the Government not only to ensure access to these programmes and services but also to strengthen efforts to make them more effective in practice. Furthermore, it calls for the adoption of more comprehensive community-based programmes and non-custodial sentences to prevent recidivism and enhance the rehabilitation and reintegration of young offenders.

D. Detention in the context of healthcare

1. Detention in the context of psychosocial disabilities

59. In Canada, the health system is largely under the jurisdiction of provincial authorities. Through the Canada Health Act, the federal Government provides funding to the public health system.

60. Part XX.1 of the Canadian Criminal Code governs the procedures applicable to accused persons found not criminally responsible or unfit to stand trial, including the court's power to order involuntary treatment under strict legal standards and procedural safeguards. Those found not criminally responsible are not convicted but come under a provincial or territorial review board, which has the authority to order their full or partial release or their custody in hospitals or other designated mental health facilities. In one such facility, the Working Group observed a continuum of care – the use of independent living units and temporary absences in the community – essential to the successful rehabilitation and reintegration of individuals. It was informed of the shortage of such facilities and of beds in existing facilities, as well as the low number of referrals of individuals of Indigenous origin. In addition, some individuals held in these facilities may never be deemed fit for release, putting them at risk of de facto indefinite detention, contrary to international standards.

61. The Working Group also observed a high prevalence of individuals with psychosocial disabilities detained in penitentiaries. Although individuals with psychosocial disabilities are sometimes housed in separate blocks, this was not uniform, and they are otherwise subjected to the same or harsher carceral conditions as the general population. In addition, the Working Group was concerned to learn of some cases of remanded individuals detained in designated mental healthcare units for reasons unrelated to mental health and subjected to stricter detention regimes.

62. The Working Group observed a high prevalence of persons with psychosocial disabilities in structured intervention units or other forms of special confinement, which often lacked sufficient opportunity for meaningful human interaction. The Working Group underlines the well-documented harm that isolation may cause, and the particular needs of individuals with psychosocial disabilities. It encourages the Government to prioritize harm-reduction measures and urgently cease the detention of such individuals in conditions that may cause further harm. The Working Group was especially concerned to learn of instances where Indigenous individuals held in these conditions and suffering from past trauma had been refused mental healthcare. In relation to youth referred for involuntary mental health treatment, the Working Group recalls the need to prioritize personal liberty over institutionalization of individuals with psychosocial disabilities. It encourages the provision of comprehensive healthcare measures outside of the carceral context, and the use of detention as a measure of last resort.

2. Substance use and treatment

63. The Working Group was informed of the growing drug crisis affecting the country as a whole and the steps taken by various provinces to address the situation. The creation of

specialized courts, such as drug treatment courts, provides alternatives to incarceration for individuals charged with non-violent offences under the Controlled Drugs and Substances Act or the Criminal Code in cases where drug dependence is a factor. The Working Group welcomes initiatives avoiding detention and emphasizing instead treatment and rehabilitation. Nonetheless, it remains concerned that individuals who wish to seek drug treatment through these courts must plead guilty and are under threat of incarceration in cases of relapse. Caution must be exercised to ensure that such courts do not cause persons with substance dependencies to falsely confess to crimes. The Working Group recalls that the threat of imprisonment should not be used as a coercive tool to incentivize people into drug treatment.

64. The Working Group learned of the availability of various drug rehabilitation programmes in most detention facilities. However, it also met individuals who were facing substance addiction at the time of their incarceration and had not been provided with any drug-substitute treatment – which in some cases can lead to severe suffering and even death if the detainee relapses into use upon release. Authorities should ensure the availability of evidence-based harm reduction services, such as treatment programmes that include opioid substitution therapy in places of detention, where medically necessary.

65. The Working Group was also informed of increasing calls and existing and proposed laws to allow the involuntary drug treatment of adults and even youth in different provinces and territories. While the Working Group acknowledges the genuine intent behind such legislative frameworks to address severe addiction cases where individuals may be at imminent risk of harm, it expresses concerns about the fundamental human rights implications of involuntary treatment approaches. The Working Group recognizes that addiction is a complex health condition that requires comprehensive, person-centred care, yet it emphasizes that the right to personal autonomy and bodily integrity remains paramount even in cases of severe substance dependence. It recalls that deprivation of liberty in all settings must be an exception and substance abuse treatments must always be based on informed and voluntary consent. Echoing the recommendations of the Committee on the Rights of Persons with Disabilities in its latest concluding observations on Canada, the Working Group urges Canada to urgently halt the adoption of and repeal existing federal, provincial and territorial laws and policies allowing for involuntary detention and treatment of individuals suffering from substance abuse.[8] As an alternative to compulsory drug treatment, the Working Group urges the authorities to further invest in voluntary, evidence-informed and rights-based health and social services, as well as drug dependence treatment and rehabilitation options in the community.

E. Detention in the context of migration

66. Detention of migrants and asylum-seekers is regulated under the Immigration and Refugee Protection Act 2001. This detention is overseen by the Canada Border Services Agency, which operates immigration holding centres. In some centres, the conditions were carceral in nature, with locked doors and limited if any access to open air areas. The Working Group learned that detainees in some facilities had only a half-hour daily opportunity to access the yard, which is insufficient. Access to gyms and libraries was limited to an hour or two a week. However, detainees were generally able to remain in common areas for most of the day and only consigned to their rooms at night. Nonetheless, the private security contractors who guard the detainees are not Canada Border Services Agency officials, making it more difficult for detainees to access information regarding their status and to lodge complaints about their conditions of detention.

67. Whereas existing policies require that migration detention be a last resort, this does not always occur in practice. The Working Group learned that more than 90 per cent of individuals detained for migration-related reasons are not considered to pose public security threats, with many held on the basis that their identity could not be verified.[9] Alternatives to detention are often only considered after arrest at the review hearing, when the damage from

[8] CRPD/C/CAN/CO/2-3, para. 28 (a).
[9] See opinions No. 15/2024 and No. 7/2019.

being removed from family, community and employment may have already been done. For those in detention, national risk assessments for detention are not solely focused on migration detainees' potential threat to the public but sometimes instead on disruptive behaviour, which can needlessly lengthen their incarceration. The Working Group urges the authorities to prioritize alternatives to migration detention and to ensure that detainees are able to come before an independent judge or justice of the peace within 48 hours of arrest.

68. While migration detention periods vary in practice, some can continue for several years and, in theory, indefinitely, given the lack of any legal limit on the length of migration-related detention. The Working Group urges Canada to specify in law a maximum duration for this form of detention and to release any individual held for migration-related reasons beyond that period. The longer the duration of migration detention, the higher the burden should be on the Canada Border Services Agency to show meaningful steps to resolve the detained person's situation.

69. The Working Group was alarmed to learn that Canada allows children and youths to be held in holding centres for migrants. Although this may be motivated by family reunification, all efforts must be made to avoid such an outcome. Canada should explicitly prohibit any migration-related detention of persons under 18 years, in line with international standards and the best interests of the child.[10]

70. The Working Group was heartened to learn that the 2016 National Immigration Detention Framework has reportedly led to a significant decrease in the number of people held for migration-related reasons. However, it remains concerned that, alongside the country's three immigration holding centres, in Laval, Surrey and Toronto, migration detainees have also been held in provincial correctional facilities alongside remand and sentenced prisoners. Detaining migrants and asylum-seekers – individuals who have not been charged with any crime – in such facilities exerts a punitive effect.[11] This practice can compel detainees to sign away rights, such as to pre-removal risk assessments, which can lead to violations of the principle of non-refoulement enshrined in article 33 of the Convention relating to the Status of Refugees, of 1951. This principle should always be respected, including when Canada conducts any "danger opinion process", whereby the risk to a potential migration returnee is weighed against the danger to Canada presented by that person. While the Working Group welcomes the news that provinces have ended their memorandums of understanding for migration detention in provincial prisons, it was concerned to hear indications that the federal Government is considering placing migration detainees in federal penitentiaries instead.

71. Regarding migration proceedings, the Working Group learned that detainees are not always represented by counsel and sometimes have trouble accessing legal aid. Decisions are sometimes based on inaccessible classified materials, severely limiting any prospect of challenging them. In some provinces, the threshold for legal aid is below the minimum wage level, hampering access to justice. Canada Border Services Agency officials sometimes conduct interviews without due regard for trauma-informed practices, risking retraumatization of vulnerable interviewees. Furthermore, for those with psychosocial disabilities, designated representatives sometimes make decisions on their behalf, which can prejudice their legal status and the outcome of their proceedings. The Working Group urges Canada to safeguard the rights of all individuals in the course of migration proceedings, including those enshrined in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

72. Finally, the Working Group notes with concern the absence of independent controls over the Canada Border Services Agency's detention-related activities and calls on Canada to establish such an oversight mechanism.

[10] See the Working Group's revised deliberation No. 5 (A/HRC/39/45, annex), para. 40.
[11] Ibid., paras. 14 and 38.

V. Conclusions

73. **The Working Group commends the Government for its willingness to submit itself to scrutiny through the visit and considers that the findings in the present report will support the Government in addressing situations of arbitrary deprivation of liberty.**

74. **Positive changes are being made across Canada in relation to the deprivation of liberty – including arrest procedures being followed in most cases, a low incidence of excessive use of force during arrests, a significant decrease in both overall and youth incarceration rates, the adoption of regulatory reforms and principles that prioritize alternatives to detention, and the use of restorative justice mechanisms, alternative pathways, diversion and community justice programmes. The ladder principle regarding pretrial detention, legislative measures to reduce reliance on sureties and cash bail, and increased use of programme supervision are being implemented. Additionally, various legal aid plans are available, and healing lodges have been established to provide culturally appropriate rehabilitation for Indigenous offenders.**

75. **However, the Working Group also observed a number of challenges within the criminal justice system that place defendants at risk of arbitrary detention, namely:**

(a) **Inefficiencies and systemic issues continue to affect the bail process, including problematic and difficult-to-comply-with bail conditions that disproportionately affect vulnerable individuals and criminalization of non-criminal behaviour through bail breaches. These issues create a vicious cycle of rearrest and detention, leading to accused individuals being discouraged from requesting bail and preferring to accrue pretrial credit over risking additional charges. These deficiencies may lead to prolonged pretrial detention or detention awaiting bail, which risks undermining the right to personal liberty and to be presumed innocent, as guaranteed under articles 9 (3) and 14 (2) of the International Covenant on Civil and Political Rights. Furthermore, the disproportionate impact on vulnerable individuals undermines equal protection rights and the prohibition of discrimination, embodied in articles 2 (1) and 26 of the Covenant;**

(b) **The lack of any requirement that lawyers be present during police interrogations leads to instances where detainees are subjected to persistent police questioning despite having invoked their right to remain silent. This practice contradicts defence rights guaranteed under article 14 (3) of the Covenant, particularly the right not to be compelled to confess guilt;**

(c) **The plea-bargaining system raises critical ethical and legal concerns. The prosecution's tactic of continuing or approving excessive charges to gain leverage in plea negotiations skews the balance of power and incentivizes accused individuals, including unrepresented ones, to plead guilty to avoid prolonged pretrial detention. This is an institutional pressure that may undermine due process and compromise the integrity of the justice system;**

(d) **The community supervision system for reintegration of offenders into society faces significant challenges, which include the displacement of some offenders from their original communities, insufficient support networks, and limited community involvement in the reintegration process. These factors contribute to an increased risk of recidivism;**

(e) **Detention conditions in several provincial correctional facilities fail to meet international standards, due to overcrowding and mixing sentenced prisoners with those on remand, in contravention of article 10 of the Covenant. Staff shortages in some federal and provincial prisons restrict outdoor access and lead to the use of lockdowns as collective punishment. Remand prisoners lack rehabilitation programmes and purposeful activities, including work, contrary to rules 43 (e), 112 and 116 of the Nelson Mandela Rules. Unclear security classifications, based on officers' discretion, increase the risk of arbitrary and discriminatory practices, disproportionately affecting marginalized groups;**

(f) **Detention facilities offer physical and mental health services, but delays in care may violate rules 24 and 25 of the Nelson Mandela Rules. Concerns persist about deaths in custody, high suicide rates among Indigenous detainees, and inadequate mental health treatment and medication, including for substance abuse;**

(g) **Although solitary confinement has been formally abolished in law, the creation of structured intervention units has effectively replicated the practice. These units often lead to isolation and limited meaningful human contact, potentially violating rules 43 to 45 of the Nelson Mandela Rules. In addition, the conditions of some of these units contradict the obligations of Canada to treat all persons detained with humanity and with respect for the inherent dignity of the human person, as enshrined in article 10 of the Covenant;**

(h) **The Working Group is deeply concerned about the continued overrepresentation of Indigenous Peoples and people of African descent in the country's criminal justice system, echoing similar concerns raised during its 2005 country visit. National policies acknowledge that overpolicing, overprosecution and overincarceration reflect systemic discrimination, structural inequalities and legacies of colonialism. These groups are often classified as higher security risks and frequently face the harshest disciplinary measures, including special confinement regimes, potentially violating articles 2 (1) and 26 of the Covenant. Indigenous federal inmates also have limited access to elder reviews, culturally appropriate programmes and healing plans, which affects security ratings, parole decisions, and transfers under sections 81 and 84. While section 81 healing lodges offer culturally sensitive support, they lack adequate funding, capacity and accessibility. The absence of disaggregated data further impedes efforts to identify and address systemic issues that impact specific populations differently, limiting the ability to develop effective solutions. The Working Group welcomes the country's new Indigenous and Black justice strategies but stresses the need for concrete action to ensure real change;**

(i) **In relation to youth criminal justice, the Working Group welcomes the use of non-judicial and non-custodial measures for children accused of criminal offences. However, concerns remain regarding the imposition of adult sentences, confinement in isolated conditions, and occasionally a lack of appropriate rehabilitative measures. These practices must be remedied in full conformity with the requirements set out in article 40 of the Convention on the Rights of the Child;**

(j) **The Working Group identified several issues of concern in relation to detention in the context of healthcare, including a shortage of mental health facilities and beds, limited referrals for Indigenous individuals, and the risk of indefinite detention for those who may never be deemed fit for release, in violation of article 9 of the Covenant. In correctional facilities, harsher conditions for individuals with psychological disabilities violate rule 5 of the Nelson Mandela Rules, and substance abuse treatment remains largely unavailable;**

(k) **The Working Group noted that access to drug treatment courts was contingent on guilty pleas. The Working Group is concerned at existing laws and increasing proposals for involuntary drug treatment for adults and youth, and emphasizes that deprivation of liberty should be used as a measure of last resort and that substance abuse treatment must always be voluntary and based on informed consent;**

(l) **In relation to detention in the context of migration, the Working Group expressed the following concerns: detention is not applied as an exceptional measure, for the shortest period, and only for a legitimate purpose; alternatives to detention are often only considered after arrest, at the review hearing; the lack of a legal limit on the maximum detention period increases the risk of arbitrary detention; children can be detained, including for family reunification, potentially in breach of the principle of the best interests of the child protected under article 3 of the Convention on the Rights of the Child; conditions in holding centres are carceral in nature, with limited access to outdoor areas; substituted decision-making for persons with disabilities restricts their legal capacity and may negatively affect their proceedings; and detainees often lack**

legal representation and have limited access to legal aid, with detention decisions sometimes taken on the basis of inaccessible classified material. The absence of independent oversight of the Canada Border Services Agency heightens risks of arbitrary detention. Finally, the Working Group was alarmed by reports of plans to use federal correctional facilities to hold persons detained purely on the basis of their migration status.

VI. Recommendations

76. **The Working Group recommends that the Government take the following measures in relation to its international human rights obligations:**

(a) **Ratify and transpose into domestic law the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and establish a national preventive mechanism in accordance with this Optional Protocol;**

(b) **Ratify and transpose into domestic law the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, the International Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the 1954 Convention relating to the Status of Stateless Persons and its 1967 Protocol.**

77. **The Working Group recommends that the Government take the following measures in building upon its positive initiatives to address arbitrary deprivation of liberty:**

(a) **Re-evaluate bail practices and conditions in order to end cycles of rearrest, and implement tailored reforms to the bail system to ensure fairness and address systemic disparities;**

(b) **Ensure respect for defence rights during police interviews, particularly the right to remain silent and not to confess guilt;**

(c) **Adopt more stringent regulations and increase transparency in plea-bargaining practices, while reinforcing protections for unrepresented defendants;**

(d) **Strengthen measures to ensure effective reintegration of offenders released on parole, by enhancing support networks, increasing community involvement, and addressing key areas such as housing, healthcare, education and employment;**

(e) **Address overcrowding and poor detention conditions in provincial correctional facilities;**

(f) **Ensure that all correctional facilities maintain adequate staffing levels, and increase efforts to make rehabilitation programmes more accessible to remand prisoners;**

(g) **Take immediate steps to ensure prompt availability of and access to physical healthcare, mental health support, treatment and medication in all correctional facilities;**

(h) **Urgently review the use of structured intervention units and other forms of special confinement to ensure that these comply with the requirements of the Covenant and of the Nelson Mandela Rules, in particular rules 43 to 45;**

(i) **Promptly implement the recommendations of the Structured Intervention Units Implementation Advisory Panel, particularly those related to enhancing independent oversight mechanisms for structured intervention units.**

78. **The Working Group recommends that the Government take the following measures in relation to detention of Indigenous Peoples, people of African descent and other marginalized groups;**

(a) **Ensure that the new federal strategy aimed at addressing systemic discrimination and the overrepresentation of Indigenous Peoples in the criminal justice system incorporates clear timelines, specific targets, measurable progress indicators, and robust evaluation tools including reviews based on disaggregated data, to enable effective adjustments as needed;**

(b) **Strengthen efforts to promptly implement the call of the Truth and Reconciliation Commission for action and justice, and the recommendations made by the Office of the Correctional Investigator, on the overrepresentation of Indigenous Peoples in the criminal justice system;**

(c) **Ensure the effective implementation of the Black Justice Strategy Implementation Plan, by allocating sufficient resources, establishing measurable progress indicators and creating robust accountability mechanisms to monitor progress and outcomes, including reviews based on disaggregated data, to enable effective adjustments as needed – essential elements for achieving transformative change;**

(d) **Increase resources allocated to section 81 healing lodges, bed availability, and accessibility across all provinces;**

(e) **Identify and address data gaps within the criminal justice system by enhancing the collection of disaggregated data at the federal, provincial and territorial levels. This includes data on offending rates, incarceration rates and sentencing patterns, and detainee demographics disaggregated by race and other relevant metrics, and ensuring that data are is readily available for analysis.**

79. **The Working Group recommends that the Government take the following measures in relation to youth criminal justice:**

(a) **Ensure that no person under 18 years of age is sentenced as an adult, irrespective of the circumstances or gravity of the offence;**

(b) **Continue to promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences, and whenever possible, use non-custodial sentences for children, such as probation or community service.**

80. **The Working Group recommends that the Government take the following measures in relation to detention in the context of healthcare:**

(a) **Ensure that individuals with psychosocial disabilities who are deemed unfit to stand trial or found not criminally responsible are not subject to indefinite detention. In accordance with the International Principles and Guidelines on Access to Justice for Persons with Disabilities, guarantee their access to justice and procedural safeguards on an equal basis with others in the review process for determining their partial or full release;**

(b) **Prioritize the deinstitutionalization of individuals with psychosocial disabilities and individuals suffering from substance abuse;**

(c) **Take immediate steps to end the detention of individuals with psychosocial disabilities in structured intervention units or other types of specialized confinement;**

(d) **Invest in the provision of comprehensive healthcare measures outside of the carceral context for persons with psychosocial disabilities and prioritize harm-reduction measures;**

(e) **Invest in evidence-based, voluntary drug treatment and rehabilitation programmes within the community for individuals suffering from substance abuse;**

(f) **Immediately halt the adoption of and repeal existing federal, provincial and territorial laws and policies allowing for involuntary detention and treatment of individuals suffering from substance abuse.**

81. **The Working Group recommends that the Government take the following measures in relation to detention in the context of migration:**

(a) **Ensure that detention during migration is used on an exceptional basis, for the shortest time possible, and only for a legitimate purpose;**

(b) **Promptly enact legislation to specify a maximum duration for migration-related detention and release any individual held for migration-related reasons beyond that period;**

(c) **Take all measures necessary to put an immediate end to the administrative detention of migrant children;**

(d) **Immediately remedy the unsatisfactory prison-like detention conditions in immigration holding centres, in accordance with international norms and standards;**

(e) **Put an end to the practice of using criminal justice facilities for migration detention;**

(f) **Ensure the provision of legal representation and access to legal aid for migrants, and guarantee access to justice and procedural safeguards for migrants with psychosocial disabilities during administrative proceedings;**

(g) **Establish an independent oversight body to monitor and review the detention-related practices of the Canada Border Services Agency.**

Appendix

Places of deprivation of liberty visited

The Working Group visited 17 places of deprivation of liberty:

Ontario

- Toronto Immigration Holding Centre
- Maplehurst Correctional Facility
- Youthdale treatment centre

Alberta

- Healing Lodge Stan Daniels Healing Centre
- Buffalo Sage Wellness House
- Grierson Institution
- Edmonton Institution for Women
- Edmonton Remand Centre
- Edmonton Young Offender Centre
- Edmonton Police Service – Downtown Division

British Columbia

- Forensic Psychiatric Hospital
- Fraser Valley Institution
- Matsqui Institution

Québec

- Etablissement de détention de Montréal
- Regional Reception Centre/Special Handling Unit
- Immigration Holding Centre
- City Of Montreal Police Department – Station 35