



**NATIONAL  
COUNCIL  
OF CANADIAN  
MUSLIMS**  
Your Voice. Your Future.

Submission to Canada's Third Universal Periodic Review

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## About the NCCM

The National Council of Canadian Muslims (NCCM) is an independent, non-partisan, and non-profit grassroots organization that is a leading voice for Muslim civic engagement and the promotion of human rights. Our mandate is to protect the human rights and civil liberties of Canadian Muslims, promote their public interests, build mutual understanding between communities, and confront Islamophobia. For over 17 years, we have worked to achieve this mission through activism in four primary areas including community education and outreach, media engagement, anti-discrimination action, and public advocacy.

## Introduction

### Combating Racism and Islamophobia

The current federal government has taken very encouraging steps to combat racism and discrimination. In recent times, Motion 103 urged the federal government to condemn and take action against the rising reality of Islamophobia in Canada. In addition, it urged the Standing Committee on Canadian Heritage's to conduct research into the reduction of racism and discrimination, resulting in the report *Taking Action Against Systemic Racism and Religious Discrimination including Islamophobia*. This was supported with the announcement of \$21 million in new funding, as part of approximately \$50 million over three years earmarked for community-led anti-racism projects and initiatives.

These developments signal the present Government of Canada is serious about addressing the perils of racism and discrimination, including Islamophobia.

Nonetheless, there is much left to be done if the federal government is to follow through on these commitments and continue to show leadership on this portfolio. By prioritizing the below-mentioned recommendations made by UN Member States during Canada's current Universal Periodic Review (UPR) (specifically those regarding (a) racism and non-discrimination, and (b) public safety and law enforcement) the government can make tangible steps toward ensuring inclusion, diversity and equity for the benefit of all Canadians.

## **Public Safety and Law Enforcement**

### **1. Correctional Services**

The accommodation of inmates' spiritual and religious needs in federal correctional facilities is mandated by the Canadian Charter of Rights and Freedoms, the Canadian Human Rights Act, as well as the Corrections and Conditional Release Act and Regulations. This is further bolstered by a number of United Nations Conventions, including - but not limited to - the UN Standard Minimum Rules for the Treatment of Prisoners. While some gains have been made in recent years, Muslim prisoners in Canada continue to experience obstacles to their full equality within the Canadian prison system. The denial of accommodation within the prison system can have acute, dignity-impairing consequences. Inmates' movements and activities are controlled by state officials. Inmates live without the enjoyment of fundamental liberty. This means that the state has a higher burden to facilitate the free exercise of religion. Too many instances of failure in this regard are known to NCCM to conclude that the problem is anything but systemic.

We urge the government of Canada to prioritize the implementation of the following UN Member State recommendations:

- Number (6) 66 - End anti-black and anti-Muslim discrimination and racism and implement an appropriate justice strategy within the criminal justice system in this regard (Islamic Republic of Iran).
- Number (6) 72 - Ensure the consistent collection of data on ethnic and racial discrimination in the criminal justice system, as well as intensify the fight against racial profiling and ethnic and religious intolerance (Russian Federation).
- Number (5.6) 50 - Eliminate all forms of racial discrimination through legal, administrative and policy measures (Kenya).
- Number (5.6) 69 - Develop and implement strategies, including the introduction of legislation and awareness campaigns to counter anti-Semitic and anti-Muslim sentiment across Canada (Bahrain).

In 2015, the NCCM called on Correctional Services Canada to fully investigate a number of complaints of religious discrimination made by inmates in Canada's federal prisons. Two cases were reported in the media, concerning Nicolas Hovanesian and Mohammed Karim, respectively. These individuals are inmates at a federal facility in Alberta who complained that their religious dietary restrictions were ignored and access to a prayer space was denied. The men also alleged they were targeted for reprisal after speaking out about their experiences of discrimination.

In addition to these cases, which have received some media attention, the NCCM regularly receives direct complaints from Muslim inmates deprived of their constitutional right to religious accommodation within the correctional system. Failing to respect diversity and treat inmates with dignity undermines rehabilitation and breeds scepticism towards the rule of law. In addition, evidence suggests that religious knowledge and connection decreases the likelihood of

criminality and re-offense, and can be an important driver of rehabilitation. Despite this knowledge, 2012 saw major budget cuts to part-time chaplaincy contracts (which happened to disproportionately affect non-Christian chaplains).<sup>1</sup> This resulted in a total of 49 contracts not being renewed, leaving only two full-time non-Christian chaplains within the federal correctional system. Despite some 27 positions being launched for new chaplains in 2015,<sup>2</sup> NCCM has been made aware that there remains ongoing funding and contract issues that prevent inmates from getting the support they need. These issues find expression as a grave lack of knowledge and services when it comes to religious accommodations available to Muslim inmates, and other inmates of non-Christian faith traditions.

With a view to prioritizing the above recommendations made by UN Member States, the **NCCM makes the following recommendations** for Canada to consider under this topic:

1. Increase federal and provincial funding for chaplaincy services to religious minorities in correctional institutions.
2. Install mandatory mental health and cultural/religious awareness training to management and front-line workers.
3. Develop a timely and effective internal complaint mechanism for inmates who have experienced violations of their human rights.

## **2. Police Services**

### **2.1 Policing of Racialized Communities**

Street identity checks, or “carding”, by police where there are no reasonable and probable grounds to suspect the individual has committed or is committing an offence is now recognized as a discriminatory burden that disproportionately affects members of racially profiled communities. Muslims today are a “securitized” community and are therefore subject to this discriminatory practice. Carding disproportionately affects Indigenous peoples, Muslims, Arabs, West Asians and Black people, largely as a result negative stereotyping, which links members of these racialized communities with criminality and propensity to violence.<sup>3</sup>

Following years of complaints by Black community leaders alleging that community members were being unduly harassed and discriminated against, in 2010 an investigation in Toronto

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<sup>1</sup> CBC Ottawa. “Non-Christian Prison Chaplains Chopped by Ottawa”. October 2012. Accessible at: <http://www.cbc.ca/news/canada/british-columbia/non-christian-prison-chaplains-chopped-by-ottawa-1.1142212>

<sup>2</sup> The Toronto Star. “Corrections Canada Reverses Course on Chaplains”. January 2015. Accessible at: <https://www.thestar.com/news/canada/2015/01/30/corrections-canada-reverses-course-on-chaplains.html>

<sup>3</sup> Ontario Human Rights Commission, “Under Suspicion: Research and consultation report on Racial Profiling in Ontario”, April 2017. Accessible at: [http://ohrc.on.ca/sites/default/files/Under%20suspicion\\_research%20and%20consultation%20report%20on%20racial%20profilin%20in%20Ontario\\_2017.pdf](http://ohrc.on.ca/sites/default/files/Under%20suspicion_research%20and%20consultation%20report%20on%20racial%20profilin%20in%20Ontario_2017.pdf)

uncovered evidence of racial profiling by police, including data demonstrating that in particular patrol zones, black citizens were much more likely to be carded by police than non-blacks.<sup>4</sup>

Since this time, the Law Union of Ontario has publicly advocated that carding constitutes a violation of Charter rights, statutory human rights, and privacy rights. The Office of the Ontario Ombudsman agrees, stating it considers the police practice of carding illegal.<sup>5</sup>

## **2.2 Challenges in Reporting Hate Crime or Incidents**

Statistics Canada has reported that an estimated two-thirds of all hate crimes go unreported for various reasons. These can include fear or shame; lack of confidence in the police; language barriers; or inaccessible reporting mechanisms. Of particular concern is the competence of police services to address anti-Muslim hate. The NCCM has received numerous reports of negative experiences from Canadian Muslims about filing hate complaints with the police. Reports describe police apathy and lack of cultural sensitivity towards Muslims. This creates a lack of trust towards police services, and deters victims from further reporting, even where an actual crime has occurred.

With these considerations in mind, the NCCM urges the Government of Canada to prioritize the following Member State recommendations with a view to addressing both the problems of racial profiling by police services in Canada, as well as the issues associated with hate crime reporting, as above:

- Number 6 (65) Conduct impartial, thorough and effective investigations into all cases of attacks, harassment and intimidation against religious and ethnic minority groups and bring perpetrators of such offenses to justice (Azerbaijan).
- Number (6) 109 Combat racist hate crimes and racial profiling by the police, security agencies and border agents (South Africa).
- Number (6) 110 Take measures to prohibit targeting, profiling and harassment of Muslims by its police, security agencies and other authorities (Pakistan).
- Number (6) 116 Organize training programs for law-enforcement officials to guarantee the respect of human rights standards (Egypt).

In addition to challenges faced when reporting incidents of hate, there are also systematic limitations on the accuracy of hate crime reporting. When reporting hate crimes, police services are allotted a single contributing motive for the crime. This single causation reporting system does not consider the intersectionality of victimization. By intersectionality we mean, the multiple and interconnected identities that one may hold that contribute to overlapping experiences of discrimination. For instance, while anti-Muslim hate crimes may have decreased by 20 incidents

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<sup>4</sup> Toronto Star, "Chances of Being Carded", September 2013. Accessible at: [https://www.thestar.com/news/gta/known\\_topolice2013/2013/09/27/chancesofbeingcarded.html](https://www.thestar.com/news/gta/known_topolice2013/2013/09/27/chancesofbeingcarded.html)

<sup>5</sup> Office of the Ontario Ombudsman, "Submission on carding", September 2015. Accessible at: <https://www.ombudsman.on.ca/resources/news/press-releases/2015/ombudsman%E2%80%99s-office-releases-submission-on-carding>

during 2016 in comparison to 2015, hate crimes motivated by race or ethnicity actually increased, in particular crimes targeting Black populations remained the most common type of hate crime related to race or ethnicity at 17 percent of all hate crimes. Statistics Canada also reports that females were more likely to be victims in incidents targeting a religion. While the NCCM understands that victims of hate related incidents may quite possibly experience hate directed at their race, religion, and gender in tandem, without proper reporting mechanisms that allow victims to report multiple motivations, intersecting grounds that motivate hate may not be captured in the data.

The **NCCM provides the following recommendations** as to how the Federal Government could tangibly work to implement the above Member State recommendations:

1. Increased cultural sensitivity and anti-racism training for frontline officers.
2. Removal of barriers and adoption of online reporting options by police services that would make reporting more accessible.
3. Creation of a plan to diversify the workforce in order to better reflect the communities the Police Services serve.
4. Provision of additional resources by provincial governments to municipalities that require budgetary support in providing essential training and resources to address hate crimes and hate incidents in their jurisdictions.
5. Implementation of a requirement for all police forces to report on hate crimes statistics to their Police Services Board.
6. Better funding for Police Services, as well as municipalities and other levels of government, to implement education campaigns regarding hate crimes to encourage hate crime reporting and to promote diversity and tolerance.
7. Modification to reporting system to allow for intersectional hate crime reporting.
8. The creation of consistent hate crime or incident reporting mechanisms across the country.
9. Accountability measures, in order to eliminate the practice of racial profiling.

## **National Security**

### **3. Bill C-23**

- Number (6) 108 - Stop racial profiling and other discriminatory practices by the police and security agencies (India).
- Number (6) 109 - Combat racist hate crimes and racial profiling by the police, security agencies and border agents (South Africa).

Bill C-23 establishes the framework for American preclearance officers (USPCOs) to control entry to the United States through the exercise of new powers to question, search and even detain Canadian citizens while still on Canadian soil. NCCM views Bill C-23 as fundamentally flawed because it fails to ensure accountability for USPCOs in Canada. Any modification to Bill

C-23 must be in line with the provisions of the *Agreement on Land, Rail, Marine, and Air Transport Preclearance between the Government of Canada and the Government of the United States of America* (the Agreement), signed between the Canadian and US governments in 2015.

The major concern raised by NCCM in this regard is that there is little to no way for a Canadian to seek enforce oversight or seek redress for individuals' treatment at the hands of USPCOs. Indeed, Canadian courts have no jurisdiction should a USPCO violate the *Canadian Charter of Rights and Freedoms* or any other Canadian law. This is troubling considering the suspicion that Muslim travellers face and the power of USPCOs to conduct strip searches, and to detain, question and search a traveller after they state their intent to withdraw from preclearance. In other words, the travellers would no longer be free to withdraw from the preclearance area should they no longer wish to use the service.

Therefore, the **NCCM urges the Government of Canada to consider the following recommendations** relating to Bill C-23<sup>6</sup>:

1. Adding an oversight mechanism for USPCOs within the Bill.
2. Renegotiation of the agreement given no conduct consultation took place during the initial negotiations.
3. Maintenance of the current clause in the Preclearance Act which notes that withdrawal is not considered grounds for suspicion of committing an offence.
4. The addition of a clause obligating USPCOs to inform travellers of the precise moment when an investigation into a suspicion of commission of an offence has begun.
5. References in the Bill pertaining to the detention of travellers and goods to be delivered to the CBSA should be changed from "as soon as feasible" to "immediately".

#### **4. Extradition Laws**

Canada's flawed extradition laws continue to expose Canadian citizens to violations of their fundamental human rights and freedoms abroad.

A prominent (and recent) case here is that of Hassan Diab, who was wrongfully extradited from Canada based on unreliable and incomplete evidence. Hassan Diab was arrested by the RCMP for extradition to France in 2008, on the basis of allegations that he participated in the 1980 bombing of a synagogue in Paris. He was extradited to France in 2014. During that time, he spent more than 3 years in pre-trial detention, as investigative judges evaluated whether to move to trial. After a decade-long ordeal, French judges have dropped all allegations against Canadian Hassan Diab and ordered his immediate release. Many have since called for a full public inquiry into this debacle.

Canadians facing extradition deserve the full protection afforded by the Canadian Charter of Rights and Freedoms. Therefore, Canada must not enter into extradition treaties with countries

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<sup>6</sup> The full list of recommendations can be found here <http://iclmq.cfswpnetwork.ca/wp-content/uploads/sites/37/2017/05/Supplementary-Brief-Bill-C-23-Final.pdf>

whose judicial systems do not align with our basic human rights standards. In some cases, Canada extradites its citizens to countries that use secret intelligence as evidence including intelligence obtained from torture. NCCM asks that Canada reevaluate its current protocols on information sharing with foreign agencies to ensure that such information is not passed to agencies where it could foreseeably contribute to the torture of individuals.

Therefore, the **NCCM asks that Canada consider the following recommendations** as part of its national security evaluations:

1. Extradition Act reforms to address any statutory limitations or weaknesses that allowed extradition to go ahead on an evidentiary basis.
2. A fully independent public inquiry on Hassan Diab's case which should include full transparency and accountability, and provide objective and considered recommendations for change.

## **5. Canadian Services Intelligence Agency (CSIS)**

### **5.1 Accountability and Transparency**

Following the events of September 11, 2001, existing and newly-created Canadian national security agencies were given more authority and resources. Since this time, Canadian officials have worked to strike a balance between safeguarding national security and guaranteeing human rights. However, many actions taken in the name of national security have failed to protect the dignity and fundamental human rights of numerous Canadian citizens.

In light of this, we submit that the Government of Canada should prioritize the following Member State recommendations:

- Number (6) 66 - End anti-black and anti-Muslim discrimination and racism and implement an appropriate justice strategy within the criminal justice system in this regard (Islamic Republic of Iran).
- Number (6) 108 - Stop racial profiling and other discriminatory practices by the police and security agencies (India).
- Number (6) 109 - Combat racist hate crimes and racial profiling by the police, security agencies and border agents (South Africa).
- Number (5.6) 50 - Eliminate all forms of racial discrimination through legal, administrative and policy measures (Kenya).

NCCM and others have raised concerns that national security organizations target and profile people based on race, ethnicity, religion and national origin, despite these same security agencies insisting they do not use racial, ethnic or religious profiling in their work. However, without a system set in place for accountability and transparency to monitor organizational practices and whether profiling is taking place, national security agencies leave themselves open to criticism and loss of public trust.

For instance, the Security Intelligence Review Committee (SIRC), the independent review body that monitors CSIS, reported in its 2013-2014 annual report, *Lifting the Shroud of Secrecy*, that CSIS “violated its duty of candour,” by not being forthcoming with SIRC on disclosing evidence in a particular investigation regarding the revocation of an individual’s security clearance.<sup>7</sup> SIRC found CSIS’ lack of candour to be “most disturbing,” and that CSIS made an “intolerable misrepresentation” that “diluted the credibility of the Service’s security assessment.”<sup>8</sup> Beyond these findings by SIRC, there is significant evidence of systemic bias and discrimination which makes it difficult for Canadians to trust that the powers conferred on national security agencies will be exercised properly and without discrimination in the absence of an accountability protocol. Implementing effective accountability and transparency measures would allow national security organizations to show that they account for human rights obligations in their work.

Based on these observations, the **NCCM urges the Government of Canada to take the following steps** toward improving the accountability and transparency of CSIS for the benefit of all Canadians:

1. Develop legislative frameworks that require security agencies to ensure respect for human rights laws, such as laws against discrimination on the basis of religion and race. These frameworks can be incorporated as amendments to existing acts that govern the work of agencies such as CSIS.
2. Require national security organizations to publicly report on human rights issues and impacts within the national security system, particularly, issues surrounding racial and religious profiling.
3. National security organizations need to engage in more data collection related to the impacts of security measures on human rights. They should collect and analyze disaggregated data based on race, religion, ethnic origin, or other grounds, which can be done in a manner consistent with the *Canadian Human Rights Act*.
4. Accountability processes, reporting on performance, and data collection should also apply to oversight bodies, such as SIRC and the Commission for Public Complaints Against the RCMP.
5. CSIS officials, including management, should undergo anti-racism and anti-oppression training, so as to ensure that national security officials are aware of their own unconscious biases which may lead to profiling on the basis of race and religion.

## 5.2 Bill C-59

The NCCM has always supported the government’s responsibility to ensure national security. Bill C-59 followed a national consultation review of Bill C-51. It creates a new national security

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<sup>7</sup> Canada. Public Works and Government Services Canada. Security Intelligence Review Committee. *SIRC Annual Report 2013-2014: Lifting the Shroud of Secrecy*. [Ottawa], 2014. <http://www.sirc-csars.gc.ca/anrran/2013-2014/index-eng.html#sc3-1>

<sup>8</sup> *Ibid.*

review agency with more oversight and review than we currently have, which is a positive development. There remain concerns and there is more the government can do.

We recommend the government prioritize the following Member State recommendations:

- Number (6) 66 End anti-black and anti-Muslim discrimination and racism and implement an appropriate justice strategy within the criminal justice system in this regard (Islamic Republic of Iran).
- Number (6) 116 Organize training programs for law-enforcement officials to guarantee the respect of human rights standards (Egypt).

The Canadian Human Rights Commission conducted employment equity audits of CSIS in 2011 and 2014. It found zero percent visible minorities in senior management positions at a time when visible minorities were about 20% of the Canadian population. The CHRC also noted an institutional culture that undervalued minorities and reproduced attitudinal barriers, which resulted in fewer hiring and advancement opportunities for minorities.

Oversight of CSIS is not sufficient; real reform is necessary.

With new and broader powers given to enforcement officers and security agencies, NCCM is deeply concerned by these above-mentioned discrimination and racism issues. CSIS requires key reform before it should be granted any additional powers. In addition, the newly-renamed *Security of Canada Information Disclosure Act* still permits departments to disclose far too much information in their pursuit of questionable security objectives, including the surveillance and targeting of minorities, Indigenous peoples and activists.

The **NCCM therefore makes the following recommendations** in its submission:

1. Large-scale recruitment, training and promotion of minorities, including Muslims within CSIS, on an urgent basis.
2. Design and implementation of an internal training program, including audits to check progress, with the aim of implementing a culture shift within the Service
3. Increased focus on community-based solutions to combat radicalization to criminal violence. This should include greater transparency on how the government intends to address the issue of violent extremism and credibly engage with communities.

## **Conclusion**

With the recent milestone of Motion 103 and the associated new funding for anti-racism and anti-discrimination work across the country by Canadian Heritage, the federal government is clearly within a unique window of opportunity to take tangible actions to address the above-mentioned Member State priorities. This is particularly important for racialized communities within Canada, including Indigenous, Black, Muslim, and other peoples, who continue to

experience disproportionate levels of discrimination by police services, border agents, and other actors, in addition to within legislative and policy frameworks.

With this in mind, the NCCM is honoured to contribute the above specific recommendations in pursuit of better human rights and civil liberties standards and outcomes for all Canadians, and looks forward to engaging with all levels of government to transform these recommendations into realities.