Submission
of the
Canadian Association of Elizabeth Fry Societies
to the
United Nations Human Rights Committee
Examining Canada's 4th and 5th Reports Regarding
the
Convention Against Torture

Contact: Kim Pate
Canadian Association of Elizabeth Fry Societies
#701, 151 Slater Street
Ottawa, Ontario
KIP 5H3

Telephone: (613) 238-2422
Facsimile: (613) 232-7130
Home Page: www.elizabethfry.ca
E-mail: kpate@web.ca

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A. Introduction

The Canadian Association of Elizabeth Fry Societies (CAEFS) was originally conceived of in 1969 and was incorporated as a national voluntary non-profit organization in 1978. Today there are 25 member societies across Canada in 9 provinces, with interest for developing societies in the territories and the 10th province. CAEFS is incorporated pursuant to the provisions of the *Canada Corporations Act*. Local societies are incorporated under provincial statutes.

Both volunteer and paid staff are involved in governance as well as program and service delivery throughout the association. Programs and services are developed at the grassroots level, in accordance with the needs of the community and range from early intervention and crime prevention activities, to pre and post release work with criminalized and imprisoned women and girls. In the last year, 31 volunteers, including Board members, devoted a total of 6,073 hours of work to the CAEFS' office. This supplemented the work of CAEFS' two full-time staff members. In our 25 member societies, 1,545 volunteers put in a total of 109,555 hours, supplementing the time of 275 full-time staff and 169 part-time staff.

At the national level, CAEFS focuses on law and policy reform initiatives, informed by its membership and those women with the lived experiences of criminalization and imprisonment.

B. General Observations

The Canadian Government and the Correctional Services of Canada (CSC) claim to be in compliance with the *United Nation's Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment* (CAT). Their claims are in the fourth and fifth Reports submitted by Canada. Noticeably, however, the reports lack evidence in support of such claims of compliance.

In her working paper prepared for the UN Sub-Committee on the Promotion and Protection of Human Rights, Ms. Florizelle O'Connor concludes that the situation of women in prison worldwide reveals gross violations of almost all accepted human rights principles.[1] The treatment of women in Canadian prisons is no exception. Federal policies and practices related to the treatment of federally sentenced women violates several provisions of the CAT in a number of ways which will be discussed below.

The UN General Assembly called on states to address key problems facing women in prison. Prominent Canadian agencies have issued reports on the situation of women in

[1] Florizelle O'Connor, Administration of Justice, Rule of Law and Democracy, fifty-sixth of the Commission on Human Rights Sub-Commission on Promotion and Protection of Human Rights. Available: http://daccessdds.un.org/doc/UNDOC/GEN/G04/148/57/PDF/G0414857.pdf?OpenElement

prisons and have made numerous concrete recommendations on how the federal government can improve the treatment of prisoners.[2]

The Correctional Service of Canada (CSC) and the Canadian government have virtually ignored recommendations made in Louise Arbour's 1996 report entitled *Commission of Inquiry into Certain Events at the Prison for Women in Kingston* and in the report by the Canadian Human Rights Commission (CHRC) entitled *Protecting Their Rights*: *A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women* which was publicly released on 28 January 2004. In fact, in response to the CHRC's report, the CSC stated that they will address all items that the CHRC deemed needing immediate action by implementing a plan to act by the year 2007.

The ongoing implementation of discriminatory and harmful policies by CSC indicates the extent to which Canada is still not in compliance with the Convention Against Torture.

Article 2: Prevention of Acts of Torture

1: Each state party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

The definition of torture set out in the first article of the convention refers to severe physical and mental pain inflicted on a person for reasons such as to punish them for an act they have committed or based on any discrimination, by a person acting in an official capacity. In considering the physical and mostly mental pain suffered but women prisoners as a result of policies related to correctional facilities, CSC has failed to take effective measures to prevent acts of torture and is in violation of article 2 of this Convention.

Specifically, it is particularly significant that CSC persists in its failure to address the inadequacies of its policies and practices following mounting numbers of reports that have highlighted weaknesses in the system and made recommendations to improve the treatment of prisoners.

Areas in which the CSC has acted contrary to Article 2 and has failed to take action to prevent torture include the use of force, the classification of women prisoners, maximum security units, cross gender monitoring, segregation practices, and the particular treatment of Aboriginal women and women with mental health disabilities. Taking the special needs of women into account in regards to all these areas can contribute to the prevention of instances of torture in federal prisons for women by reducing the physical and mental pain suffered by prisoners while they are detained for the purpose of punishing them for acts in relation to which they are convicted of criminal offences.

[2] United Nations General Assembly, Resolution 58/183 "Human Rights in the Administration of Justice".

Classification and maximum security units

The fourth and fifth Canadian Reports claim to be making progress in meeting the needs of women prisoners, in gender and culturally sensitive ways, in order to keep them in the least restrictive environment as possible. The report also claims that the number of maximum security women is decreasing. However, the problems with over classifying Aboriginal women have not been addressed and little has been done to reduce the population of maximum security Aboriginal women.

Because of the male-based classification tools in use, women are being over classified, and there are too many women classified as maximum security prisoners. Men and women are assessed with the same tool despite the fact that they pose different security risks.[3] In fact, CSC and National Parole Board (NPB) records indicate that less than half of 1% (i.e. 0.39%) of federally sentenced women released into the community recidivate for violent offences, thus suggesting that their is actually no need for an assessment of women based on risk.

The classification tool actually punishes women prisoners who already experiencing disadvantages due to their life experiences and backgrounds. Women are found to pose a greater risk and are classified as higher security if they have been victims of domestic violence, if they have had a "childhood that lacks family ties", if they have a history of low employment, or low education, if they are unattached to a community, or their residence is "poorly maintained", if they have "inappropriate sexual habits" or inappropriate sexual preferences, or are from a "problematic religion". Instead of accurately identifying factors associate with a level of security risk an individual can pose, these criteria actually only reveal discriminatory biases of CSC policy. This classist, heterosexist and racist classification system disadvantages women and in particular women from the most marginalized groups. This approach results in unnecessary harm and suffering to women prisoners, the placement of women in overly secure facilities, too often segregation, and a lack of needed programs.

Dealing with women classified as maximum security is a challenge that CSC is not dealing with effectively. Many of the women classified are Aboriginal or suffer from mental health problems. Maximum security units do not serve their needs and are actually more likely to aggravate existing problems. These units are segregated units that have their own small prison yards and program space. Generally the women are confined to their very small pods within the new segregated maximum security units. CSC has constructed more maximum units than were required to accommodate the number of women classified as maximum security prisoners. The number increased due to CSC's

[3] The Canadian Human Rights Commission, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa, 2003.

decision to mandate that all people convicted of murder as maximum security prisoners for at least the first two years of their sentence.[4]

The CHRC confirmed that most women classified as maximum security prisoners were not classified as maximum security because they were considered dangerous when they entered prison. Most are classified as maximum because they are considered to have institutional adjustment problems. Furthermore, the *Secure Unit Operation Plan* focuses more on controlling security risks than meeting the needs of prisoners.[5] This needlessly results in women being placed in isolation and in segregation units, which too often leads to severe mental suffering that is experienced by the women as a form of torture.

In addition, women with mental health problems are being housed in increasingly restrictive environments called Structured Living Environments (SLE). When women refuse to receive treatment or participate in programming in these units, they are often reclassified as maximum security and sent to a regional maximum unit. "Extra control and supervision can not be supported under the guise of "treatment."…a prisoner has the right to refuse treatment."[6] The Disabled Women's Network (DAWN) supports that by sending a woman to prison because of a conviction for an offence related to her mental health problem, forcing her into treatment, and classifying her as maximum security and therefore isolating her from the rest of the prison, recreates an environment exactly like that of a non-voluntary mental institution or asylum.[7] Placing women in maximum security conditions because they choose to exercise their right to refuse treatment and/or not participate in treatment is an abuse of power that results in yet more women needlessly suffering from the condition of segregation units.

Furthermore, the new regional facilities are having a hard time accommodating the women being classified as maximum security prisoners.[8] Correctional Services of Canada is not adequately addressing the over classification of women by changing why and how they classify and their classification tools, which has been central in many recommendations.

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[4]Canadian Association of Elizabeth Fry Societies. *CAEFS' Submission to the Canadian Human Rights Commission for the Special Report on the Discrimination on the Basis of Sex, Race and Disability faced by Federally Sentenced Women May 2003* (online). Available: http://www.elizabethfry.ca/caefs.e.htm. [June 2005].

[5] The Canadian Human Right Commission, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa, 2003.

[6][6] Ibid.

[7] DisAbled Women's Network of Canada. *Federally Sentenced Women with mental Disabilities: A Dark Corner in Canadian Human rights February 2003,* Available: http://www.elizabethfry.ca/caefs.e.htm. [June 2005].

[8] National Association of Women and the Law (NAWL) - *Federally Sentenced Women: Canada's Breach of Fiduciary Duty and Failure to Adhere to International Obligations 2003***,** Available: http://www.elizabethfry.ca/caefs.e.htm. [June 2005].

As the Prison for Women in Kingston was being closed, many maximum security women were sent to male institutions as a temporary measure. Despite the fact that male institutions are inappropriate for women prisoners, women still end up in male institutions. The placement of women, especially women with mental health issues, in male institutions is inappropriate and is a form of segregation that no doubt can cause severe mental suffering.

DAWN and the National Association of Women and the Law (NAWL) have condemned the placement of Federally Sentenced Women (FSW) in men's prisons, particularly concerning women with mental health problems. This is because of the restricted movement in the institutions, little available space for confidential meetings, and a lack of programming of any kind. This can adversely affect a women's attempt to successfully complete her sentence.

Cross-gender monitoring/searching and sexual harassment

Not allowing men on the front lines in women's institutions is considered discriminatory by some, where others argue that because many women in prison have histories of abuse by men in authority positions, and due to the lack in an effective grievance process to guard against abuse in the institutions men should not be performing front-line duties. Moreover, CAEFS believes that being a woman should be considered a bono fide occupational requirement for correctional staff working in prisons for women.

CSC continues to employ men in prisons for women. They claim that the staff and women in prison because their internal sampling of prisoners and the staff are in favour of the CSC decision to employ men on the front line. Unfortunately, CSC also refused to implement the recommendation of the Cross-Gender Monitor - a body they contracted to make recommendations to them regarding these matters.

Not only did the CSC ignore the recommendation of the Cross-Gender Monitor to have only women work the front lines in women's prisons, but they have also added men to the front-line staff at the Edmonton Institution for Women. The Edmonton prison was the only one where the front-line worker positions were initially staffed entirely by women.

As Louise Arbour stated, "our society does not tolerate the presence of non-intimate members of the opposite sex during the performance of private functions, except under very rare circumstances, such as during hospitalization. The abnormality of this situation is, in fact, heightened by the prison setting, where both female and male inmates are confined against their will in positions of relative powerlessness"[9]

[9] Canada, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*. Report. Ottawa: Public Works and Government Services Canada, 1996. (Cat. No. JS42-73/1996E). (Commissioner: The Honourable Louise Arbour).

The *United Nations Standard Minimum Rules for Treatment of Prisoners* also requires that "women prisoners shall be attended only by women officers".[10]

CSC claims that there have been no complaints of sexual harassment since implementing cross-gender staffing at the regional facilities. This is not because no abuse has gone on, but because there is no effective complaint mechanism available to the women. This year, alone, a number of women at the Fraser Valley Institution for Women (FVI) in British Columbia and the Grand Valley Institution (GVI) in Ontario reported aggressive behaviours on the part of a male staff worker. CSC indicated that the allegations at FVI were deemed unfounded and that they were allegations of abuse of power and not 'gender' issues; the incidents at GVI are still apparently under investigation.

The CHRC found that safeguards in place to reduce the vulnerability of women in prison and decrease the instances of abuse are not respected. It was found that male guards were still doing unit and bed checks and that harassment by guards persisted. In addition, the CHRC recommended that independent external investigations of such matters be appointed by CSC. The report of the Cross-Gender Monitor stated that the power imbalance between guard and prisoner is too great to have an effective informal conflict resolution process. Louise Arbour also recommended that CSC's sexual harassment policy be extended to prisoners.[11]

After Madam Justice Arbour recommended explicit protocols for men working as front-line staff in the prisons for women, CSC introduced the National Operational Protocol for Front-Line Staffing in the CSC Women's Institutions and Maximum Security Unit. The Protocol requires that staff, prisoners and volunteers be informed of the Protocol and provided with a copy."[12] The Cross-Gender Monitor found that there was no screening or training for many guards and that the National Protocol is largely violated. In one institution 74% of staff could not name one provision of the protocol.

CSC has admitted that, "There appears to be little system-wide understanding of the need for and strict enforcement of particular policies and practices designed to protect women prisoners from privacy violations and sexual misconduct."[13] As these policies are neglected, the CSC is failing to take proper precautionary measures to avoid instances of torture amongst women in prison.

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[10] United Nations Standard Minimum Rules for the Treatment of Prisoners, paragraph 53(3).
[11] Canada, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*. *Report*. Ottawa: Public Works and Government Services Canada, 1996. (Cat. No. JS42-73/1996E). (Commissioner: The Honourable Louise Arbour).
[12] Correctional Service of Canada, *Cross Gender Monitoring Project: Third and Final Annual Report 2000*, Available: http://www.cscscc.gc.ca/text/prgrm/fsw/gender3/toc_e.shtml#TopOfPage. [June 2005].
[13] Correctional Service of Canada, *Cross Gender Monitoring Project: Third and Final Annual Report 2000* (online). Available: http://www.cscscc.gc.ca/text/prgrm/fsw/gender3/toc_e.shtml#TopOfPage. [June 2005].

Aboriginal Prisoners

Aboriginal women are overrepresented in the prison population. The Supreme Court of Canada referred to the overrepresentation of aboriginal people in the prison system a "sad and pressing social problem". [14]

Dealing with this issue is multifaceted and there are many aspects of corrections that need improvement if we are to see a decrease in the number of Aboriginal women in prison. "Colonialism has created the climate of distrust where Aboriginal people see this is not a system of justice, which equally represents them. This is the first layer surrounding the individualized discrimination Aboriginal women face while incarcerated."[15] Severe pain and suffering for reasons based on discrimination is also considered torture pursuant to the definition in the Convention. The effects that CSC practices have on Aboriginal women are directly linked to both physical and mental pain and suffering.

The classification tools designed to meet the needs of women prisoners are particularly ineffective when dealing with Aboriginal prisoners. According to the Correctional Service of Canada, in 2000 Aboriginal women were over-represented in the maximum security population. 15.3% of Aboriginal women serving federal sentences were classified as maximum security prisoners compared to only 4.5% of non-Aboriginal women in prison. 43.2% of non-Aboriginal women were classified as minimum-security, while Aboriginal women accounted for only 17.0% of minimum security.[16]

Louise Arbour identified that the classification tools discriminate against Aboriginal women. Aboriginal women are more likely to have records and to have previously experienced prison. They are also more likely to be convicted of a violent offence. These are factors CSC are equates with risk, which contributes to the over classification of Aboriginal women as maximum security prisoners.

The classification tool assesses individual experiences, but absolutely fails to take into account the impact that oppression and colonization have on Aboriginal women and their communities. The CHRC asserts that the tools are assessing Aboriginals on the basis of stereotypes and perceptions and that the tools lack any validity testing. There has been no research to prove that these tools should be applied to women, especially Aboriginal women, who are discriminated against based on gender and culture.[17] The Correctional Investigator's office acknowledges that the tools translate social disadvantage into

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[14] *R. v. Gladue* [1999] 1 S.C.R. 688 at para. 64.
[15] Patricia Monture-Angus, Patricia, The Lived Experience of Discrimination: Aboriginal Women who are Federally Sentenced, 2002, Available: http://www.elizabethfry.ca/submissn/aborigin/1.htm. [June 2005].
[16] *Ibid.*
[17][17] The Canadian Human Right Commission, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, Ottawa, 2003.

pathologies. The office is concerned because this could lead to there being more maximum security women then the service could accommodate.[18]

CSC has made some attempts to accommodate Aboriginal women in corrections; one of the main efforts is the creation of the Okimaw Ohci Healing Lodge. The incarceration of Aboriginal prisoners in westernized prisons is inappropriate as the experience replicates the oppressive relationship that Aboriginal people have been victims for centuries. The Healing lodge was designed to imprison Aboriginal women in a culturally appropriate environment.

Louise Arbour stated "that access to the Healing Lodge should be available to all Aboriginal women, regardless of their present classification."[19] The Healing Lodge is not incapable of accepting maximum security women, but currently it does not and despite numerous appeals to CSC, nothing has been done to change this or to change the classification tools. Both Arbour and the CHRC have recommended that Aboriginal women classified as maximum security prisoners be individually assessed and evaluated as to whether or not they can be admitted to the Healing Lodge. The CSC has yet to implement this recommendation.

The CHRC has stated that CSC needs to meet their promise to implement a separate but parallel program strategy for Aboriginal women.[20] There is an overall deficit in Aboriginal programming in all institutions. CAEFS has found that some Aboriginal women have been forced to participate in non-Aboriginal programming that does not meet any of their needs. They have also been forced into Aboriginal programming in order to maintain their status as being Aboriginal. This is a culturally inappropriate practice and violates the right not to be discriminated against based on race pursuant to the *Canadian Charter of Rights and Freedoms*. CSC also has not made any distinction between different Aboriginal Nations and seemingly refuses to recognize that a generalized Aboriginal program can not meet the needs of all Aboriginal people.

Professor Patricia Monture reports that withholding programming is used as a way to punish Aboriginal women and to get them to conform. It should not be up to the staff to decide who gets programming and who does not, especially spiritual and cultural.[21]

One of the greatest challenges for Aboriginal women is the lack of community options upon release. Louise Arbour reported that many Aboriginal women cannot return to their

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[18]Office of Correctional Investigator, *Correctional Investigator's Response to the Canadian Human Rights Commission's Consultation Paper for the Special Report on the Situation of Federally Sentenced Women January 2004*, Available: http://www.oci-bec.gc.ca/reports/OCIResponse_CHRC_e.asp. [June 2005].
[19] *Ibid.*
[20] The Canadian Human Right Commission, Protecting Their Rights: *A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa, 2003.
[21] Patricia Monture-Angus, *The Lived Experience of Discrimination: Aboriginal Women who are Federally Sentenced*, 2002. Available: http://www.elizabethfry.ca/submissn/aborigin/1.htm. [June 2005].

home community and are forced to move to urban centers with little or no support available to them.

As a result, many women delay applying for conditional release.[22] As such, over classification of Aboriginal women also leads to a slower return to society. 52% of non-Aboriginal women benefit from conditional release and finish their sentences in the community under some form of parole or statutory release. Comparatively, only 40% of female Aboriginal women prisoners similarly obtain conditional release.

There have been attempts made to deal with this dilemma. Section 84 of the *Corrections and Conditional Release Act (CCRA)* was created to encourage Aboriginal communities to take responsibility over the care and custody of the released prisoner. Patricia Monture, the CHRC, CAEFS and the Correctional Investigator have all observed that despite the need for this section, it is rarely used. Aboriginal communities and the women have little knowledge of the section and there is little attempt to inform Aboriginal women of this section during the intake process.[23]

Denying any Aboriginal prisoners a culturally appropriate environment for incarceration, under utilizing provisions that would expand community options for release and unnecessarily placing Aboriginal women in maximum security units based on racist classification tools are all examples of Canada's failure to take proper measures to prevent torture. They are also evidence of a violation of article 2 of the Convention.

Segregation

Segregation serves no productive purpose and tends to cause dire emotional and mental harm to prisoners. Studies have shown that segregation in prison is a threat to the mental health of prisoners. Administrative or disciplinary segregation, as well as the new maximum security units in the prisons for women, segregate women from the rest of the prison population. CAEFS has found that the isolation of women in segregated maximum security units in both men's and women's prisons, and the subsequent lack of regular programming or meaningful work, exacerbates the deleterious effects and conditions of segregation.

According to Canada's fourth report to the Human Rights Committee on the Convention Against Torture, "segregation is considered an exceptional measure, to be used only for specific safety and security reasons and only if there is not other reasonable alternative".[24] There is evidence to suggest that the use of segregation in prison is not so

[22] Canada, Commission of Inquiry into Certain Events at the Prison for Women in Kingston. *Report*. Ottawa: Public Works and Government Services Canada, 1996. (Cat. No. JS42-73/1996E). (Commissioner: The Honourable Louise Arbour).
[23] The Canadian Human Right Commission, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, Ottawa, 2003.
[24] Canada, Fourth Report to the UN Human Rights Committee regarding the Convention Against Torture, 1997.

exceptional. It is disturbing to find that many women are kept in segregated conditions across the country. In 2002-2203 there were 375 federally sentenced women in prison, with 265 admissions to segregation. Aboriginal women tend to be segregated more often and for longer periods of time. As of 2003, the CHRC reported that one Aboriginal woman, who also now happens to be hospitalized and on life support as a result of her 'treatment' within a segregated prison mental health unit, had been in segregation for 567 days.

Louise Arbour pointed out that one of the key weaknesses in studies conducted on segregation, is that they are usually conducted on men. For example, the legendary Stanford experiments were conducted on male undergraduates who volunteered. The researchers screened out anyone with mental health problems and also informed the participants as to how long they would be in segregation.

Louise Arbour expressed that the worst aspect of segregation is that the prisoner has no idea how long they will be there, and no assurances that her health needs will be addressed. She writes that "the findings that I made earlier support the conclusion that prolonged segregation is a devastating experience, particularly when its duration is unknown at the outset and when the inmate feels that she has little control over it."[25] She also recognized that women are affected differently than men by segregation. The use of segregation interferes with the rehabilitation process, in addition to jeopardizing safety and mental health by exacerbating distress, especially for those with histories of physical and/or sexual abuse.[26]

Despite the lack of evidence that segregation serves any productive purpose, Louise Arbour noted that CSC built twice as many 'enhanced security' cells than they initially projected in the original designs of the institutions.[27] It is the belief of CAEFS that CSC's rationale for the increase in 'enhanced security' cells is rooted in the discriminatory way in which CSC deals with and sees federally sentenced women. It is made worse by the behaviour modification style "level" systems instituted in the segregation units. Much of what are considered privileges in this system are in fact legal entitlements of all prisoners in the prison population.[28]

Although the new maximum security units are not considered segregation by CSC, the relevant legislation, the *Corrections and Conditional Release Act,* is clear in differentiating two forms of confinement: segregation and general population.

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[25] Canada, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston. Report.* Ottawa: Public Works and Government Services Canada, 1996. (Cat. No. JS42-73/1996E). (Commissioner: The Honourable Louise Arbour).
[26] The Canadian Human Right Commission, Protecting Their Rights: *A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa, 2003.
[27] Canada, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston. Report.* Ottawa: Public Works and Government Services Canada, 1996. (Cat. No. JS42-73/1996E). (Commissioner: The Honourable Louise Arbour).
25 Corrections and Conditional Release Act (CCRA).

Consequently, any women who are imprisoned in the maximum security units in the five regionally located prisons across the country are living in conditions of segregation. They live on different ranges are generally not permitted to associate. Clearly, they are in conditions of segregation despite the fact that CSC does not acknowledge this reality. Segregation is a status, not a place. Accordingly, the CSC's self-reporting on segregation admissions and numbers of bed days are seriously underestimated, and misleading in terms of identifying how many federally sentenced women are being confined in segregation.[29]

Too many women in federal and provincial prisons in Canada are forced to serve their sentences in extremely isolating conditions in maximum security units in men's institutions or exiled to other regions of the country. In her report on women in prison to the UN Sub-Commission on the Promotion and Protection of Human Rights Ms. O'Connor emphasizes that housing women in women's wings of men's prisons is contrary to the UN Minimum Standard Rules for the Treatment of Prisoners.[30]

Because Louise Arbour found the long and indeterminate duration of segregation to be the most objectionable aspect of segregation, she recommended that time limits be placed upon the length of time that prisoners might be kept in conditions of segregation. She also recommended that the courts provide external monitoring of CSC to ensure that their use of segregation complies with the law.[31] The Supreme Court of Court has indicated that segregation is a prison within a prison. Accordingly, the CCRA and *Regulations* set out a series of procedures that must be complied with in order for a detention in segregation to be justified by law. Since CSC does not officially view women in maximum security units as in segregation these women are not protected by the procedural rules regarding segregation and risk being subjected to greater abuse and torture. Federally sentenced women placed in provincial institutions under exchange of services agreement between the federal and provincial governments are also not protected by the CCRA regulations relating to segregation.

Further to Madam Justice Arbour's recommendations for external monitoring the CHRC recommended at the very least independent adjudication for decisions relating to involuntary segregation. The CSC replied that independent adjudication was not within its legislative options but that they would develop options in collaboration with Public Safety and Emergency Preparedness Canada. The CSC has yet reveal concrete evidence as to how they plan to realize this goal.

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[27] Disabled Women's Network of Canada, *Federally Sentenced Women with mental Disabilities: A Dark Corner in Canadian Human rights February 2003* (online). Available: http://www.elizabethfry.ca/caefs.e.htm. [June 2005].

[30] Florizelle O'Connor, Administration of Justice, Rule of Law and Democracy, fifty-sixth of the Commission on Human Rights Sub-Commission on Promotion and Protection of Human Rights. Available: http://daccessdds.un.org/doc/UNDOC/GEN/G04/148/57/PDF/G0414857.pdf?OpenElement

[31] Canada, Commission of Inquiry into Certain Events at the Prison for Women in Kingston. *Report*. Ottawa: Public Works and Government Services Canada, 1996. (Cat. No. JS42-73/1996E). (Commissioner: The Honourable Louise Arbour).

It is CSC's policy to force all prisoners, both men and women, sentenced to life for murder to spend at least the first two years of their sentence in maximum security units regardless of their risk assessment. This policy can cause severe suffering for those women who must spend this time in segregated units. This policy is considered contrary to the law by CAEFS, the Correctional Investigator and others.

This policy serves to further discriminate against the most marginalized groups of women who have been convicted of first or second degree murder. Among women, many murder convictions relate to their use of lethal force in response to violent attacks initiated by others. Indeed, a number of such situations involve women defending themselves and/or their children from attacks by abusive partners. After repeated documentation of the discriminatory nature of the policy and the development of legal cases with and by women subject to CSC's two years in maximum security rule, CSC announced that all women subject to the policy will be reviewed for exemptions. Many have since had the exemption successfully applied, clearly underscoring the discriminatory and arbitrary nature of this illegal policy initiative.

Many women are also kept in segregation while undergoing psychiatric treatment. Segregation has been known to have devastating effect on women in prison, this is even more so when applied to women with mental health issues. The Disabled Women's Network of Canada (DAWN) has found that many women are placed in segregation within the psychiatric setting, but do not have access to segregation provisions and regulations in the *Corrections and Conditional Release Act* (CCRA). This is because the segregation is not being used as a 'security' measure, but is inappropriately categorized as a placement for 'treatment' purposes.[32] Many women with mental health problems are segregated because they are a challenge to the prison staff. This is not a valid purpose of segregation as set out in the CCRA.

CSC's Task Force on the use of segregation found that segregation was being applied in many ways that do not meet the legislative criteria. Prisoners were being placed in segregation while waiting for cell space or for a transfer to another institution. It was found that "overall, CSC staff members and managers demonstrated a casual attitude towards the rigorous requirements of the law, both in terms of their understanding of the law and their sense of being bound by it."[33]

Programming

Programming within the correctional system is essential in ensuring that a prisoner's stay in prison does not amount to cruel, degrading or inhuman treatment. Programming is

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[32] DisAbled Women's Network of Canada. *Federally Sentenced Women with mental Disabilities: A Dark Corner in Canadian Human rights February 2003* (online). Available: http://www.elizabethfry.ca/caefs.e.htm. [June 2005].

[33] Correctional Service of Canada, *Task Force Report on Administrative Segregation - Commitment to Legal Compliance, Fair Decisions and Effective Results - March 1997* (online). Available: http://www.csc-scc.gc.ca/text/pblct/taskforce/toc_e.shtml.

essential to ensuring the good mental and physical health of federally sentenced women as well as to assist them with a successful reintegration into the community upon release. The lack of effective programming can also result in serious mental suffering on the part of imprisoned women.

Correctional Services is mandated by the *Corrections and Conditional Release Act* to provide appropriate programming to prisoners that responds to their specific needs.[34] However, as the CHRC pointed out in their review, the training, educational and therapeutic programs in fact do not meet the specific needs of federally sentenced women in Canada.

It has been reported that programs are often administered by facilitators that have little experience in the areas or that their equipment or training skills are outdated. For example, at the Edmonton Institution for Women (EIFW) in Alberta, several women are employed in a graphics shop but many who have worked there came to realize that the skills and equipment they were using were outdated when they were unable to obtain employment in the community where graphic artistry is mostly computerized. Prisoners have extremely limited access to computers and none to the internet.

In Nova Scotia a common and very popular programming opportunity is the dog training program; however, none of its participants have obtained employment training aid dogs in the community. A floral design prison industry that resulted in several women obtaining employment, albeit minimally waged, was shut down several years ago.

In addition, many programs have limited enrolment or are programs that exist on paper and are not actually readily available for women in need.[35] Far too many women do not apply to the National Parole Board (NPB) for conditional release when they are first eligible because they have been unable to access the programming that CSC and the NPB expect them to complete before they will consider them for conditional release.[36]

Theoretically CSC programs should prepare women for meaningful work upon release. The UN Standard Minimum Rules for Treatment of Prisoners indicates that treatment in prison should lead prisoners to have self-supporting lives on release. Such programs are virtually non-existent in Canada for women prisoners. Work options and training programs often focus on traditional "women skills" such as cooking, cleaning, and sewing.

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[34] Corrections and Conditional Release Act, ss.4(a), 77 and 80.
[35] Sky Blue Morin, "Federally Sentence Aboriginal Women's Perspective" in Morin, Sky Blue *Federally Sentenced Aboriginal Women in Maximum Security: What ever happened to Creating Choices* (1999) http://www.csc-scc.gc.ca/text/prgrm/fsw/skyblue/toce_e.shtml
[36] The Canadian Human Right Commission Protecting Their Rights: *A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa, 2003.

Community release facilities are also lacking for women. Very few financial resources are allocated to community groups to provide the community release facilities and services required. This is particularly true for Aboriginal women as it is rare that they can access community release resources and options that are developed by and for them.

The same classification tool that is used to asses risk is also used to identify needs of the individual. As this tool is designed to assess men it is largely ineffective when identifying the appropriate program needs of women as it fails to take into account the social context of federally sentenced women. Even the new tools developed for women result in the same discriminatory result, largely because they are constructed within the same prison framework and research constructs, rather than starting with the specific context and nature of the criminalization and imprisonment of women.

Margaret Shaw writes that the process of criminalization of women is directly linked to their subordinate positions in society.[37] The classification tool cannot appropriately respond to women's needs unless it appropriately factors in the disadvantages specific to women such as gender based violence, and the intersectional marginalization based on class, physical and mental ability, race, sexuality and gender.

Florizelle O'Connor comments, in her report to the UN entitled, *Administration of Justice, Rule of Law and Democracy*, that women prisoners are disadvantaged compared to men prisoners in terms of counseling, education, training and rehabilitation programs. She concludes that in addition to a lack of funding for prisons generally, the lower quality programs for women are due to the fact that the programs are made for men and there is a lack of programs designed for women.[38]

Not only does the process of assessing the needs of prisoners not take into account their individual circumstances as women or women from further marginalized groups, but the process does not sufficiently involved the prisoners themselves. Although women are often called in for a short interview during the planning process, women often feel excluded from what is said to be a collaborative process according to the correctional treatment plan.

Women who are placed in maximum security units based on this discriminatory classification tool have limited access to programs especially when placed in a men's prisons, but also in the prisons for women. It has been noted that this classification system most negatively affects Aboriginal women and women with disabilities or mental health issues as their lived realities are used to their disadvantage in the security classification process. Racialized women, disproportionately Aboriginal women, also suffer from a lack of programs, as the classification system translates their marginalization into a security issue, and thus results in their being over-represented in

[37] Shaw et al, *Paying the Price: Federally Sentenced Women in Prison*, p.19
[38] Florizelle O'Connor, Administration of Justice, *Rule of Law and Democracy, fifty-sixth of the Commission on Human Rights Sub-Commission on Promotion and Protection of Human Rights*. Available: http://daccessdds.un.org/doc/UNDOC/GEN/G04/148/57/PDF/G0414857.pdf?OpenElement

maximum security, and segregated units. The CHRC report emphasizes that program implementation must respect the needs of women who are most vulnerable to discrimination. CSC falls short of this objective when considering that there are very few training programs geared towards women with disabilities.

All of the regional prisons for women have Structured Living Environments (SLE) in place for women with mental health disabilities. These units are operated according to a behaviour modification model that imposes more restrictive regulations than prisoners in general population. Further, the women whose behaviour is not considered manageable enough for them to be in the SLE are usually imprisoned in the maximum security and segregation units, where they are subject to harsher sanctions. This program amounts to involuntary psychiatric treatment, and thus subjects prisoners to mental suffering, and cruel, degrading and inhuman treatment.

Many women are warned that unless they participate in the SLE program they will not have access to counselors or psychiatrists and psychologists more than seven times a year, or on a regular basis. Several women in the EIFW were advised that they would only have access to individual visits with a psychologist 4 times, after which they might have access to group therapy should they be determined to be in need of additional counseling.

The Regional Psychiatric Centre (RPC) in Saskatoon is both subject to the CCRA and the *Saskatchewan Mental Health Act.* This psychiatric prison not only often results in subjecting women to greater use of force but leaves them with fewer administrative protections. Women at the RPC are denied protections provided in the CCRA based on the fact that aggressive interventions are more frequently characterized as treatment and not security measures.

On the other hand, security decisions may also prevail at times that neglect treatment objectives. This is particularly troublesome in terms of uses of force. Although the right to use force by correctional officers is highly regulated to protect the prisoner it is not the case for patients where the use of force is only subject to the discretion of the mental health professional. Instead of preventing acts of torture, this administrative practice increases the possibility of federally sentenced women being subjected to physical and mental torture. Although women prisoners often object to having to work with male therapists, too often the only therapists available are men. This can be especially difficult for women who have been assaulted or abused by men.

In 2001, women prisoners were forced to see a male doctor at the RPC despite the fact that he had been charged and accused of sexual harassment and stalking by women in the local community. Similarly, a man who, although unregistered in Ontario, worked as a psychologist with women at the Prison for Women until it closed, and about whom women complained to no avail, later pled guilty to criminal charges related to allegation brought by a woman in the community whom he apparently stalked and forcibly confined.

The Task Force on Federally Sentenced Women recommended that health services be provided in the community.[39] This recommendation has yet to be implemented. The need to access community health services is particularly crucial for prisoners with HIV/AIDS or Hepatitis C. It is clear that these prisoners do not have the same standard of care as do people from the outside. For example, the necessary pain relief required for prisoners with HIV/AIDS of Hepatitis C is not generally made available to them due to security concerns as these drugs are concerned valuable as a trade item within the prison setting.

CSC also demonstrates a lack of respect for Aboriginal cultures. It is extremely important that Aboriginal approaches to social and psychological health be implemented and integrated as a central part of CSC services and programming. Aboriginal prisoners have also indicated they have been forced to participate in non-Aboriginal programs. Although the Okimaw Ohci Healing Lodge on Nekaneet Land in Saskatchewan is designed to meet the needs of Aboriginal prisoners, those who do not wish to relocate to the Healing Lodge have often had difficulty accessing programs to meet their cultural needs. Moreover, given the discriminatory nature of the classification and assessment instruments, many Aboriginal women are classified as maximum security prisoners and therefore have virtually no access to the Lodge.

Women also report that programming CSC identifies as designed for Aboriginal women has been mandated and forced upon prisoners. Some women have indicated that CSC officials question their Aboriginal ancestry if/when they refuse to participate in Aboriginal programming or "religious" ceremonies inconsistent with their culture or teachings. Refusing to participate in programs that stem from someone else's notion of their culture can result in an prisoner essentially losing her status as Aboriginal.

The confinement of Aboriginal women in traditional male-centric prisons is culturally inappropriate as it perpetuates the control and suppression of Aboriginal people by colonizers and can thus contribute to severe mental suffering. Aboriginal women have indicated that the only effective programming for them would be programs designed and delivered by other Aboriginal women.[40]

Article 3: Expulsion or Extradition

1: *No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.*

[39] Correctional Services of Canada, *Creating Choices: The Report of the Task Force on Federally Sentenced Women*, 1990. Available: http://www.csc-scc.gc.ca/text/prgrm/fsw/choices/toce_e.shtml
[40] Native Women's Association of Canada, Fran Sugar and Lana Fox, *A Survey of Federally Sentenced Women*, 1990, p. 14.

In the Canadian reports to the UN Committee Against Torture it is claimed that Canada will not extradite anyone who is at risk of being tortured. Adil Charkaoui was released on bail in February 2005. He is one of five men that have been held under Security Certificates, the other four men remain in custody. Under the Immigration and Refugee Protection Act (IRPA), the Canadian Security Intelligence Service can initiate security certificates. The process can lead to the arrest of a permanent resident or refugee who has committed no crime. They then are detained indefinitely and are subject to being deported; regardless of if they face torture or death in their home country. The detainee and his.her lawyer have no right to see the information for which s/he are being detained.[41] Section 98 of the IRPA explicitly states that people at risk of being tortured in their own countries are eligible to be excluded from refugee protection. This is counter to the convention's prohibition of returning people to torture

In its comments on Canada's fourth periodic report to the Human Rights Committee, the committee expressed concern over Canada's extradition policies. The UN Human Rights Committee recommends that Canada revise this policy and commit to not deport people to countries where they risk being subjected to cruel and inhuman treatment.[42]

Article 4: Criminalization of Torture

1: Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in Torture.

Canada fails to criminalize acts of torture and tacitly participates in torture, given that CSC practices and policies that result in the torture of women prisoners are designed and implemented by actors of the state and sanctioned by Canadian legislation.

The treatment of federally sentenced prisoners is legislated by the *Correction and Conditions Release Act* (CCRA) and the *Canadian Conditional Release Regulations (Regulations).* Both the CCRA and the *Regulations* provide for restrictions on the rights of prisoners whereas otherwise prisoners retain the rights and privileges that all members of society enjoy. These restrictions often result in severe mental and physical suffering.

Prisoners are also entitled to procedural protections in order to ensure that prisoners maintain their basic rights and freedoms. Most of these protections are not outlined in the CCRA or *Regulations* but instead stem from CSC policies that authorize the Commissioner of Corrections pursuant to section 97 of the CCRA. This provision of the *CCRA* is too often viewed as authorization for the Commissioner to enact any policies as

[41] The Campaign to Stop Secret Trials, *What's Wrong with Security Certificates? What you can do about it* (online). Available: http://www.homesnotbombs.ca/Secret%20Trial%20brief.pdf

[42] United Nations Human Rights Committee fifty-sixth session, Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee, April 7th, 1999. Available: http://www.pch.gc.ca/progs/pdp-hrp/docs/iccpr/session65_e.cfm#principal

long as they do not explicitly contradict the *CCRA* and *Regulations.* Such discretion can in effect decriminalize acts of torture such as the enforcement of unnecessary segregation or forcing imprisoned women to submit to psychiatric treatment against their will.

Perceived security issues can also often supercede the enforcement of criminal law. For instance, where the use of force is punishable under criminal law, excessive violence committed by CSC officials is often justified in the name of security or maintaining the good order of the institution. In order words, actions causing severe mental or physical suffering tend not be recognized as criminal.

Article 10: Education and Training

10: *Each State shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.*[43] ***[43]***

In the fourth and fifth Canadian Reports, Canada asserts that the CSC, the RCMP, the Canadian Forces, and Immigration Enforcement officers are trained to comply with the Convention against Torture. However, the CHRC's report found a lack of procedures in place to disseminate information about prisoners' rights and recommends that CSC develop a system to ensure the promotion of human rights throughout its operations.

Article 11: Systemic Review and Treatment of Persons Arrested, Detained or Imprisoned

11: *Each State shall keep under systemic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.*

Article 11 requires states to ensure that policies regarding detained persons are kept under systemic review in order to actively prevent cases of torture. Canada is acting contrary to article 11, as CSC has failed to put into place accountability mechanisms to review official practices contributing to severe physical and mental pain of prisoners.

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[43] United Nations. Office of the High Commissioner for Human Rights. *Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment June 1987,* Available: http://www.unhchr.ch/html/menu3/b/h_cat39.htm. [June 2005].

Although problems federally sentenced women face within the correctional system across Canada are constantly being documented by organizations such as CAEFS and the Correctional Investigator, there is still no system in place for identifying problems in the facilities let alone across all of the 8 federal prisons where women are detained. Although Prisoners' Committees exist in most of the prisons most of the time, the documenting of problems that they do are regularly interfered with by prison administration rendering this mechanism ineffective.

Use of Force

In The fourth Canadian Report, CSC states that it is in compliance with CAT by abiding by s. 4(d) of the *Corrections and Conditional Release Act*, which requires CSC to use the least restrictive measures in controlling prisoners, yet the CSC has failed to systemically review policies, implement recommendations and prevent torture related to the excessive use of force.

The United Nations *Standard Minimum Rules for the Treatment of Prisoners* also requires that discipline not exceed what is necessary to maintain safe custody and a well-ordered community. [44] In the fourth and fifth Canadian Reports, CSC states that Corrections must justify the amount of force used and must ensure that prisoners will be seen by a physician after any incident related to the use of force. They also state that any use of force situations involving strip searches, cell extractions, institutional emergency response team (IERT) deployments, and any other major security incidents will be video taped. Video taping is meant to create accountability, even though delays in processing access to information and privacy requests often make it difficult for anyone outside of CSC, other than Office of the Correctional Investigator, to view those tapes. Because of this, it is difficult to hold accountable the Correctional Services of Canada because there are no external monitoring bodies to ensure proper compliance and the recommendations of the Office of the Correctional Investigator (OCI). Moreover, the recommendations of the OCI are not binding on CSC, as evidenced by CSC's annual refusal to implement most of the OCI's recommendations.

The Arbour report states that "failure to account adequately for incidents where force was used is a significant departure from policy which … does not serve CSC well. Apart from communicating internally the nature of the incidents in which force was used, the completion of the report brings home to the person involved the seriousness of any interference with the physical integrity of another person".[45] Madam Justice Arbour decided that all videotapes of interventions by the IERT should be immediately sent to the Correctional Investigator. Since then, this usually occurs, but the OCI's findings and

[44] United Nations *Standard Minimum Rules for the Treatment of Prisoners*, paragraph 27.
[45] Canada, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston. Report*. Ottawa: Public Works and Government Services Canada, 1996. (Cat. No. JS42-73/1996E). (Commissioner: The Honourable Louise Arbour).

suggestions are frequently ignored. There is virtually no evidence that CSC is able to correct and hold itself accountable despite their claims to the contrary.

As the Canadian Human Rights Commission pointed out, an effective way of ensuring that excessive use of force is properly dealt with and prevented is to have an external body monitoring the use of force. The CHRC stated: "External monitors such as the Office of the Correctional Investigator perform an invaluable function and role, but it can be difficult to impose from outside the kind of systemic change that may be needed. Moreover, an organization and the individuals associated with it benefit by taking responsibility for ensuring that it happens from within."[46] It is to be noted that since that report there has been no implementation of a systematic model for identifying and addressing persistent problems occurring in women prisons thus leaving prisoners particularly vulnerable to the use of force and torture.

Also the lack of minimum security institutions for women in this country results in women classified as minimum security prisoners being held in environments that are more restrictive than is warranted given their relative lack of threat to public safety or security. There is only one minimum security prison for women in Canada and it only has ten-twelve beds. Consequently women are being subjected to a higher level of security than it is acknowledged that they require. The living conditions for women classified as minimum security prisoners in the regional prisons for women are barely discernible from those of women who are classified as medium security prisoners.

Article 12 and 13: Prompt and Impartial Investigation and Allegations of Torture

12: Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

13: Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidations as a consequence of his complaint or any evidence given.

Articles 12 and 13 speak to effective procedures for investigating and addressing allegations of torture. These articles require states to proceed with impartial and expeditious investigations.

[46]The Canadian Human Right Commission, *Protecting Their Rights*: *A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa, 2003.

Grievances

In the fourth Canadian Report it is stated that the "Grievance system embodies the principles of fairness, confidentiality and accessibility to all offenders without negative consequences."[47] As evidenced by the submissions by CAEFS and women in and from prison during the CHRC review process, the grievance procedure embodies none of these things and that there is a dire need to make available a more effective complaint process for prisoners.

The grievance procedure was criticized by Louise Arbour in a number of ways. Specifically, CSC could not be expected to process complaints against themselves because of their inability to accept responsibility for what happens within the institutions.[48] According to the Office of the Correctional Investigator, the power imbalance between prisoners and the staff causes the ineffectiveness and inefficiencies of the current complaint mechanisms.[49] Of course this power imbalance is amplified for women from traditionally marginalized groups such as racialized women, Aboriginal women, women with disabilities, and lesbian women and transgendered.

Women are rarely informed or aware of their right to grieve, and if they are aware of the right, they will not pursue a grievance because of a perceived or real threat of increased risk to them, their family contact, and their process in the correctional setting.[50] CAEFS has found that grievances rarely come to the attention of the national leadership in CSC, as they are often deemed to be 'resolved' by staff. In many cases the complaint is given to the staff member it is against or to the person who made the decision which is being grieved. This is unfair and illegal.

Women have experienced overt and subtle indications that if they utilize the grievance process they will experience an unpleasant outcome. It basically comes down to the women's word against that of the staff. CAEFS has seen situations where prisoners have been pressured to either not file a complaint or if they have already filed, to withdraw it. A grievance can also result in reclassifying the woman making the grievance. As the CHRC witnessed during their review, women who filed grievance were maintained at a maximum security designation as a result of their use of the grievance system and their

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[47] *Ibid.*

[48] Canada, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston. Report.* Ottawa: Public Works and Government Services Canada, 1996. (Cat. No. JS42-73/1996E). (Commissioner: The Honourable Louise Arbour).

[49] Office of Correctional Investigator, *Correctional Investigator's Response to the Canadian Human Rights Commission's Consultation Paper for the Special Report on the Situation of Federally Sentenced Women January 2004* (online). Available: http://www.oci-bec.gc.ca/reports/OCIResponse_CHRC_e.asp. [June 2005]

[50] Canadian Association of Elizabeth Fry Societies, *CAEFS' Response to the Canadian Human Rights Commission's Consultation Paper for the Special Report on the Situation of Federally Sentenced Women 2003,* Available: http://www.elizabethfry.ca/caefs.e.htm. [June 2005]

view that such action was indicative of disruptive behaviour and/or problems with institutional adjustment.[51]

When women already classified as maximum security file grievances they are further classified as "difficult to manage" which can result in them not being reviewed to have their classification reviewed. In at least one prison, when the Prisoners' Committee tried to call an assembly of all women and later tried to urge the women to file a group grievance about a matter that affected all of the prisoners, the Chair of the Prisoners' Committee was advised that she and other committee members would be charged with inciting a riot if they tried to hold an assembly and they would also be seen as instigating disruption if they encouraged women to they filed a group grievance.

According to a report by the Women's Legal Action and Education Fund (LEAF), there is a presumption of innocence that skews the investigative process in favour of the respondent. This is coupled with an assumption that complainants are overly sensitive, overly excited and lack credibility.[52] What is most disturbing is that the Cross-Gender Monitor found that the grievance process was being used to route allegations of sexual misconduct against staff. Although it is inappropriate to be using the grievance process, which is ineffective and time consuming, to process complaints that deserve immediate attention and resolution[53], this process persists.

The lack of an effective grievance process available to federally sentenced women highlights the need for external monitoring if CSC is to be held accountable for the activities that go on in their institutions. CSC is reluctant to allow external oversight and argues that the oversight function is fulfilled by the Office of the Correctional Investigator. However, CAEFS has found that the Correctional Investigator does not have sufficient staff and financial resources to effectively represent all of the issues brought forward by federally sentenced women.[54] Also, the Correctional Investigator has no authority to enforce its recommendations. The Office of the Correctional Investigator should report directly to Parliament and the Standing Committee on Justice, Public Safety, Emergency Preparedness and Human Rights should regularly expect an accounting from the Correctional Service of Canada with respect to issues raised by the office of the Correctional Investigator.

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[51] Canadian Association of Elizabeth Fry Societies. *CAEFS' Response to the Canadian Human Rights Commission's Consultation Paper for the Special Report on the Situation of Federally Sentenced Women 2003.* (online). Available: http://www.elizabethfry.ca/caefs.e.htm. [June 2005]

[52] Women's Legal Education and Action Fund (LEAF) - *The Tip of the Iceberg: Barriers to Disclosure of the Abuse and Mistreatment of Federally Sentenced Women May 2003* (online). Available: http://www.elizabethfry.ca/caefs.e.htm. [June 2005].

[53] Correctional Service of Canada, *Cross Gender Monitoring Project: Third and Final Annual Report 2000,* Available: http://www.cscscc.gc.ca/text/prgrm/fsw/gender3/toc_e.shtml#TopOfPage. [June 2005].

[54] Canadian Association of Elizabeth Fry Societies, *CAEFS' Response to the Canadian Human Rights Commission's Consultation Paper for the Special Report on the Situation of Federally Sentenced Women 2003.* (online). Available: http://www.elizabethfry.ca/caefs.e.htm. [June 2005] .

Louise Arbour confirmed that it is imperative that there are consequences for CSC if they have compromised the integrity of a sentence by mismanaging it. If the rule of law is present in full force within institutions, the administration of justice can reclaim the legality of the sentence.[55] CSC has either paid rhetorical lip service or ignored the recommendations for accountability mechanisms that have come from the Arbour report, the Annual Reports of the Office of the Correctional Investigator, the Task Force on Federally Sentenced Women, the Auditor General, Public Accounts Committee, the Minister responsible for correctional services, and the Parliamentary Standing Committee on Justice, Public Safety, Emergency Preparedness and Human Rights, and Parliament itself.[56] It is important to have effective and efficient complaint processes in prison. Louise Arbour worried that the deficiencies of the complaint process, both in time and substance, will cause great frustrations and further resentment for both prisoners and staff.[57]

These findings indicate the very real threat to both the opportunity for an impartial, prompt examination of complaints and the protection against ill treatment for prisoners in Canada, as guaranteed in articles 12 and 13 of the Convention.

Prisoner Access to Legal Assistance and Privileged Correspondence

The Canadian Reports claim that prisoners have reasonable access to legal assistance and privileged correspondence. Realistically, there is no reasonable access because many prisoners are not informed of their rights. Also, prisoners rarely have the resources available to them to access legal assistance. Prisons remain shielded by the prisoner's inability to complain, and in their limited ability to consult with the outside world.

Cuts to legal aid resources have made it even harder for federally sentenced women to access the legal assistance they need. CAEFS and the CHRC have recommended the establishment of a prisoner legal fund. Federally sentenced women are not only in need of funding, they also require clear and current information on their rights, on the redress mechanisms, on how to contact the Correctional Investigator, the CHRC, Elizabeth Fry Societies and other prisoner support and advocacy groups. They also need to be better informed of their court dates, access to information and privacy, and the rights available under the *Canadian Charter of Rights and Freedoms.*[58]

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[55] Canada, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston. Report*. Ottawa: Public Works and Government Services Canada, 1996. (Cat. No. JS42-73/1996E). (Commissioner: The Honourable Louise Arbour).

[56] Canadian Association of Elizabeth Fry Societies, *CAEFS' Response to the Canadian Human Rights Commission's Consultation Paper for the Special Report on the Situation of Federally Sentenced Women 2003.* (online). Available: http://www.elizabethfry.ca/caefs.e.htm. [June 2005]

[57] Canada, Commission of Inquiry into Certain Events at the Prison for Women in Kingston. *Report*. Ottawa: Public Works and Government Services Canada, 1996. (Cat. No. JS42-73/1996E). (Commissioner: The Honourable Louise Arbour).

[58] Protecting Their Rights: *A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa, The Canadian Human Right Commission, 2003.

Providing for better access to legal aid and better awareness of the important legal issues surrounding the conditions of their imprisonment and release assists with the investigation process as it empowers women, allowing them to take active roles in resolving situations in which they suffer from mistreatment and discrimination prohibited by the Convention Against Torture.

Article 16: Cruel, inhuman or degrading treatment or punishment

Article 16.1: Each State party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment.

In cases where the policies and practices discussed above are not found to cause severe mental or physical pain, the actions remain contrary to the Convention on Torture when they can be proven to amount to cruel, inhuman or degrading treatment.

Arguably forcing women into segregation based on social indicators, denying women access to appropriate social programs and failing to provide inmates with effective recourses to address human rights violations and harassment amount to either or all cruel, inhuman and degrading treatment.