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CANADA'S FAILURE TO RESPECT THE RIGHTS OF PRISONERS: SOLITARY CONFINEMENT

**Submission to the United Nations Human Rights Committee's 145th Session on the Occasion
of the Committee's Periodic Review of Canada**

By The John Howard Society of Canada

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Introduction

As a non-government agency involved with supporting the rehabilitation and reintegration of prisoners into communities and with prison reform for more than half a century in Canada, the John Howard Society of Canada welcomes the opportunity to comment on Canada's report to the UN Human Rights Committee on its compliance with the International Covenant on Civil and Political Rights (ICCPR). These comments will focus on issues of legislative and operational compliance with the provisions of the ICCPR intended to ensure that prisoners' rights and dignity are respected.

Solitary Confinement

The United Nations' Mandela Rules define solitary confinement as being confined for 22 hours or more without meaningful human contact. The Rules prohibit prolonged solitary confinement (more than 15 days consecutive days of it) as a form of cruelty. The damage caused by such confinement has been well documented. Courts in Canada have used that definition in assessing whether prolonged isolated confinement also violates rights protected by Canada's Charter of Rights and in class action lawsuits resulting in damages for prisoners who were subjected to prolonged solitary confinement.

In 2019, Courts of Appeal in British Columbia and Ontario ruled that administrative segregation, the solitary confinement regime of the day, violated s. 7 and s 12 Charter rights. Among the Courts findings were the need for an independent review within 5 days of the placement of people in isolated confinement, capping solitary confinement at 15 consecutive days, and a recognition that mental health and behaviour worsens through isolated confinement. Rather than appealing the decisions to the Supreme Court, the government opted to replace the offending legislative regime with a new legislative scheme introducing Structured Intervention Units (SIUs) as the principle form of isolated confinement. Bill C-83 avoided defining solitary confinement and attempted to skirt requirements by requiring that prisoners be "offered" four hours out of cells per day with two hours per day of meaningful human contact. Confinement in SIUs would end as soon as possible without any cap being placed on the duration of this secure confinement. While the legislation introduced "independent, external decision-makers"

to review placements in SIUs, they are not engaged in a review of the legitimacy of the placement within 5 days and the legislated grounds for their review is whether the correctional authority has done its best to get people out of their cells for the required 4 hours per day.

Many organizations, including the John Howard Society of Canada, appeared before Parliamentary Committees to raise concerns about the legislative proposals' adequacy to actually protect prisoners' Charter rights as set out by the Courts of Appeal and to prevent prolonged solitary confinement. Some of those concerns were allayed by Minister Goodale, the Minister of Public Safety at the time, striking a SIU Implementation Advisory Panel (SIU IAP) to monitor the implementation of the legislative reforms and by Parliament including a very strict review requirement in Bill C-83. It reads:

Review by committee

40.1 (1) At the start of the fifth year after the day on which this section comes into force, a comprehensive review of the provisions enacted by this Act must be undertaken by the committee of the Senate, of the House of Commons or of both Houses of Parliament that may be designated or established for that purpose.

Report to Parliament

(2) The committee referred to in subsection (1) must, within one year after the review is undertaken under that subsection, submit a report to the House or Houses of Parliament of which it is a committee, including a statement setting out any changes to the provisions that the committee recommends.

Bill C-83 was proclaimed in force on June 21, 2019. The required 'start of the fifth year' was on June 21, 2023 and the report of any recommended changes should have been submitted by June 21, 2024. As yet, despite the legal requirement, there has been no parliamentary review of Bill C-83 and the new Structured Intervention Units.

The Structured Intervention Unit – Implementation Advisory Panel, however, did closely monitor and analyze the implementation of the SIUs. The final SIU-IAP Report released publicly in December 2024 was the twelfth in a series of meticulously researched studies. Those empirically based reports make it abundantly clear on the basis of hard data from the Correctional Service of Canada (CSC) that prisoners in Canada's penitentiaries experience solitary confinement, whether it is called that or not. Some of the main conclusions based on

empirical findings contained in the 12 reports produced by the Panel between 2020 and 2024 include:

SIUs have not eliminated the ***experience*** of solitary confinement in federal penitentiaries. We can see this by looking at several different indicators. These have been covered in detail in the first section of this report and in our three previous annual reports. A few of the most central of these failures are the following:

- a. The use of SIUs for long stays is comparable to the rates in the use of Administrative Segregation in the final years of that practice.
- b. Concerns around the length of time in an SIU are heightened when one sees the prevalence of “split stays” (being released and then placed back into an SIU within a few days).
- c. The legislated “time out of cell” provisions (4 hours per day overall, two hours of which are supposed to involve meaningful human interaction) have largely not been achieved and little correctional programming appears to be provided. If what differentiates “structured intervention confinement” from “solitary confinement” is, in part, time out of cell and actual “interventions”, then SIUs are closer to solitary confinement than “structured interventions”.
- d. Many prisoners are being moved from one institution/region to another, and people with mental health issues tend to experience more SIU stays in different SIUs, in different regions. The disruption to programming and stability that this creates for people who clearly need stability and programming is alarming.
- e. It is unreasonable to conclude that these failures are the prisoners’ fault since there are no plausible data available to suggest this. One might have thought that CSC had more ability to ensure that the intent of the law is followed than prisoners do under these circumstances.
- f. Dramatic regional/institutional differences on many measures suggest that, at certain times in the history of the SIUs, prisoners have been more likely to

receive the time out of cell (and meaningful human interaction) that is contemplated by the law. These findings suggest improvement on these dimensions is possible.

- g. CSC has not articulated and/or published any specific outcomes or milestones that allow for a measure of progress toward the desired transformation.
- h. The introduction of Independent External Decision Makers has failed to provide a timely or effective review of SIU operations.

(From Annex A of the December 5, 2024 Report at

<https://www.publicsafety.gc.ca/cnt/rsrccs/pblctns/2024-siu-iap-sltry-cnfmnt/index-en.aspx>

The reports from the SIU IAP reveal a litany of problems in the operationalization of the SIUs. Some could have been dismissed as the transient growing pains of transformation had it not been for the Panel's damning finding that improvements had not been made over the years. It also found that the SIUs must be understood in the broader context of the prison estate given its impacts, such as isolated confinement taking place outside of the more closely watched SIUs. Particularly troubling is the implication that the legislative reforms are doing little to protect those with mental health issues from the damaging effects on them of isolated confinement: About 20% of SIU stays are for longer than two months -- but those with various mental health needs who are getting worse over time stay longer in SIUs than others (37% stayed longer than two months). Of those with mental health needs who stayed more than one month in an SIU, almost a quarter received no correctional programming.

There can be no fair conclusion from the reports other than the SIUs are failing to deliver the legislative intent and are not being administered consistent with the law. The final report should have been understood as the final nail in the coffin of a failed effort to protect prisoners from prolonged solitary confinement and the harms it is inflicting on individuals, the prison system as a whole, and ultimately our communities who will be receiving people whose mental

well-being and behaviour was made worse by their experience in isolated confinement. Instead, the government's response was to thank the SIU-IAP for its work and permit the CSC to continue with only the limited oversight of an overburdened Correctional Investigator.

Conclusion:

Canada's Report to the United Nations Human Rights Committee relating to its ending of administrative segregation and its description of the operation of the Structured Intervention Units is misleading. The repeal of the administrative segregation provisions actually weakened the procedural protections of prisoners and led to a proliferation of areas in the federal prisons where prisoners are subjected to the UN definition of solitary confinement without appropriate safeguards and oversight. These areas include Voluntary Limited Association Ranges (VLARs), Restricted Movement Cells, observation cells, and many others. The empirical studies of the SIU-IAP make it clear that the SIUs themselves are failing. Moreover, Canada, a country that prides itself on its respect for the rule of law, is ignoring its statutory obligation to conduct a parliamentary review of the legislative reforms that introduced the SIUs.

The John Howard Society of Canada urges the UN Committee on Human Rights to question Canada about its failure to hold the required Parliamentary Review of Bill C-83, and about the many failings of the SIUs found in the empirical studies of the SIU-IAP.

The John Howard Society of Canada urges the UN Committee on Human Rights to ensure that Canada respects its obligations under Articles 7, 9, and 10 of the International Covenant on Civil and Political Rights by defining solitary confinement in the *Corrections and Conditional Release Act* consistent with the Mandela Rules, ending prolonged solitary confinement for all prisoners, and ending any solitary confinement for prisoners with mental illnesses that are worsened by isolated confinement.