
Statement on Detainees and COVID-19

STATEMENT BY:
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Introduction

We are approaching the fifth month since the World Health Organization (WHO) declared a global pandemic due to the novel coronavirus – COVID-19. Worldwide, deaths have now topped 400 000. In Ontario, over 35, 000 cases have been confirmed and over 2500 people have died.

In response to the crisis, all levels of government across Canada declared states of emergency to contain the pandemic. In this context, emergency declarations serve multiple purposes, including establishing a public health infrastructure to contain and mitigate the pandemic's impacts. In addition to the emergency measures, federal, provincial, territorial and municipal public health authorities have directed the public to take certain precautions, including regular hand washing, avoiding contact with those not in your immediate household, regular decontamination of surfaces, wearing masks or protective face coverings when in public and finally, the requirement that individuals “physically distance” themselves from others.¹

Heightened Vulnerability of certain populations

What is readily apparent as the virus spreads, is that particular populations are at increased risk of infection and death, that certain vulnerable populations are *precluded* from following the directives issued by public health authorities to protect themselves, and that there is particular vulnerability in congregate living environments. This includes prisons and other places of detention, as well as within populations that face housing insecurity and homelessness. The Office of the United Nations High Commissioner for Human Rights stated on May 5, 2020 that conditions in congregate settings in the Americas are “deeply worrying” as they have enabled the “rapid spread of COVID-19 in many facilities.” The Chief Public Health Officer in Canada has affirmed that correctional facilities are a “high-risk setting” in which a mass infection could have grave consequences² and that prevention is crucial to avoid the spread. This is all the more worrying in Ontario where the 2019 Auditor General’s report found that 14 of the 25



correctional institutions in Ontario were operating beyond the Ministry's optimal rate of 85% occupancy.³ These conditions elevate risk for incarcerated people.⁴

We at the Black Legal Action Centre (BLAC) and the Alliance for Healthier Communities are keenly aware that these “grave consequences” will disproportionately impact Black communities, due to the over-representation of Black people incarcerated in provincial and federal correctional facilities across the country. The over-representation of Black people in both, provincial and federal correctional institutions, and other places of detention, is rooted in our country's history of colonialism, slavery and segregation. This historical context has produced stereotypes that link Blackness with criminality, and in turn, justifies the need to scrutinize and over-police Black communities. The outcome is the over-representation of Black people in custody. Early COVID-19 data is already showing disproportionate impacts on key communities and groups, including Black populations in Ontario.⁵ Failure to develop clear strategies will further harm Black populations and communities already bearing a heavier pandemic burden due to systemic and structural inequity.

A report from the Office of the Correctional Investigator (OCI) at the national level found that “Black inmates are one of the fastest growing sub-populations in federal corrections. Over the last 10 years, the number of federally incarcerated Black inmates has increased by 80%.”⁶ More recently in 2018-2019, Black inmates represented 8% of the total federal in-custody population, yet comprised only 3.5% of the total Canadian population.⁷ The number of Black women incarcerated is also rising.⁸

Although disaggregated race-based data is not collected in Ontario to the same degree as the federal system, one study reported that Black people in 2010-2011 comprised only 4% of the general population, yet accounted for a grossly disproportionate 17.7% of the provincial corrections population.⁹ Data from 2013 showed that young Black males were overrepresented in provincial jails by *four times* their general population.¹⁰ Finally, Black people awaiting trial between 2015 and 2016 in Ontario jails were there longer, on average, than white people charged with the same offences.¹¹

While the provincial government has taken steps to begin decarceration,¹² there is a growing number of outbreaks in correctional facilities across the province. In one institution in Brampton, 60 inmates and eight staff tested positive for COVID-19.¹³ Staff and inmates at Toronto South Detention Centre, Monteith Correctional Complex in Iroquois Falls and Hamilton-Wentworth Detention Centre have also tested positive for the virus.¹⁴ In the federal system, Grand Valley Institution in Kitchener – Canada's largest prison for women – has eight inmates and one correctional officer who have tested positive for the virus.¹⁵

What needs to be done

It is the position of BLAC and the Alliance for Healthier Communities that the Canadian government has clear obligations, international and domestic, to ensure that those who remain incarcerated and are under the authority of federal, provincial and territorial governments are properly cared for and supported during this pandemic. COVID-19 is a health crisis. While we are nearing the end of the first wave of this pandemic, a second wave is expected and the World Health Organization has indicated that the worst is yet to come.¹⁶ Populations must be supported in adopting interventions that protect from harm and reduce health risks. In March 2020, the UN High Commissioner for Human Rights noted that neglecting incarcerated populations during the pandemic could be catastrophic.¹⁷ Further, governments have a responsibility to ensure that released individuals can access appropriate supports to ensure they do not move from one vulnerable population (imprisoned/detained) to another (homeless). These obligations, including the right to life and the right to health, stem from international norms and covenants, to which Canada is a party.¹⁸

The United Nations Human Rights Committee, in a decision issued under the complaint mechanism of the Optional Protocol to the *International Covenant on Civil and Political Rights*, set out Canada's very specific obligations with respect to these fundamental rights:

The Committee considers that the right to life concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death ... the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. [...]even if such threats and situations do not result in loss of life. In particular, as a minimum States parties have the obligation to provide access to existing health care services that are reasonably available and accessible, when lack of access to the health care would expose a person to a reasonably foreseeable risk that can result in loss of life.¹⁹

Further in a joint statement issued on May 13, 2020, the United Nations leaders of global health, human rights and development institutions “urgently” called on political leaders to take all appropriate public health measures to prevent “large outbreaks of COVID-19”. To this end, the joint statement noted the “heightened vulnerability” of prisoners and other people deprived of liberty *who are a part of our communities*. Critical to the prevention is the ***establishment of coordination systems that bring together health and justice sectors.***²⁰

To date, there is a failure to ensure the health and ability to physically distance of those who remain incarcerated, and a failure to provide appropriate supports to those who have been released. To this end, we at BLAC and the Alliance call on all levels of government to ensure that those with heightened vulnerability, such as those incarcerated and in other places of detention,

such as immigration detention centres, are protected and when released, provided with appropriate health and social supports. We demand:

1. A detailed action plan for those who remain in custody that includes, a plan for physical distancing, the distribution of **free** hygienic supplies,²¹ sentinel testing to all facilities across the province and treatment to impacted populations. This includes steps that protect those who are tasked with supervising and transporting those in custody, for example, personal protective equipment (PPE). This should include additional screening for particularly vulnerable groups, such as those living with and affected by HIV and hepatitis C;
2. The release of those vulnerable to COVID-19, namely, those above the age of 50, those who are immunocompromised, pregnant or any individual who has a pre-existing condition that makes them vulnerable to the virus;
3. Development of pandemic discharge strategies, that include health and housing supports for those who are released from detention. A commitment is required specifically from the Ministry of Community Safety and Correctional Services (MCSCS) and the Solicitor General of Ontario, to work with those who are being discharged or released from detention to connect them to health care facilities and services in their areas;
4. Health and housing supports for those who are released from detention, specifically, a commitment from the Correctional Service of Canada and the Minister of Public Safety and Emergency Preparedness, to work with those who are being discharged or released from detention to connect them to health care facilities and services in their areas;
5. A commitment from the Office of the Correctional Investigator (OCI) to investigate systemic human rights violations related to COVID-19 practices in federal correctional facilities;
6. A commitment from the Ontario Ombudsman to investigate systemic issues related to COVID-19 in provincial correctional facilities and detention centres;
7. The immediate collection of disaggregated race-based data in the provincial correctional system and in all places of detention in the province.

We echo the urgent warning of the global health, human rights and development leaders and call on all levels of government to coordinate systems that ensure the prevention of the spread of COVID-19 to our most vulnerable populations.

¹ Public Health Ontario, *Coronavirus Disease 2019 (COVID-19) Physical Distancing*, (2 April 2020), online: Public Health Ontario <<https://www.publichealthontario.ca/-/media/documents/ncov/factsheet/factsheet-covid-19-guide-physical-distancing.pdf?la=en>> “Physical distancing means keeping our distance from one another and limiting activities outside the home... When outside your home, it means staying at least 2 metres (or 6 feet) away from other people whenever possible”.

² Justin Chandler, *Releasing some prison inmates is key to reducing COVID-19 spread, say advocates*, (2 April 2020), online: CBC Radio <<https://www.cbc.ca/radio/thecurrent/the-current-for-april-2-2020-1.5518783/releasing-some-prison-inmates-is-key-to-reducing-covid-19-spread-say-advocates-1.5519071>>.

³ Office of the Auditor General of Ontario, “Annual Report 2019: Reports on Correctional Services and Court Operations” (Fall 2019) at 11, online (pdf): Office of the Auditor General <https://www.auditor.on.ca/en/content/annualreports/arreports/en19/2019AR_v3_en_web.pdf>.

⁴ World Health Organization, UNODC, WHO, UNAIDS and OHCHR joint statement on COVID-19 in prisons and other closed settings, (13 May 2020), online: World Health Organization <<https://www.who.int/news-room/detail/13-05-2020-unodc-who-unaid-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings>>.

⁵ Public Health Ontario, *COVID-19 in Ontario: A Focus on Diversity*, (14 May 2020), online: Public Health Ontario <<https://www.publichealthontario.ca/-/media/documents/ncov/epi/2020/06/covid-19-epi-diversity.pdf?la=en>>.

⁶ The Correctional Investigator Canada, “Annual Report of the Office of the Correctional Investigator 2012-2013” (June 2013) at 9, online (pdf): Office of the Correctional Investigator <<https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20122013-eng.pdf>>.

⁷ The Correctional Investigator Canada, “Annual Report of the Office of the Correctional Investigator 2018-2019” (June 2019) at 79, online (pdf): Office of the Correctional Investigator <<https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20182019-eng.pdf>>; Statistics Canada, *Census of Canada*, 2016.

⁸ The Correctional Investigator Canada, “A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries Final Report” (10 July 2013) at 10, online (pdf): Office of the Correctional Investigator <<https://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20131126-eng.aspx>>.

⁹ Akwasi Owusu-Bempah & Scot Wortley, “Race, Crime, and Criminal Justice in Canada” in Sandra M. Bucerius & Michael H. Tonry, eds, *Oxford Handbook of Ethnicity, Crime, and Immigration* (Oxford: Oxford University Press, 2014), 281 at 289.

¹⁰ Jim Rankin & Patty Winsa, *Unequal justice: Aboriginal and black inmates disproportionately fill Ontario jails* (1 March 2013), online: Toronto Star <https://www.thestar.com/news/insight/2013/03/01/unequal_justice_aboriginal_and_black_inmates_disproportionately_fill_ontario_jails.html>.

¹¹ Thomson Reuters, *Black people awaiting trial in Ontario jails spend longer in custody than white people* (20 October 2017), online: CBC News <<https://www.cbc.ca/news/canada/toronto/raceontario-jails-wait-trial-disparity-1.4364796>>.

¹² For example: The Ministry of the Solicitor General has provided temporary absences to inmates serving intermittent sentences and released inmates who were nearing the end of their sentences: CBC News, *More than 2,000 inmates released, 6 COVID-19 cases confirmed inside Ontario jails* (9 April 2020), online: CBC News <<https://www.cbc.ca/news/canada/toronto/ontario-jails-coronavirus-1.5527677>>.

¹³ Liam Casey, *COVID-19 outbreak leads to Ontario jail being closed after 60 inmates, eight staff test positive* (20 April 2020), online: National Post <<https://nationalpost.com/news/ontario-jail-closing-after-60-inmates-8-staff-test-positive-for-covid-19>>.

¹⁴ CBC News, *More than 2,000 inmates released, 6 COVID-19 cases confirmed inside Ontario jails* (9 April 2020), online: CBC News <<https://www.cbc.ca/news/canada/toronto/ontario-jails-coronavirus-1.5527677>>.

¹⁵ Julianne Hazlewood, *8 inmates test positive for COVID-19 at Grand Valley Institution* (15 April 2020), online: CBC News <<https://www.cbc.ca/news/canada/kitchener-waterloo/8-cases-covid-19-grand-valley-institution-1.5531987>>.

¹⁶ BBC News, *Coronavirus: Worst could be yet to come, WHO warns* (29 June 2020), online: BBC News <<https://www.bbc.com/news/world-53227219>>.

¹⁷ The Office of the High Commissioner for Human Rights, *Urgent action needed to prevent COVID-19 "rampaging through places of detention" –Bachelet*, (25 March 2020), online: The Office of the High Commissioner for Human Rights <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745>>.

¹⁸ See, Universal Declaration of Human Rights, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71, online: <<https://www.refworld.org/docid/3ae6b3712c.html>> [accessed 1 May 2020]; *International Convention on the Elimination of All Forms of Racial Discrimination*, GA Res. 2106 (XX), UN GAOR, 20th Sess, Supp. No 14 at 47, UN Doc. A/6014 (1965) 660, online: <<https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>>; *Convention on the Elimination of All Forms of Discrimination Against Women*, GA Res 34/180, UN GAOR, 34th Sess, Supp. No 46, UN Doc. A/34/36 (1980), online: <<https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>>; *Convention on the Rights of the Child*, GA Res 44/25, U.N. GAOR, 44th Sess., Supp. No 49, UN Doc A/44/49 (1989), online: <<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>.

¹⁹ United Nations Human Rights Committee, Communication No 2348/2014, *Toussaint v. Canada*, UN Doc CCPR/C/123/D/2348/2014, (7 August 2018), online: <https://www.escribnet.org/sites/default/files/caselaw/toussaint_judgment.pdf>, at para. 11.3.

²⁰ *Supra* note 4.

²¹ BLAC is aware, through anecdotal evidence, of at least one Black inmate detained at a provincial jail who had to buy the hygienic supplies required to keep him safe.