

The *Canada OPCAT Project* Shadow-Briefing Paper to the UN Committee against Torture on Canada's Seventh Periodic Report under the UN Convention against Torture

Ottawa, Canada - 12 October 2018

About the *Canada OPCAT Project*

The *Canada OPCAT Project* (www.canadaopcatproject.ca) came into being as a civil society-inspired information hub over the summer of 2018. Its main initiator previously worked at the Geneva-based Association for the Prevention of Torture for over a decade until 2014, focussing at considerable length on the promotion and implementation of the Optional Protocol to the UN Convention against Torture (OPCAT) in an array of countries in the Eurasia region.

A primary motivating reason for the creation of the *Canada OPCAT Project* website was the paucity of information in the public domain about any on-going developments about Canada's *repeatedly* stated intention to consider ratifying the OPCAT (please see below). As such, it aims to plug this gap in information by gathering as much information as possible about the on-going steps to implement the OPCAT in Canada and place such material in the public domain, where it reasonably belongs. Interested UN Committee Members are therefore invited to visit the *Canada OPCAT Project* website (www.canadaopcatproject.ca) for further information.

The state of national discussions on the OPCAT in Canada

Despite the public statements of successive Canadian governments that Canada is considering the ratification of the OPCAT, the overall lack of progress in this connection is unquestionably disappointing. Moreover, there is no evidence to suggest that the key advice of the UN Subcommittee on Prevention of Torture is being met, namely that that the future "... NPM should be identified by an open, transparent and inclusive process which involves a wide range of stakeholders, including civil society."¹ Quite clearly, this process has yet to occur in Canada.

It should be recalled that Canada used the pledge of OPCAT ratification during its candidacy for the UN Human Rights Council as long ago as 2006, a pledge unfulfilled to the present day.² Moreover, several years later, in its sixth periodic report under the UN Convention against Torture from 2011, Canada underscored the possibility of OPCAT ratification again.³

¹ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Guidelines on national preventive mechanisms* (UN Doc. CAT/OP/12/5, 9 December 2010) §16.

² E. Holmes, *The Politics of Torture, Human Rights, and Oversight: The Canadian Experience with the UN's Optional Protocol to the Convention Against Torture (OPCAT)* (MA thesis, Department of Criminology, Faculty of Social Sciences, University of Ottawa, Ottawa, ON, Canada 2013) 74.

³ Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention, Sixth periodic reports of States parties due in 2008: Canada (UN doc. CAT/C/CAN/6, 22 June 2011) §10.

More recently, during Canada's third-cycle Universal Periodic Review in May 2018 some 27 countries urged Canada to either ratify the OPCAT or consider the ratification of the instrument.⁴ During this review Canada repeated its position that it was "... considering becoming a party to the Optional Protocol to the UN Convention against Torture, as well as options to implement that instrument."⁵ Canada reported back to the Human Rights Council during its 39th Session on 21 September 2018, stating that it had accepted the recommendation to consider ratification of the OPCAT.⁶

The above position is largely reiterated in Canada's seventh periodic report under the UN Convention against Torture, in which Canada has stated the following:

*With respect to the Optional Protocol to the Convention, Canada is committed to the prevention of torture and the elimination of cruel, inhuman and degrading treatment or punishment (CIDTP), at home and abroad. Canada values independent oversight of conditions in places of detention. On May 2, 2016, the Minister of Foreign Affairs stated that the Optional Protocol "will no longer be optional for Canada in the future", and that Canada would begin a process to join it. The accession process will involve extensive consultations with other interested federal departments; the provinces and territories; Indigenous governments that may be implicated; and civil society. The Minister of Foreign Affairs is confident that once the necessary steps have been taken and all voices have been heard, Canada will be in a position to accede to the Optional Protocol.*⁷

Regrettably, based on the information made available to the *Canada OPCAT Project*, this process of consultation has yet to move forwards at any discernible pace.

A reasonably up-to-date snapshot of the limited progress achieved so far and the intentions of the Canadian Government vis-à-vis the ratification of OPCAT was obtained by the *Canada OPCAT Project* in May 2018 through a formal Access to Information Act (ATIP) request. The Office of the Correctional Investigator⁸ had written to Minister of Justice Jody Wilson-Raybould in May 2017, requesting information about the status of OPCAT ratification. The response of the Minister to the Correctional Investigator was transmitted (nearly a year later) in a letter dated 19 April 2018, in which the following information was stated:

⁴ Report of the Working Group of the Universal Periodic Review – Canada (UN Doc. A/HRC/39/11, 11 July 2018) §142.8-142.20.

⁵ Report of the Working Group of the Universal Periodic Review – Canada (UN Doc. A/HRC/39/11, 11 July 2018) §84.

⁶ *The Canada OPCAT Project*, 'Canada Makes Renewed UPR OPCAT Pledge' (*The Canada OPCAT Project*, Ottawa, Ontario, Canada, 21 September 2018): <<https://canadaopcatproject.ca/2018/09/21/canada-upr-opcat-commitment/>> accessed 11 October 2018.

⁷ Committee against Torture, Seventh periodic reports of States parties due in 2016: Canada (UN Doc. CAT/C/CAN/7, 13 September 2016) §5.

⁸ The Office of the Correctional Investigator is the Canadian equivalent of a federal prisoner ombudsperson's office.

- The matter of OPCAT ratification was discussed at a federal, provincial and territorial ministerial human rights meeting in Gatineau, Québec in mid-December 2017, where support was expressed for the continued consideration of ratification.⁹
- The Department of Justice has undertaken its own legal analysis of Canada’s potential accession to the instrument (please also see below).
- Finally, the Department of Justice will apparently no longer take the lead on any national discussions on the OPCAT. Instead, Global Affairs Canada has been bequeathed this mandate for the purposes of “...more detailed policy work”, which lies outside the core policy mandate and expertise of the Department of Justice.

In a word, the progress achieved so far in pushing forwards the process of considering the ratification of the OPCAT has been far less than most observers would have reasonably anticipated. Moreover, despite the key guidance of the UN Subcommittee on the Prevention of Torture (please see above), the *Canada OPCAT Project* is not aware of any in-depth consultation process having taken place with civil society on the question of OPCAT ratification and implementation.

It should also be noted that the *Canada OPCAT Project* has, to date, not been able to obtain a copy of the Department of Justice’s legal analysis on Canada’s potential accession to the OPCAT (please see above). On 5 June 2018 the *Canada OPCAT Project* filed a second ATIP request to obtain a copy of the aforementioned Department of Justice legal analysis. On 28 June 2018 the Department of Justice responded to this request, stating that it required an additional 60 days to comply with the request. Despite the elapse of this additional 60-day extension, the Department of Justice Canada had still not responded to this ATIP request.¹⁰

Thus, on 1 October 2018 the *Canada OPCAT Project* lodged a complaint with the Information Commissioner of Canada on the basis of a ‘deemed refusal’ of information on the part of the Department of Justice.¹¹ This apparent reluctance to share information seems all the more surprising, as the request concerns a key United Nations torture-prevention instrument which Canada has stated that it is considering ratifying on multiple occasions.

⁹ Department of Justice Canada, ‘Federal, Provincial and Territorial Ministers from across the country gather to discuss Human Rights’ (Department of Justice Canada, Gatineau, QC, Canada 12 December 2017): <https://www.canada.ca/en/department-justice/news/2017/12/federal_provincialandterritorialministersfromacrossthecountrygat.html> accessed 11 October 2018.

¹⁰ For more information about this ATIP request see: The Canada OPCAT Project, ‘ATIP OPCAT Request – Time’s Up!’ (The Canada OPCAT Project, Ottawa, Ontario, Canada, 30 August 2018): <<https://canadaopcatproject.ca/2018/08/30/opcat-atip-request/>> accessed 11 October 2018.

¹¹ The Canada OPCAT Project, ‘The Right To Know: Tell Us About OPCAT Please?’ (The Canada OPCAT Project, Ottawa, Ontario, Canada, 1 October 2018): <<https://canadaopcatproject.ca/2018/10/01/the-right-to-know/>> accessed 11 October 2018.

Suggested questions to the Canadian State Party delegation:

On the basis of the above information the *Canada OPCAT Project* suggests that the UN Committee against Torture solicits answers to the following questions:

- As stated in paragraph 5 of Canada's seventh periodic report (please see the above excerpt on page 2 of this shadow-briefing), could the delegation please detail any 'extensive consultations' which Canada has so far undertaken on the question of the ratification of the OPCAT?
- Could the delegation cite specific examples of consultation with Canadian civil society in this same regard? If not, when does Canada envisage conducting in-depth consultations with civil society on this issue?
- Could the delegation provide a more detailed timeline and end-date for the completion of the process of considering the ratification of the OPCAT?
- Could the Canadian delegation please explain the specific roles allotted to the Department of Justice and Global Affairs Canada respectively in relation to the OPCAT ratification process?
- Is the Department of Justice planning to make public its legal analysis on Canada's accession to the OPCAT? If not, could the Canadian delegation please specify why this information should not be placed in the public domain (in an unredacted format) for the purposes of discussion?
- Has Canada considered contacting the UN Subcommittee on Prevention of Torture with a view to seeking its advice on the ratification of the OPCAT?

Interested persons are warmly invited to contact the *Canada OPCAT Project* with any further questions about this shadow briefing.

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