



Native Women's
Association of Canada



L'Association des
femmes autochtones
du Canada

Shadow Submission to the United Nations Human Rights Committee

List of Issues Prior to Reporting in Relation to Canada's 7th Periodic Review

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Introduction

Since Canada's examination by the UN Human Rights Committee in 2015, Canada's human rights track-record has continued to be closely scrutinized by the United Nations' key human rights bodies. Through a combined process of periodic treaty body examinations and visits to the country by several UN special procedures, Canada's performance in relation to its range of international human rights obligations has repeatedly come under the spotlight. Unlike certain other countries, Canada remains a country which is conscious of projecting to the outside world its commitment to democracy and human rights and, as a result, the country takes a genuinely constructive approach at the international level to the overall process of reporting to the UN.

Notwithstanding the general gravity of Canada's overall approach and repeatedly stated commitment to respecting human rights ideals, there remains much to be done at the domestic level in ensuring that the country's international obligations are respected in practice. This fact rings wholly true vis-à-vis respect for the human rights of Indigenous women, girls and gender-diverse persons.

What follows in this submission to the UN Human Rights Committee is an overview of some of Native Women Association of Canada's (NWAC) concerns in relation to Indigenous women, girls and gender-diverse persons in Canada. Due to the very broad scope of the policy and legal issues on which NWAC is currently focused, this submission offers a *non-exhaustive* account of specific human rights concerns, comprising the following:

- *Ensuring follow-up to the National Inquiry into Murdered and Missing Women and Girls' final report, Reclaiming Power and Place;*
- *Ensuring follow-up to the Truth & Reconciliation Commission's final report, Honouring the Truth, Reconciling for the Future;*
- *Addressing racism and discrimination experienced by Indigenous Peoples in Canada's health care system;*
- *The coerced and forced sterilization of Indigenous women and girls;*
- *The provision of Indigenous child welfare;*
- *The death of Chantel Moore: deaths in police custody, alleged police ill-treatment and excessive use of force against Indigenous persons;*
- *The impact of the COVID-19 pandemic on prisons, the over-incarceration of Indigenous women and other concerns relating to federal prisons;*
- *Persisting concerns about the Indian Act;*

- *The implementation of the UN Declaration on the Rights of Indigenous Peoples in Canada;*
- *Follow-up to UN special procedures fact-finding missions to Canada.*

As possible action points, the different sections of this paper advance various *recommended questions*, which the Human Rights Committee may wish to include in its List of Issues Prior to Reporting (LOIPR) in relation to Canada's 7th periodic review. NWAC believes that the Government of Canada should be required to provide more detailed information in relation to all of these recommended questions in order to address significant gaps in the promotion and protection of human rights in the country.

Should the members of the Human Rights Committee or staff at the Office of the High Commissioner for Human Rights have any questions about this submission, please contact NWAC's Director of International, Matthew Pringle (mpringle@nwac.ca).

(1) Ensuring follow-up to the National Inquiry into Murdered and Missing Women and Girls' final report, *Reclaiming Power and Place*

The Human Rights Committee's 2015 recommendation to Canada:

The State party should, as a matter of priority, (a) address the issue of murdered and missing indigenous women and girls by conducting a national inquiry, as called for by the Committee on the Elimination of Discrimination Against Women, in consultation with indigenous women's organizations and families of the victims; (b) review its legislation at the federal, provincial and territorial levels, and coordinate police responses across the country, with a view to preventing the occurrence of such murders and disappearances; (c) investigate, prosecute and punish the perpetrators and provide reparation to victims; and (d) address the root causes of violence against indigenous women and girls. (§9)

Canada launched its National Inquiry into Missing and Murdered Indigenous Women and Girls in September 2016, resulting in the publication of the Final Report on 3 June 2019.¹ As the National Inquiry Final Report formally recognized, the advocacy activities of an array of different national and international organizations were instrumental in its establishment, including of NWAC.² Moreover, recommendations to launch a national inquiry had previously been advanced by the UN Committee on the Elimination of Discrimination against Women during an inquiry visit to Canada in 2013³ as well as by the Truth and Reconciliation Commission in its 2015 Final Report (please also see section 2 of this submission below).⁴

The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls contains 231 Calls for Justice which have been described in the Final Report as 'legal imperatives'⁵ and which are presented by different themes and actors. As the limits of this submission do not allow for these themes to be set out in detail, the Human Rights Committee should consult the official National Inquiry document, *Calls for Justice*, for more detailed information.⁶ Nonetheless, the individual Calls for Justice are of a non-monetary reparatory nature and are strategically targeted at righting past human rights wrongs and avoiding their repetition across an array of social themes.

¹ Government of Canada, *Backgrounder - National Inquiry into Missing and Murdered Indigenous Women and Girls* (26 November 2020): <<https://www.canada.ca/en/status-women/news/2019/06/backgrounder--national-inquiry-into-missing-and-murdered-indigenous-women-and-girls.html>> accessed 20 April 2021.

² *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1a* (June 2019) 57.

³ Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (UN Doc. CEDAW/C/OP.8/CAN/1, 30 March 2015) §220a - b.

⁴ *Honouring the Truth, Reconciling for the Future* – Summary of the Final Report of the Truth and Reconciliation Commission of Canada (2015) 325.

⁵ *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1a* (June 2019) 58.

⁶ National Inquiry into Murdered and Missing Indigenous Women and Girls, *Calls for Justice* (June 2019).

The broad scope of the mandate of the National Inquiry into Missing and Murdered Women and Girls allowed it to address a range of interrelated issues concerning all forms of violence against Indigenous women and girls in a holistic manner.⁷ A core finding of the three-or so-year-long process was very well captured in the Final Report in the following terms:

*The truths shared in these National Inquiry hearings tell the story – or, more accurately, thousands of stories – of acts of genocide against Indigenous women, girls, and 2SLGBTQQIA people. The violence the National Inquiry heard amounts to a race-based genocide of Indigenous Peoples, including First Nations, Inuit and Métis, which especially targets women, girls, and 2SLGBTQQIA people. This genocide has been empowered by colonial structures evidenced notably by the Indian Act, the Sixties Scoop, residential schools and breaches of human and Indigenous rights, leading directly to the current increased rates of violence, death, and suicide in Indigenous populations.*⁸

The key point should be underscored, however, that the crisis facing Indigenous women, girls and gender-diverse persons is on-going and will continue to persist until the National Inquiry's Calls for Justice are addressed. In a word, the present-day violence encountered by Indigenous women is not an historical artifact.

Challenges

On one hand, while there was much to commend the overall National Inquiry process, on the other, it also suffered from certain limitations. As the National Inquiry Final Report itself noted, it had the broadest mandate a Canadian national inquiry had ever received, its work spanned 14 jurisdictions, making it Canada's first truly 'national' inquiry, and it had at its disposal resources solely determined by the government.⁹

The National Inquiry's most significant challenge, however, was - by its own admission - a lack of time.¹⁰ Regrettably, the National Inquiry's request for a two-year extension of its mandate was denied. Instead, it was provided with only a six-month writing extension. As the Final Report observed: "This was profoundly disappointing, and does a disservice to the thousands of Indigenous women, girls, and 2SLGBTQQIA people lost to violence, and to the survivors of violence, some of whom advocated for decades for a public inquiry."¹¹

In comparison, the 1996 Royal Commission on Aboriginal Peoples inquiry and the 2015 Truth and Reconciliation Commission inquiry had approximately five and eight years respectively

⁷ *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1a* (June 2019) 58.

⁸ *ibid* 50.

⁹ *ibid* 59-60.

¹⁰ *ibid* 72.

¹¹ *ibid* 74.

to undertake their work.¹² Such time constraints inevitably had a direct bearing on the number of survivors and their families who could be heard during the National Inquiry process.

The National Inquiry's restricted mandate and powers to forensically examine cases of missing and murdered Indigenous women and girls and police misconduct in the related investigations was deemed another major weakness.¹³ Only after the start of the National Inquiry process was the Forensic Document Review Project established, namely in March 2018, becoming operational only in the latter part of the lifetime of the inquiry.¹⁴ Other cited limitations included: the National Inquiry's limited focus on cases of missing or murdered 2SLGBTQQIA people and its partial investigation into the complexity of inter-sectional colonial violence¹⁵; and its failure to deeply probe state complicity in cases of missing and murdered Indigenous women, girls and gender-diverse persons.¹⁶

Despite these limitations and being beset by certain organizational challenges, the overall process included many positives. Most significantly, it ensured that the voices of those persons and communities most severely afflicted by Canada's race-based genocide were included in the overall process. In summary, while a welcome first significant step in ensuring that justice is finally served vis-à-vis Indigenous women, girls and gender-diverse persons in Canada, the challenge now will be to ensure that the National Inquiry's 231 Calls for Justice are implemented in practice.

Ensuring follow-up

In December 2019, the Crown-Indigenous Relations Minister Carolyn Bennett publicly stated that the Canadian government was developing an Action Plan to act on the 231 Calls for Justice, which were to be published by June 2020.¹⁷ Regrettably, on 26 May 2020 – the week before the first anniversary of the release of the National Inquiry Final Report – Minister Bennett announced in interviews with select media that the government had not drafted its promised National Action Plan and, at the time, had no timetable for doing so.¹⁸

¹² Please see: Royal Commission on Aboriginal Peoples, *Highlights of the Report of the Royal Commission on Aboriginal Peoples Inquiry - People to People, Nation to Nation* (Minister of Supply and Services Canada, 1996); and *Honouring the Truth, Reconciling for the Future – Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015).

¹³ Please see: Connie Walker, 'MMIW national inquiry to focus on violence prevention not police investigations' (CBC News, 20 July 2016): <MMIW national inquiry to focus on violence prevention not police investigations | CBC News> accessed 23 April 2021.

¹⁴ *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (June 2019) *1b: Annex 1 Summary of Forensic Document Review Project* 238.

¹⁵ *ibid* 247 and 251.

¹⁶ *ibid* 218, 237 and 242.

¹⁷ Global News, *Action plan on missing, murdered Indigenous women inquiry to be released in June: minister* (Global News, 4 December 2019): <<https://globalnews.ca/news/6255882/missing-murdered-indigenous-women-inquiry-june/>> accessed 19 April 2021.

¹⁸ The Native Women's Association of Canada, *Canada's Failed UN Security Council Bid: Lead by Example at Home to Lead by Example Abroad* (18 June 2020).

In a positive development, however, from summer 2020 onwards the government department playing the lead role in relation to the National Action Plan, Crown-Indigenous Relations and Northern Affairs Canada, undertook concrete action to do so. It has since established a National Family and Survivors Circle, a Core Working Group, and eight sub-working groups on a range of thematic issues with a view to drafting a National Action Plan in relation to the 231 Calls for Justice.¹⁹ The work of these entities remains on-going, but it is hoped that a National Action Plan will be finalized by June 2021, although, as a so-called ‘evergreen’ document, the National Action Plan will not be published in a final, definite form.

Domestically, the recommendation that Canada should institute broad reparations for the past conduct of its representatives and other private persons acting on its behalf have been a key output of various high-level independent inquiries initiated over the years aimed at establishing the truth about serious human rights violations against Indigenous persons.

Perhaps most notable of all were the key findings of the Royal Commission on Aboriginal Peoples inquiry from 1996.²⁰ Regrettably relatively little became of the Commission’s sweeping recommendations for much-needed change.²¹ As such, the present and continuing crisis facing Indigenous women, girls and gender-diverse persons is hardly surprising.

What is more, there have been other high-profile inquiries into the treatment of Indigenous peoples in Canada at different jurisdictional levels, including Indigenous women. The British Columbia Missing Women Commission of Inquiry from 2011-2012²², the Truth and Reconciliation Commission from 2015²³, and the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec (Viens Commission) from 2019 are more recent illustrative cases in point.²⁴ The National Inquiry into Missing and Murdered Indigenous Women and Girls report should therefore be seen as a continuity of demands situated in a context of frequent state inaction.

In this wider context, Indigenous actors at the domestic level should remain vigilant of the risk of being coopted into National Inquiry follow-up processes which becomes ends in themselves and which sidestep the need for demonstrable action and progress.

¹⁹ Government of Canada, *Statement from the MMIWG National Action Plan Core Working Group* (6 December 2020): <<https://www.rcaanc-cirnac.gc.ca/eng/1607207513882/1607207535679>> accessed 19 April 2021.

²⁰ Royal Commission on Aboriginal Peoples, *Highlights of the Report of the Royal Commission on Aboriginal Peoples Inquiry - People to People, Nation to Nation* (Minister of Supply and Services Canada, 1996). See also: *Interim Report – The National Inquiry into Missing and Murdered Indigenous Women and Girls: Our Women and Girls are Sacred* (2017) 10.

²¹ CBC News, *20 years since Royal Commission on Aboriginal Peoples, still waiting for change* (CBC News, 3 March 2016: <<https://www.cbc.ca/news/indigenous/20-year-anniversary-of-rcap-report-1.3469759>> accessed 14 April 2021.

²² Please see: *The Missing Women Commission of Inquiry British Columbia*: <<https://missingwomen.library.uvic.ca/>> index.html accessed 20 April 2021.

²³ *Honouring the Truth, Reconciling for the Future – Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015).

²⁴ *Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress – Final Report*, (Government of Québec, Canada 2019).

In a word, despite the commissioning of multiple high-level inquiries as attempts to inquire on and establish the truth about serious violations of human rights committed in Canada's past and present colonial context, much remains to be done to ensure that Indigenous persons, particularly women, girls and gender-diverse persons, receive full reparations for the many different harms caused to them. Only by providing full reparation to victims through the instigation of sweeping change in the form of the Calls for Justice will Canada ensure the non-recurrence of violations of human rights and that a semblance of justice is finally served.

Recommended question 1: *Above and beyond the work that Canada has undertaken with respect to the Working Groups for the National Action Plan on missing and murdered Indigenous women and girls, please provide information to the Human Rights Committee on the concrete steps being taken to institute a National Action Plan to address the National Inquiry Calls for Justice. For example, which easily implementable Calls for Justice has it acted on to date while drafting the National Action Plan.*

(2) Ensuring follow-up to the Truth & Reconciliation Commission’s final report, *Honouring the Truth, Reconciling for the Future*

The Human Rights Committee’s 2015 recommendation to Canada:

The State party should, in consultation with indigenous people, ... (d) fully implement the recommendations of the Truth and Reconciliation Commission with regard to the Indian Residential Schools. (§19)

The findings of another key national inquiry concerning Indigenous peoples, *Honouring the Truth, Reconciling for the Future – Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, was issued in 2015.²⁵ The inquiry was set up in 2008 to establish the truth and make recommendations regarding the unimaginable abuses committed against Indigenous children during the century-long residential schools’ system. The Truth and Reconciliation Commission issued 94 Calls to Action, many of which were necessarily reparative in the broader non-monetary sense of the word. Its numerous key recommendations fell into the following broad categories of action under the wider headings *Legacy* and *Reconciliation*, as follows:

Legacy:

- Child Welfare;
- Education;
- Language and Culture;
- Health;
- Justice.

Reconciliation:

- Canadian Governments and the United Nations Declaration on the Rights of Indigenous Peoples;
- Royal Proclamation and Covenant of Reconciliation;
- Settlement Agreement Parties and the United Nations Declaration on the Rights of Indigenous Peoples;
- Equity for Aboriginal People in the Legal System;
- National Council for Reconciliation;
- Professional Development and Training for Public Servants;
- Church Apologies and Reconciliation;
- Education for reconciliation;

²⁵ *Honouring the Truth, Reconciling for the Future – Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015).

- Youth Programs;
- Museums and Archives;
- Missing Children and Burial Information;
- National Centre for Truth and Reconciliation;
- Commemoration;
- Media and Reconciliation;
- Sports and Reconciliation;
- Business and Reconciliation;
- Newcomers to Canada.²⁶

Certain international authorities such as the UN Expert Mechanism on the Rights of Indigenous Peoples have remarked positively on the overall Truth and Reconciliation Commission’s eight-year-long inspective process, noting that it was established jointly by Indigenous peoples and governments and that Indigenous peoples participated fully from the outset. Moreover, it addressed both historical human rights violations and the intergenerational roots of the current situation of Indigenous peoples.²⁷

In its 2019 report, the UN Expert Mechanism on the Rights of Indigenous Peoples also noted: “While at its origins the Commission focused on the residential school system and its legacy, the calls to action address a broad range of issues that are crucial for reconciliation and for the implementation of the Declaration [on the Rights of Indigenous Peoples]”.²⁸ The Inter-American Commission on Human Rights has also acknowledged the broad transformative effect of the Calls to Action.²⁹

By and large, however, many of the 94 Calls to Action remain disappointingly unimplemented in practice in Canada, including key provisions with a direct reparatory and reconciliatory dimension. According to one key domestic authority, despite several jurisdictions across Canada having stated that they are committed to implementing the TRC Calls to Action “...it is too early to assess the success of these specific initiatives.”³⁰

Even less favourably, the CBC News’ *‘Beyond 94: Truth and Reconciliation in Canada’* research database reported, as of 12 April 2021, that in relation to 22 Calls to Action no state steps towards implementation had been taken, while projects had been proposed, but had not started, in

²⁶ *ibid* 319-337.

²⁷ UN Expert Mechanism on the Rights of Indigenous Peoples, *Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: recognition, reparation and reconciliation* (UN Doc. A/HRC/EMRIP/2019/3, 2 May 2019) §48.

²⁸ UN Expert Mechanism on the Rights of Indigenous Peoples, *Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: recognition, reparation and reconciliation* (UN Doc. A/HRC/EMRIP/2019/3, 2 May 2019) §50.

²⁹ Inter-American Commission on Human Rights, *Indigenous Women and Their Human Rights in the Americas* (Inter-American Commission on Human Rights, Washington DC, USA 2017) 111.

³⁰ *Interim Report – The National Inquiry into Missing and Murdered Indigenous Women and Girls: Our Women and Girls are Sacred* (2017) 12.

relation to a very sizeable 39 Calls to Action. In the case of just 10 Calls to Action was progress described as being ‘complete’.³¹ Members of the UN Human Rights Committee are kindly urged to closely scrutinize the CBC News’ *‘Beyond 94: Truth and Reconciliation in Canada’* research database for more detailed information.

The concerns presented in section 5 of this submission in relation to the discriminatory provision of child welfare for Indigenous children in Canada aptly illustrates the significant lack of progress achieved to date on the part of Canadian governments in implementing several key Calls to Action. Other sections of this paper echo such concerns, particularly in the spheres of health and criminal justice.

It remains clear that *nearly six years* after the Truth and Reconciliation Commission issued its 94 Calls to Action much remains to be done to ensure that the Calls to Action are implemented at the domestic level and that in doing so, Canada meets its international human rights obligations, including under the International Covenant on Civil and Political Rights.

Recommended question 2: *Please provide information to the Human Rights Committee of the concrete steps taken to address the Truth and Reconciliation Commission’s numerous unimplemented or only partially implemented Calls to Action. By what timeline does it foresee the implementation of the Calls to Action. Please also provide information about how the Government of Canada is going beyond implementing symbolic Calls to Action to effecting systemic change.*

³¹ CBC News, *Beyond 94: Truth and Reconciliation in Canada* (CBC News, Ottawa, 12 April 2021): <<https://newsinteractives.cbc.ca/longform-single/beyond-94?&cta=1>> accessed 12 May 2021.

(3) Addressing racism and discrimination experienced by Indigenous Peoples in the Canada’s healthcare system

The evidence that anti-Indigenous, systemic racism is rampant within the Canadian healthcare system is ample and growing.³² Indigenous patients have long reported incidents of abusive treatment, substandard quality of care, negative stereotyping, and an overall sense of feeling unwelcome within the healthcare setting. Discrimination is considered one of the root causes of health disparities between Indigenous and non-Indigenous populations in Canada. It cuts across all social determinants of health, ultimately impacting the health and wellbeing of Indigenous populations.³³

Negative experiences stemming from racism and discrimination within healthcare inevitably lead to a reluctance to seek health services, poorer mental and physical health, and continue to perpetuate healthcare inequities.³⁴ Furthermore, racism and negative stereotypes can be directly linked to incidents of forced or coerced sterilization, misdiagnosis, medical malpractice and, in some incidents, death (please see section 4 below on the coerced and forced sterilization of Indigenous women and girls).³⁵

It is important to situate racism in healthcare in the larger colonial system in Canada. Through settler colonial policies, Indigenous populations in Canada have been targeted by various assimilation policies and practices including: the *Indian Act*; the century-long residential school system (please see section 2 of this paper); the forced relocation of Inuit populations; and historical and ongoing child welfare policies, such as the 60s scoop.³⁶ These policies were designed to assimilate, control and/or eliminate the Indigenous population. Entrenched anti-Indigenous

³² Please see the discussions in the following documents: B. Allan & J. Smylie, *First Peoples, Second Class Treatment: The role of racism in the health and well-being of Indigenous peoples in Canada* (Wellesley Institute, Toronto, Canada 2015) 2-3; Y. Boyer, ‘Healing racism in Canadian health care’ (2017) 189(46) *Canadian Medical Association Journal* 408–9; and L. Wylie & S. McConkey, ‘Insiders’ Insight: Discrimination against Indigenous Peoples through the Eyes of Health Care Professionals’ (2019) 6(1) *Journal of Racial & Ethnic Health Disparities* 37–45.

³³ B. Allan & J. Smylie, *First Peoples, Second Class Treatment: The role of racism in the health and well-being of Indigenous peoples in Canada* (Wellesley Institute, Toronto, Canada 2015) 2-3; and L. Wylie & S. McConkey, ‘Insiders’ Insight: Discrimination against Indigenous Peoples through the Eyes of Health Care Professionals’ (2019) 6(1) *Journal of Racial & Ethnic Health Disparities* 37–45.

³⁴ Y. Boyer, ‘Healing racism in Canadian health care’ (2017) 189(46) *Canadian Medical Association Journal* 408–9; and L. Wylie & S. McConkey, ‘Insiders’ Insight: Discrimination against Indigenous Peoples through the Eyes of Health Care Professionals’ (2019) 6(1) *Journal of Racial & Ethnic Health Disparities* 37–45.

³⁵ Y. Boyer, ‘Healing racism in Canadian health care’ (2017) 189(46) *Canadian Medical Association Journal* 408–9; and L. Wylie & S. McConkey, ‘Insiders’ Insight: Discrimination against Indigenous Peoples through the Eyes of Health Care Professionals’ (2019) 6(1) *Journal of Racial & Ethnic Health Disparities* 37–45. See also: J. Feith, ‘Indigenous woman records slurs by hospital staff before her death’ (*Montreal Gazette*, 30 September 2020): <<https://montrealgazette.com/news/local-news/indigenous-woman-who-died-at-joliette-hospital-had-recorded-staffs-racist-comments>> accessed 3 May 2021; and C. Puxley, ‘Brian Sinclair inquest told aboriginals face racism in ERs’ (*The Canadian Press - CBC News*, 10 June 2014): <<https://www.cbc.ca/news/canada/manitoba/brian-sinclair-inquest-told-aboriginals-face-racism-in-ers-1.2670990>> accessed 3 May 2021.

³⁶ B. Allan & J. Smylie, *First Peoples, Second Class Treatment: The role of racism in the health and well-being of Indigenous peoples in Canada* (Wellesley Institute, Toronto, Canada 2015) 5-8.

discrimination stems from colonization whose lingering effects are multifaceted, intertwined and are upheld by contemporary policies and practices.

As an illustrative case in point, the Canadian healthcare system is founded on the colonial perspectives of Western dominance over Indigenous worldviews and results in a significant power imbalance between non-Indigenous healthcare providers and Indigenous patients.³⁷ This imbalance is poorly understood and often not perceived by providers. As such, systems that perpetuate colonialism, including healthcare, will always be plagued with racism despite their technical superiority and often well-intentioned practitioners.³⁸

Incidents of anti-Indigenous racism and negligence in healthcare often go unreported and those that do see the light of day are regularly swept under the rug, resulting in no immediate action. Exceptionally, some healthcare incidents of racism and malpractice - like those of Joyce Echaquan and Brian Sinclair for example - were so abhorrent that they were picked up by the Canadian news media and were justifiably met with public outcry.

The deaths of Brian Sinclair and Joyce Echaquan

Brian Sinclair was a 45-year-old First Nations man who died an entirely preventable death in September 2008 after being ignored for 34 hours in the emergency room at the Adult Emergency Department at the Health Sciences Centre in Winnipeg, Manitoba when staff mistook him for a drunk homeless man.³⁹ The official court inquest into his death found the following:

At the time of his death, Brian Sinclair was a 45-year-old Aboriginal man. He was a double amputee. Both of his legs had been amputated above the knee in 2007. After that, he used a wheelchair to transport himself. At 12:51 a.m. on September 21st, 2008, Brian Sinclair was pronounced dead in the Adult Emergency Department (hereinafter referred to as “ED”) at the Health Sciences Centre (hereinafter referred to as “HSC”).

In fact, some hours prior to being pronounced dead, Mr. Sinclair had already passed away in the waiting room of the HSC ED. A full 34 hours earlier on September 19th, 2008 at 2:51 p.m., Mr. Sinclair had been transported by taxi, wheeled in and dropped off at the HSC ED. A little earlier that day, Mr. Sinclair had attended an inner city primary health care facility, the Health Action Centre (hereinafter referred to as “HAC”), complaining of abdominal pain and problems with his Foley urinary catheter. He was assessed by a physician, provided a letter from the physician and told by the physician to give the letter to the HSC ED staff upon his arrival there.

³⁷ Y. Boyer, ‘Healing racism in Canadian health care’ (2017) 189(46) Canadian Medical Association Journal 408–9; and R. Matthews, ‘The cultural erosion of Indigenous people in health care’ (16 January 2017) Canadian Medical Association Journal E78–79.

³⁸ R. Matthews, ‘The cultural erosion of Indigenous people in health care’ (16 January 2017) Canadian Medical Association Journal E78–79.

³⁹ C. Puxley, ‘Brian Sinclair inquest told aboriginals face racism in ERs’ (The Canadian Press - CBC News, 10 June 2014): <<https://www.cbc.ca/news/canada/manitoba/brian-sinclair-inquest-told-aboriginals-face-racism-in-ers-1.2670990>> accessed 3 May 2021.

*When he arrived at HSC ED, he spoke to the Triage Aide at the ED reception desk. For the next 34 hours, until his discovery by another visitor in the ED, he awaited but did not receive assessment or treatment.*⁴⁰

Inquest Judge Timothy J. Preston issued 63 recommendations in his inquest into the treatment and subsequent death of Brian Sinclair⁴¹, noting sharply in his report that Brian Sinclair did not have to die.⁴²

Advancing forward to the year 2020, little seems to have changed in the interim, as tragically illustrated by the death of Joyce Echaquan. The 37-year-old Atikamekw mother of seven died on 28 September 2020, tied to a bed at a hospital in Joliette, Québec.⁴³ Joyce Echaquan filmed herself live on *Facebook* pleading for medical care while lying on a hospital bed, as two nurses belittled and verbally abused her, reportedly informing her that she was ‘stupid, only good for sex, and that she would be better off dead’.⁴⁴ A coroner’s inquest into the death of Joyce Echaquan is scheduled to be held at the Palace of Justice in Trois Rivières, Québec from 13 May to 2 June 2021.⁴⁵

The appalling circumstances of the death of Joyce Echaquan generated highly critical national and international news coverage, prompting the Canadian federal government to call a series of emergency national meetings on eliminating racism in the Canadian healthcare system, which were held in October 2020 and January 2021.⁴⁶ A third emergency meeting is supposed to be held before late June 2021.

The needless and humiliating death of Joyce Echaquan has also prompted a civil society initiative to promote adherence in practice of *Joyce’s Principle*. The latter principle of good practice aims to guarantee to all Indigenous persons the right of equitable access, without discrimination, to all social and health services, as well as the right to enjoy the best possible physical, mental, emotional and spiritual health.⁴⁷

⁴⁰ Provincial Court of Manitoba, *In the Provincial Court of Manitoba in the Matter Of: The Fatality Inquiries Act and In The Matter Of: Brian Lloyd Sinclair, Deceased* (2014) §4-5.

⁴¹ *ibid* 182-187.

⁴² *ibid* §660.

⁴³ J. Feith, ‘*Indigenous woman records slurs by hospital staff before her death*’ (Montreal Gazette, 30 September 2020): <<https://montrealgazette.com/news/local-news/indigenous-woman-who-died-at-joliette-hospital-had-recorded-staffs-racist-comments>> accessed 3 May 2021

⁴⁴ M. Godin, ‘*She Was Racially Abused by Hospital Staff as She Lay Dying. Now a Canadian Indigenous Woman’s Death Is Forcing a Reckoning on Racism*’ (Time, 9 October 2020): <<https://time.com/5898422/joyce-echaquan-indigenous-protests-canada/>> accessed 5 May 2021.

⁴⁵ Bureau du coroner Québec, *Décès de Mme Joyce Echaquan - Annonce des dates des audiences* (25 February 2021): <<https://www.coroner.gouv.qc.ca/medias/communiqués/detail-dun-communique/407.html>> accessed 6 May 2021.

⁴⁶ Government of Canada, *Government of Canada actions to reduce anti-Indigenous racism in healthcare systems* (Government of Canada, 2 April 2021): <<https://www.sac-isc.gc.ca/eng/1611863352025/1611863375715>> accessed 5 May 2021.

⁴⁷ Please see: Conseil de la Nation Atikamekw, *Joyce’s Principle*: <<https://principedejoyce.com/en/>> accessed 6 May 2021.

Public inquiries into healthcare provision and the treatment of Indigenous patients

Public outrage following such incidents are sometimes met with investigations, in which Indigenous communities, leaders, advocates, and organizations call for systemic change. Hospitals and government leaders often commit to these recommendations, although their implementation and related action are frequently performative, partial, or ineffective. As such, while atrocious, the treatment suffered by Joyce Echaquan, Brian Sinclair and countless others is regrettably not surprising.

As noted in section 2 of this submission, the findings of the Truth and Reconciliation Commission from 2015, which issued 94 recommendations known as Calls to Action, also focused on healthcare provision.⁴⁸ Calls to Action 18-24 and 55 specifically relate to the healthcare of Indigenous persons. Furthermore, similar recommendations emerged from the National Inquiry into Missing and Murdered Indigenous Women and Girls, referred to in section 1 of this submission. Seven of the 231 Calls for Justice pertained to health and wellness including Calls to Justice 3.1 - 3.7, while nine Calls for Justice were directed towards healthcare providers and pertained to healthcare provision.⁴⁹

Finally, at the provincial level there have been several inquiries into racism in healthcare settings in recent years. As a case in point, it is highly relevant to note that the death of Joyce Echaquan came almost one year to the day of the publication of the highly critical Viens Commission Report, which, among other issues, looked into the provision of health and social services in the province of Québec, issuing some 33 Calls for Action.⁵⁰ The Commission concluded that: “*Having completed my analysis, it seems impossible to deny that members of First Nations and Inuit are victims of systemic discrimination in their relations with the public services that are the subject of this inquiry.*”⁵¹ Shortly afterwards, in the province of British Columbia, the similarly critical *In Plain Sight* report concerning healthcare provision and Indigenous persons was published.⁵²

In view of the fact that so many recommendations have abounded in Canada in the context of healthcare provision to Indigenous communities in recent years, the question must be asked why action has been so lagging?

⁴⁸ *Honouring the Truth, Reconciling for the Future* – Summary of the Final Report of the Truth and Reconciliation Commission of Canada (2015).

⁴⁹ National Inquiry into Missing and Murdered Indigenous Women, *Calls for Justice* (Ottawa, Canada, June 2019) Calls for Justice 3.1 - 3.7 and 7.1 - 7.9.

⁵⁰ *Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress – Final Report* (Government of Québec, Canada 2019) 173-182 and 365-404.

⁵¹ *ibid* 203.

⁵² Government of British Columbia, *In Plain Sight: Addressing Indigenous-specific Racism and Discrimination in B.C. Health Care* (Victoria, BC, 2020).

Recommended question 3: *Please provide information to the Human Rights Committee of any concrete measures undertaken to address systematic racism in Canadian healthcare settings, including in relation to the aforementioned federal and provincial inquiries and their numerous recommendations.*

Recommended question 4: *Please inform the Human Rights Committee of the outcome of the coroner's inquest into the death of Joyce Echaquan. Please provide information about any sanctions imposed on the healthcare workers resulting from their alleged racist treatment of Joyce Echaquan.*

(4) The coerced and forced sterilization of Indigenous women and girls

The forced or coerced sterilization of Indigenous women is not only an extremely serious violation of human rights, medical ethics, and reproductive rights, but also an assault on the cultural integrity of Indigenous populations. NWAC recently brought its multiple concerns to the fore in this respect in an in-depth academic article published in the *International Journal of Indigenous Health* titled '*Forced or Coerced Sterilization in Canada: An Overview of Recommendations for Moving Forward*'.⁵³ In the paper NWAC's authors argued that sterilizing Indigenous women against their will violates their rights to equality, non-discrimination, physical integrity, health, and security, and constitutes an act of genocide, violence, and torture against women.⁵⁴

Between 2015 and 2019, over 100 Indigenous women from the provinces of Alberta, British Columbia, Manitoba, Northwest Territories, Nova Scotia, Nunavut, Ontario, and Quebec came forward to say that they were forced or coerced to undergo a sterilization procedure in Canada. Following allegations of sterilization in Saskatchewan, the Saskatoon Health Authority commissioned Senator Yvonne Boyer and Dr. Judith Bartlett to conduct an independent review.⁵⁵

During the review they interviewed healthcare providers as well as women who were forced or coerced into sterilization. They found that Indigenous women were often pressured, if not threatened, by healthcare providers to consent to sterilization while in labour, or shortly thereafter. Women were often offered inadequate information about the procedure and other options for birth control were rarely provided. This led to women consenting to sterilization without fully understanding its risks or permanency. In some cases, sterilization procedures were conducted despite the women expressly refusing to provide consent and/or sign consent forms.⁵⁶

Although clearly violating medical ethics, the forced or coerced sterilization of Indigenous women is not explicitly illegal in Canada. In addition to the absence of legislation prohibiting it, the continuation of forced or coerced sterilization of Indigenous women in Canada can be attributed in part to the deeply rooted systemic racism and patriarchal policies that exist in Canadian systems, including, but not limited to, healthcare (please see section 3 of this paper above).⁵⁷

In its 2020 article published in the *International Journal of Indigenous Health*, NWAC outlined the findings from a thematic analysis of 162 recommendations based on four selected inquiries or examinations into the practice of forced or coerced sterilization of Indigenous women in Canada.⁵⁸ The paper argued that moving forward, action is required on an array of fronts, including: to ensure accountability; provision of services and supports for Indigenous women; training and education for healthcare providers and Indigenous women; investigation of the scope

⁵³ C. Ryan, A. Ali & C. Shawana, 'Forced or Coerced Sterilization in Canada: An Overview of Recommendations for Moving Forward' (2020) 16(1) *International Journal of Indigenous Health* 258, 258-273.

⁵⁴ *ibid* 259.

⁵⁵ *ibid* 261.

⁵⁶ *ibid* 261.

⁵⁷ *ibid* 261-262.

⁵⁸ *ibid* 258-273.

and scale of the issue; and amendments to policies and procedures to bring about the immediate and abrupt end to acts of abuse. In addition, principles of cultural safety and trauma-informed practices must underscore this action to ensure no further harm to the survivors. Finally, there is an acute need for systemic change at all levels to respond to the underlying causes of forced or coerced sterilization of Indigenous women.⁵⁹

It should be noted that the practice of the coerced and forced sterilization of Indigenous women in Canada has also provoked international concern. During its examination of Canada's seventh periodic report in late 2018 the UN Committee against Torture expressed concern about the issue. Various recommendations were advanced in this regard.⁶⁰ Similarly, the Inter-American Commission on Human Rights also echoed analogous concerns, calling on Canada to address these unacceptable practices.⁶¹

Recommended question 5: *Please provide information to the Human Rights Committee of the concrete measures undertaken by Canada to counter the practice of coerced and forced sterilization of Indigenous women and girls. In particular, please inform the Human Rights Committee of the actions undertaken to respond to the recommendations of the different inquiries and hearings into such practices.*

Recommended question 6: *Please also comment on how the Canadian authorities have acted on the key recommendations of the UN Committee against Torture from 2018 and Inter-American Commission on Human Rights from 2019 in this same connection.*

⁵⁹ *ibid* 270.

⁶⁰ UN Committee against Torture, Concluding observations on the seventh periodic report of Canada (UN Doc. CAT/C/CAN/CO/7, 21 December 2018) §51.

⁶¹ Inter-American Commission on Human Rights, '*IACHR expresses its deep concern over the claims of forced sterilizations against indigenous women in Canada*' (18 January 2019, IACHR, Washington DC, USA): <https://www.oas.org/en/iachr/media_center/PReleases/2019/010.asp> accessed 26 April 2021.

(5) The provision of Indigenous child welfare

The Human Rights Committee’s 2015 recommendation to Canada:

The State party should, in consultation with indigenous people, (a) implement and reinforce its existing programmes and policies to supply basic needs to indigenous peoples; ... (c) provide family and childcare services on reserves with sufficient funding; and (d) fully implement the recommendations of the Truth and Reconciliation Commission with regard to the Indian Residential Schools. §19

As highlighted in section 2 of this submission, the findings of a key inquiry concerning the treatment Indigenous peoples in the century-long residential schools system, *Honouring the Truth, Reconciling for the Future – Summary of the Final Report of the Truth and Reconciliation Commission of Canada* was published in 2015.⁶² The document issued 94 key recommendations framed as *Calls to Action* under the wider headings of *Legacy* and *Reconciliation*, several of which concerned the welfare of Indigenous children and young persons. As argued previously, it remains clear that *nearly six years* after the Truth and Reconciliation Commission issued its 94 Calls to Action, much remains to be done to ensure that the Calls to Action are implemented at the domestic level.

The CBC News’ *‘Beyond 94: Truth and Reconciliation in Canada’* research database reported, as of 12 April 2021, that in relation to 22 Calls to Action no state steps towards implementation had been taken, while projects had been proposed, but had not started, in relation to a very sizeable 39 Calls to Action. In the case of just 10 Calls to Action was progress described as being ‘complete’.⁶³ In particular, the CBC’s findings in relation to the child welfare provision and Indigenous children present an extremely discouraging state of affairs, as follows.⁶⁴

| Truth & Reconciliation Commission Calls to Action: Child Welfare | Status |
|--|----------------------------------|
| 1. Reduce the number of Aboriginal children in care. | In progress – Projects proposed. |
| SUMMARY: The number of Aboriginal children in care has not yet been reduced, nor has there been a co-ordinated national assessment of neglect investigations. But in 2019, an Indigenous child welfare bill was passed. | |

⁶² *Honouring the Truth, Reconciling for the Future – Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015).

⁶³ CBC News, *‘Beyond 94: Truth and Reconciliation in Canada’* (CBC News, 12 April 2021): <<https://newsinteractives.cbc.ca/longform-single/beyond-94?&cta=1>> accessed 12 May 2021.

⁶⁴ The table has been created on the basis of information highlighted in the CBC News, *Beyond 94: Truth and Reconciliation in Canada* online database.

| | |
|---|----------------------------------|
| 2. Publish annual reports on the number of Aboriginal children in care. | Not started. |
| SUMMARY: Neither the federal government, provinces or territories have prepared and published annual reports of this nature since this 2015 Call to Action. | |
| 3. Implement Jordan's Principle. | In progress – Projects underway. |
| SUMMARY: Most levels of government have implemented Jordan’s Principle. | |
| 4. Enact child welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases. | In progress – Projects underway. |
| SUMMARY: Bill C-92 An Act respecting First Nations, Inuit, and Métis Children, Youth and Families was passed in 2019 but it does not address all the elements of the call to action. | |
| 5. Develop culturally appropriate parenting programs for Aboriginal families. | In progress – Projects proposed. |
| SUMMARY: While there are several provincial and territorial programs in place to assist Indigenous families, they’ve not been developed in response to the Truth and Reconciliation Commission’s Call to Action #5. Some, however, do receive federal funding. | |

As succinctly captured in the above table, the number of Indigenous children in care has remained stubbornly high⁶⁵, while the Government of Canada still does not publish an annual report on the numbers of such children in care.⁶⁶ What is more, even the entry into force in January 2020 of Bill C-92, *An Act respecting First Nations, Inuit, and Métis Children, Youth and Families*, has not been without issue. The legislation clearly indicates that no Indigenous child should be apprehended solely on the basis, or as a result of his or her socio-economic conditions, including: poverty, lack of housing or related infrastructure, or state of health of the child's parent or care provider. It also emphasizes, among other issues, preventative care such as prenatal care or support to parents.⁶⁷

⁶⁵ National Association of Friendship Centres, *Justice and Safety for Urban Indigenous Children and Youth in Canada* (March 2020) 10: <https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/CAN/INT_CRC_NGO_CAN_42711_E.pdf> accessed 12 May 2021.

⁶⁶ Canadian Coalition for the Rights of Children, *Close Gaps Through Systematic Change: Implement Children’s Rights in Canada* (March 2020) 8-9 and 20: <https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/CAN/INT_CRC_NGO_CAN_42226_E.pdf> accessed 12 May 2021; and UNICEF Canada, *Where Does Canada Stand? The Canadian Index of Child and Youth Well-being 2019 Baseline Report* (2020) 25.

⁶⁷ *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24 §15.

Despite its positive appearance, a paucity of information about the legislation on the part of the Federal Government in terms of an implementation plan and funding have fueled serious concerns about its overall execution in practice. A recent publication by the First Nations thinktank, the *Yellowhead Institute*, identified five areas of existing concern in relation to the enacted law, despite improvements to earlier draft versions of the legislation. These concerns relate to the implementation in practice of the concept of ‘best interest of the child’ for children in long-term care and related national standards; a potential lack of jurisdictional clarity; a lack of commitment of funding for child and family services to Indigenous peoples; and the absence of any dispute resolution mechanism and data collection.⁶⁸ As a result, these concerns undermine the potentially positive impact of the law in practice, underscoring the key point that there remains much more to be done in terms of Indigenous child welfare than just the enactment of new laws.

Furthermore, key Canadian non-profit organizations, such as the First Nations Child & Family Caring Society have heavily criticized the Government for, among other things, repeatedly failing to implement the full meaning and scope of Jordan’s Principle in practice. In doing so, the organization has brought a series of cases against the Government of Canada before the Canadian Human Rights Tribunal, resulting in the landmark *2016 CHRT 2 ruling*. The latter found that the Government of Canada had racially discriminated against Indigenous children in relation to the application of Jordan’s Principle in practice. Since 2016, the Canadian Human Rights Tribunal has issued a whole series of subsequent procedural and noncompliance orders in this context.⁶⁹

In this wider context, it is not surprising that the child removal rates of Indigenous children from their families has remained high. Thus, on one hand, large numbers of Indigenous children are routinely removed from their families and placed in care, on the other, the much-needed supports to keep families together are underfunded and often absent in practice.⁷⁰

The reports of different fact-finding missions of UN special procedures to Canada in recent years have to some extent echoed several of the above concerns in relation to the welfare of Indigenous children. These have included the UN Special Rapporteur on Violence against Women, following a 2018 visit to Canada⁷¹ and the UN Special Rapporteur on the Rights of Persons with Disabilities following a visit to the country in 2019.⁷² It was therefore not by accident that the UN Committee on the Rights of the Child has only just issued several questions to Canada in relation to child welfare and Indigenous children. These questions have been included in its so-called List

⁶⁸ The Yellowhead Institute, *The Promise and Pitfalls of C-92: An Act respecting First Nations, Inuit and Métis children, youth and families* (Ryerson University, Toronto, Ontario, Canada, July 2019) 4-10.

⁶⁹ First Nations Child & Family Caring Society, *Jordan’s Principle Information Sheet* (January 2021): <https://fncaringociety.com/sites/default/files/jordans_principle_information_sheet_jan_2021.pdf> accessed 12 May 2021.

⁷⁰ Please see: Canadian Human Rights Commission, *Submission to the Human Rights Committee in advance of the Committee’s development of the List of Issues Prior to Reporting for Canada’s 7th Periodic Review* (May 2021) 5-7; and UNICEF Canada, *Where Does Canada Stand? The Canadian Index of Child and Youth Well-being 2019 Baseline Report* (2020) 25 and 32.

⁷¹ Report of the Special Rapporteur on violence against women, its causes and consequences, *Visit to Canada* (UN Doc. A/HRC/41/42/Add.1, 3 June 2019) §95(z)(ii).

⁷² Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Canada (UN Doc. A/HRC/43/41/Add.2, 19 December 2019) §34.

of Issues relating to Canada's fifth and sixth combined periodic reports, scheduled to be examined by the UN Committee in Geneva in 2022.⁷³

Recommended question 7: *Please provide information to the Human Rights Committee of concrete measures undertaken by Canada to address long-standing concerns about the high number of Indigenous children in care. Please clarify why Canadian governments at different jurisdictional levels do not systematically publish annual reports on the numbers of Indigenous children in care.*

Recommended question 8: *Please provide information to the Human Rights Committee of how the Government of Canada is addressing widely-held concerns about the implementation in practice of An Act respecting First Nations, Inuit, and Métis Children, Youth and Families.*

Recommended question 9: *Following the landmark 2016 CHRT 2 ruling of the Canadian Human Rights Tribunal, please respond to the finding that the Canadian Government had racially discriminated against Indigenous children in relation to the application of Jordan's Principle in practice. Please inform the Human Rights Committee of the measures it has since been taking to implement the full meaning and scope of Jordan's Principle in practice.*

⁷³ Committee on the Rights of the Child, List of issues in relation to the combined fifth and sixth reports of Canada (UN Doc. CRC/C/CAN/Q/5-6, 17 November 2020) §8b, 10a, 19 and 20.

(6) The death of Chantel Moore: deaths in police custody, alleged police ill-treatment, and excessive use of force against Indigenous persons

The Human Rights Committee's 2015 recommendation to Canada:

The State party should strengthen its efforts to ensure that all allegations of ill-treatment and excessive use of force by the police are promptly and impartially investigated by strong independent oversight bodies with adequate resources at all levels, and that those responsible for such violations are prosecuted and punished with appropriate penalties. (§11)

Serious allegations of police ill-treatment and excessive use of force against Indigenous persons continue to be reported in Canadian news and social media. In some cases, violent interactions between police and Indigenous persons have resulted in death. In their most recent April 2021 annual reports Amnesty International and the International Work Group for Indigenous Affairs (IWGIA) expressed concern about such actions against both Black and Indigenous persons, including Indigenous women.⁷⁴ In the 2021 edition of *The Indigenous World*, for example, IWGIA comments as follows:

The past year has seen Canada's national and local policing institutions coming under close scrutiny and criticism. This attention has largely been driven by a number of events involving the RCMP throughout 2020, including: the June 2020 recording of the violent treatment of Chief Allan Adam by the RCMP on 10 March, the failure of the RCMP to respond to the terrorizing of Mi'kmaw fishermen by lobster fishermen in Nova Scotia; the 2020 police killings of Regis Korchinski-Paquet, 29-year-old Black-Indigenous woman, Eishia Hudson, a 16-year-old Indigenous girl, Chantel Moore, a 26-year-old Tla-o-qui-aht/Nuu-chahnulth woman and Rodney Levi, a 48-year-old man from the Metepenagiag First Nation.

*In response to these events, Indigenous leaders have called for the defunding or abolition of the RCMP as well as various municipal/ regional police forces, and the funding of Indigenous approaches to cultural safety and mental health.*⁷⁵

In recent years similar concerns have been echoed by various independent UN experts after undertaking fact-finding missions to Canada, including the UN Working Group of Experts on People of African Descent in 2017⁷⁶ and the UN Special Rapporteur on Violence against Women

⁷⁴ Please see: Amnesty International, *Report 2020/21: The State of the World's Human Rights* (April 2021) 112; and International Work Group for Indigenous Affairs, *The Indigenous World 2021* (April 2021) 565-566.

⁷⁵ *ibid* 565-566.

⁷⁶ Report of the Working Group of Experts on People of African Descent on its mission to Canada (UN Doc. A/HRC/36/60/Add.1, 16 August 2017) §37 and §93c.

in 2018.⁷⁷ Canada's ever-growing Black and Indigenous Lives Matter movement has routinely voiced analogous concerns in past months.

The death of Chantel Moore in the context of a so-called police 'wellness check' epitomizes many of these widely-held concerns in Indigenous communities. In October 2020 NWAC wrote to various UN and Inter-American special procedures, expressing its deep concern about the killing of Indigenous woman Chantel Moore by police in Edmundston, New Brunswick on 4 June 2020. Since Chantel Moore's tragic death, NWAC's President, Elder Lorraine Whitman, has travelled to Edmundston to meet her mother, Martha Martin and other family members in order to offer support and to listen to their accounts of Chantel Moore's untimely death.

As outlined in the official statement of the investigating authorities, Quebec's *Bureau des enquêtes indépendantes* (BEI), issued on 4 June 2020, the fatal shooting of 26-year-old Chantel Moore reportedly took place at her place of residence in Edmundston during a so-called 'wellness check' in the early hours of the morning of 4 June 2020. Police had reportedly responded to a telephone call from a friend of Chantel Moore, requesting that police verify her wellbeing and safety. It is alleged, however, that Chantel Moore threatened the attending police officer, Jeremy Son, with a knife during the wellness check, resulting in him shooting her multiple times and her death.

In discussion with NWAC President Lorraine Whitman, Chantel Moore's family members questioned the officially stated version of events. Police officer Jeremy Son allegedly shot Chantel Moore at least five times during the wellness check, a detail widely reported in the news media. However, according to the verbal testimonies of family members who saw the body of the deceased, Chantel Moore also suffered a broken leg, a deep cut to the arm as well as multiple bruising during the encounter with the police officer.

The official investigation into the death of Chantel Moore is being led by Québec's *Bureau des enquêtes indépendantes*, a nominally independent police oversight agency located in the neighbouring Canadian province of Québec. As an agency, the BEI is mandated to conduct independent investigations into cases of serious injury, injury through the use of firearms, and death. Upon the conclusion of an investigation, the BEI submits its final report to the Director of Prosecutions, who determines whether charges will be laid against the police officers involved in an incident. If charges are filed, the agency assists the Director of Prosecutions during the subsequent legal proceedings. It should be noted, however, that the BEI's final reports are not made public.⁷⁸

⁷⁷ Report of the Special Rapporteur on violence against women, its causes and consequences, *Visit to Canada* (UN Doc. A/HRC/41/42/Add.1, 4 November 2020) §96(z).

⁷⁸ For further details about the BEI's conduct of investigations, please see: BEI, *Cheminement d'une enquête indépendante*: <<https://www.bei.gouv.qc.ca/enquetes/cheminement.html>> accessed 10 May 2020.

At the time of writing, the BEI investigation had been completed and the file was transferred to the public prosecutions service of New Brunswick on 16 December 2020.⁷⁹ It is also relevant to note that the New Brunswick Department of Public Safety announced on 11 June 2020 that a coroner's inquest will also be held into the fatal shooting of Chantel Moore. The coroner's inquest, however, was subject to the finalization of the BEI investigation into the shooting. At the time of writing, no further information was publicly available about the status of the coroner's inquest into the death.

NWAC fully recognizes that the duty to effectively, promptly, impartially and independently investigate the death of Chantel Moore, as per international human rights law, lies primarily with the Canadian criminal justice authorities. Nonetheless, in view of widely held concerns about the effectiveness of existing police oversight structures in Canada, the organization has supported calls by the family of Chantel Moore for a public inquiry into her death.

There exist widely shared and deeply seated concerns among Indigenous and other minority communities in Canada about the independence, transparency and effectiveness of existing mechanisms which investigate serious cases of alleged police wrongdoing, such as the BEI. The principle that all incidents of serious injury or death resulting from encounters between police and Indigenous persons be independently investigated can also be found deeply anchored in the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, namely in Calls for Justice 5.7, 9.6. and 9.7.⁸⁰

More generally, the Council of Canadian Academies underscored this alarming reality in the context of its 2019 report, *Toward Peace, Harmony, and Well-Being: Policing in Indigenous Communities*. This highly respected academic-policy body stated: "Over the past 30 years, a number of commissions and inquiries have had an impact on policing in Indigenous communities and on the relationships between Indigenous communities and the criminal justice system. They have often been sparked by crisis and they have highlighted inequities, and sometimes gross misconduct, in relations between Indigenous Peoples and policing and justice systems in Canada."⁸¹

Since 1989 the Council of Canadian Academies counted 22 such commissions and inquiries related to Indigenous police and justice in Canada at different jurisdictional levels, including, as noted above, the National Inquiry into Missing and Murdered Women and Girls.

⁷⁹ Bureau des enquêtes indépendantes Québec, *Enquête indépendante concernant l'événement survenu à Edmundston, au Nouveau-Brunswick, le 4 juin 2020 : le BEI remet son rapport d'enquête au Service des poursuites publiques du Nouveau-Brunswick* (BEI Québec, 23 December 2021): <<https://www.bei.gouv.qc.ca/actualites/detail/enquete-independante-concernant-levenement-survenu-a-edmundston-au-nouveau-brunswick-le-4-juin-20.html>> accessed 10 May 2021.

⁸⁰ *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1a* (June 2019).

⁸¹ Council of Canadian Academies, *Toward Peace, Harmony, and Well-Being: Policing in Indigenous Communities: The Expert Panel on Policing in Indigenous Communities* (4 April 2019): <<https://cca-reports.ca/reports/policing-in-indigenous-communities/>> accessed 28 September 2020.

Regrettably, any progress to implement this profusion of accumulated recommendations has been slow at best.

Recommended question 10: *Please inform the Human Rights Committee how the investigation into the death of Chantel Moore is being conducted in an effective, prompt, impartial and independent manner. Once publicly available, please also provide information on the outcome of the investigation by Québec's Bureau des enquêtes indépendantes into Chantel Moore's death as well as the outcome of the coroner's inquest.*

Recommended question 11: *More generally, please inform the Human Rights Committee of the measures being taken by Canadian governments to address widely-held concerns among Indigenous and non-Caucasian communities about the independence and effectiveness of investigations into violent police encounters.*

(7) The impact of the COVID-19 pandemic on prisons, the over-incarceration of Indigenous women and other concerns relating to federal prisons

The Human Rights Committee's 2015 recommendation to Canada:

The State party should ensure the effectiveness of measures taken to prevent the excessive use of incarceration of indigenous peoples and resort, wherever possible, to alternatives to detention. It should enhance its programmes enabling indigenous convicted offenders to serve their sentences in their communities. The State party should further strengthen its efforts to promote and facilitate access to justice at all levels by indigenous peoples. (§18)

In November 2020 NWAC published an in-depth paper titled *Minimizing COVID-19-related Risk Among Incarcerated Indigenous Females Through Transparency and Accountability*.⁸² Among other issues, the report noted that in Canada Indigenous women represent over 41% of federally incarcerated women, despite representing just 4% of the total female population. In January 2020 the Correctional Investigator of Canada, the country's federal prison ombudsperson, had referred to the ever increasing 'Indigenization' of Canada's federal prison population as a 'national travesty', whose rising trajectory saw no foreseeable end.⁸³ NWAC's report also underscored the key point that epidemiological data shows that federally incarcerated women have been disproportionately impacted by infection during the global health crisis. As a result, federally incarcerated Indigenous women are at an elevated risk based on their over-incarceration, gender and ethnicity.⁸⁴

As a significantly higher number of Indigenous women spend more time behind bars than their non-Indigenous counterparts, they are more likely to come into contact with COVID-19 while institutionalized. The coronavirus therefore poses an additional risk to an already vulnerable population. It also bears noting that decades of oppression, assimilation, and discrimination have led to socio-economic conditions that generally contribute to poorer health outcomes in Indigenous populations. As a result, this disproportionate burden of disease also increases Indigenous women's susceptibility to COVID-19 infection, more so in closed institutions such as prisons.⁸⁵ The latter are ideal breeding grounds for infection, partly due to their intrinsically closed nature, the proximity of prison cells, high turnover among both staff and inmates, overcrowding, and the

⁸² Native Women's Association of Canada, *Minimizing COVID-19-related Risk Among Incarcerated Indigenous Females Through Transparency and Accountability* (25 November 2020).

⁸³ Office of the Correctional Investigator, 'Indigenous people in federal custody surpasses 30%. Correctional Investigator issues statement and challenge' (21 January 2020). <<https://www.oci-bec.gc.ca/cnt/comm/press/press20200121-eng.aspx>> accessed 28 April 2021.

⁸⁴ Office of the Correctional Investigator, 'COVID-19 update for federal corrections—June 19, 2020' (19 June 2020): <<https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20200619-eng.pdf>> accessed 28 April 2021; and A. Iftene, 'COVID-19 in Canadian prisons: Policies, practices and concerns' in C. Flood, V. MacDonnell, J. Philpott, S. Thériault, & S. Venkatapuram (eds.), *Vulnerable: The law, policy and ethics of COVID-19* (University of Ottawa Press, Ottawa, Canada 2020).

⁸⁵ The Native Women's Association of Canada, *Minimizing COVID-19-related Risk Among Incarcerated Indigenous Females Through Transparency and Accountability* (25 November 2020) 5.

communal dining, recreational, and bathing facilities, which make close contact inevitable and physical distancing near impossible.⁸⁶ The World Health Organization recognized very early on in the pandemic that COVID-19 contributes to the heightened vulnerability of prisoners.⁸⁷

The classification and limited opportunities for release of Indigenous women

While the novel coronavirus poses a new and serious risk to the wellbeing of incarcerated individuals, Indigenous women who are criminalized and incarcerated at a much higher rate than their non-Indigenous counterparts are already embroiled in a crisis. The correctional system has failed and continues to fail to account for their unique needs and experiences. This failure permeates the entire criminal justice system, with Indigenous women being over-classified as high risk, which means they are less likely to be granted day or full parole, and are more likely to be released at the statutory release date compared to their non-Indigenous female counterparts.⁸⁸ Thus, they are often unable to return to their communities and to reintegrate into society until much later, due to the restrictions and barriers resulting from being over-classified as high risk.

A connection to culture has long been identified as a strengths-based protective factor that promotes a healthy mind and spirit. It has been shown that culturally safe and trauma-informed supports are extremely beneficial to incarcerated Indigenous women and help in their healing journey and reintegration into the community. The benefits of integrating culture into rehabilitation are best exemplified in the creation of the healing lodges by Correctional Services Canada to address the growing over-incarceration of Indigenous Peoples. These lodges aim to understand and address the factors that led to an individual's incarceration; they also offer culturally specific and trauma-informed programs that incorporate Indigenous traditions, worldviews, and values. The benefits are outlined in the Office of the Auditor General report *Preparing Indigenous Offenders for Release*, which found that individuals who participated in healing lodge programs had much lower rates of re-offending upon release.⁸⁹

Unfortunately, access to culturally safe and trauma-informed supports are lacking and when available, many barriers relating to access persist. One of the most significant barriers is that the ability to take part in cultural programming (such as that offered through healing lodges) is contingent upon being classified as low-risk. Consequently, high-risk or maximum-security classified women - where Indigenous women are disproportionately represented, and are arguably most in need of specialized supports - are unable to access the very supports that are designed for them.⁹⁰

⁸⁶ *ibid* 5.

⁸⁷ World Health Organization, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention – interim guidance* (WHO, Geneva, Switzerland, March 2020) 1-2.

⁸⁸ M. Wesley, *Marginalized: The Aboriginal Women's Experience in Federal Corrections* (Public Safety Canada, Ottawa, Canada 2012) 41-46.

⁸⁹ The Native Women's Association of Canada, *Minimizing COVID-19-related Risk Among Incarcerated Indigenous Females Through Transparency and Accountability* (25 November 2020) 3.

⁹⁰ *ibid* 3.

This reality exists in spite of healing lodges being identified as valuable to all Indigenous women prisoners regardless of their security classification. While Indigenous women experienced a difficult time accessing culturally safe services prior to the pandemic, given that institutional programs and visits have been suspended in the context of the pandemic, there can be no doubt that the risks to the health of incarcerated Indigenous women will be exacerbated, and their hopes of healing and of a successful reintegration compromised.⁹¹

The failure of Canada's federal correctional system to respond meaningfully to the impacts that colonization has had on Indigenous women is a national travesty. This is echoed in the Correctional Investigator's recent annual report, which exposed the bleak reality of incarcerated Indigenous women as well as the related challenges found in federal institutions. The report indicated that 92% of federally sentenced Indigenous women have moderate to high substance abuse needs, and 72% reported childhood abuse.⁹² Leading penal reform advocate Senator Kim Pate has also reported: 'It is no coincidence that 91 percent of Indigenous women and 87 percent of all women in federal prisons in Canada have experienced physical and/ or sexual abuse. Most also live with disabling mental health issues.'⁹³

It should also be noted that Indigenous women are also more likely than non-Indigenous women to be placed in solitary confinement type conditions and to be over-represented in use of force incidents in federal prison.⁹⁴ These highly revealing statistics demonstrate the need for supports rather than punishment, but instead of receiving support, Indigenous women face further challenges and barriers to healing in federal correctional institutions.

It is highly regrettable that it has taken a pandemic to expose the inequalities and violence faced by Indigenous women experiencing criminalization or incarceration. Members of the Human Rights Committee are therefore kindly invited to refer to NWAC's in-depth paper titled *Minimizing COVID-19-related Risk Among Incarcerated Indigenous Females Through Transparency and Accountability* for more detailed information about the on-going crisis for Indigenous women in federal prisons, concerns which are equally applicable to imprisoned Indigenous women in provincial and territorial facilities.⁹⁵

⁹¹ The Native Women's Association of Canada, *Minimizing COVID-19-related Risk Among Incarcerated Indigenous Females Through Transparency and Accountability* (25 November 2020) 3.

⁹² *ibid* 4.

⁹³ Policy4Women, *Policy Briefing Note: Rising Incarceration Rates of Racialized Women* (2020): <https://www.criaw-icref.ca/images/userfiles/files/P4W_BN_IncarcerationRacializedWomen_Accessible.pdf> accessed 15 May 2021.

⁹⁴ Office of the Correctional Investigator, *Annual Report 2019-2020* (2020) 21; and Office of the Correctional Investigator, *Administrative Segregation in Federal Corrections 10 Year Trends* (2015) 3-7.

⁹⁵ The report is available at the following [link](#).

Limitations in independent oversight of places of detention

Finally, it should be noted that Canadian prisons at all jurisdictional levels are currently imperfectly served by independent oversight mechanisms, particularly those with a pre-emptive mandate to prevent abuses from taking place in the first instance. Currently, oversight of Canadian prisons consists of a patchwork of federal, provincial, and territorial complaints-handling bodies.⁹⁶

Despite Canada first declaring to the international community that it would ratify the Optional Protocol to the UN Convention against Torture (OPCAT) in 2006 as part of its election pledge to the UN Human Rights Council, the country seems no closer to ratifying this vitally important instrument aimed at preventing neglect and abuse from taking place in an array of detention settings. In May 2016, the then Minister of Foreign Affairs Stéphane Dion declared to much fanfare that the OPCAT could no longer be optional for Canada.⁹⁷ Regrettably, since 2016 there has been next to no progress in ratifying the instrument.

In past years, various international entities have either recommended that Canada should ratify or expedite the ratification of the OPCAT, including the UN Committee against Torture in 2018. The UN Special Rapporteurs on Violence against Women and on the Rights of Persons with Disabilities advanced the former recommendation following country visits to Canada in 2018 and 2019 respectively. Moreover, during its Universal Periodic Review in May 2018, some 27 UN Member States urged Canada to ratify or consider ratifying the OPCAT.⁹⁸

Regardless, in view of the federal government's deafening silence on the issue of ratification and the absence of any open, transparent, and inclusive national process of discussion on the issue, it can only be assumed that the ratification of the OPCAT remains a distant aspiration of the current Canadian federal government, *if at all*.⁹⁹

Recommended question 12: *Please provide information to the Human Rights Committee of how the detaining authorities have responded to the COVID-19 pandemic and have ensured the health and safety of incarcerated Indigenous women at all jurisdictional levels.*

Recommended question 13: *Please provide information of the actions being taken to reverse the over-representation of Indigenous women in federal prisons in Canada. In this same connection, please provide detailed information of how alternatives to imprisonment are used in practice and at which stages of the criminal justice process.*

⁹⁶ The Native Women's Association of Canada, *Minimizing COVID-19-related Risk Among Incarcerated Indigenous Females Through Transparency and Accountability* (25 November 2020) 7.

⁹⁷ *ibid* 8.

⁹⁸ *ibid* 8.

⁹⁹ *ibid* 8.

Recommended question 14: *Please also explain why Indigenous women are disproportionately classified as high and medium security prisoners compared with non-Indigenous women prisoners in federal facilities.*

Recommended question 15: *Please inform the Human Rights Committee if Canada still intends to ratify the OPCAT. If so, please provide information of when it intends to do so and of any domestic consultations being undertaken at the domestic level, including with national Indigenous organizations and civil society actors, to ratify and implement the instrument.*

(8) Persisting concerns about the *Indian Act*

The Human Rights Committee's 2015 recommendation to Canada:

The State party should speed up the application of the 2011 Gender Equity in Indian Registration Act and remove all remaining discriminatory effects of the Indian Act that affect indigenous women and their descendants, so that they enjoy all rights on an equal footing with men. (§17)

The full coming into force of Bill S-3, *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c Canada*, has resulted in the elimination of the discrimination identified in the *Descheneaux* decision, and in the views of the UN Human Rights Committee in the *McIvor* decision.¹⁰⁰

While generally welcoming the entry into force of the provisions of Bill S-3, *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)* on 15 August 2019, NWAC has continued to urge the Canadian Government to amend sex-based discrimination and other issues in the *Indian Act* which remain unaddressed by Bill S-3.

While the known bases of discrimination have now been addressed, issues with the registration provisions persist. Distinctions based on ages, marital status and sex under section 6 of the *Indian Act* likely continue to cause inequality, and the continued role of the federal government in legislating who is and who is not entitled to 'Indian status' significantly infringes on the self-determination of First Nations peoples, specifically the Indigenous right to determine their own membership in accordance with their customs and traditions.

The implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* through Bill C-15, *An Act Respecting the United Nations Declaration on the Rights of Indigenous Peoples* includes provisions that will mandate the Government of Canada to, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure the laws of Canada are consistent with the Declaration¹⁰¹ (please see section 9 of this submission for more information).

It is critically important for the self-determination and membership rights of First Nations peoples that the processes for conforming the laws of Canada with the UN Declaration include legislative reform processes of the *Indian Act*. These processes must work toward the equitable inclusion of Indigenous governing bodies in Canada's system of cooperative federalism in a manner that recognizes and respects First Nations' self-determination and membership rights.

¹⁰⁰ Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2020/2010 (UN Doc. CCPR/C/124/D/2020/2010, 11 January 2019).

¹⁰¹ Bill C-15, *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples* §5, 6(1) and 7(1).

Ultimately, the control of membership in First Nations' communities by the Government of Canada exercised under the registration provisions of the *Indian Act* is incompatible with Indigenous rights, a system of cooperative federalism that properly respects the jurisdiction of Indigenous governments, and the human rights of Indigenous individuals guaranteed under Canada's *Charter of Rights and Freedoms* and international human rights law.

Furthermore, it is important to note that currently, there exists a two-tier system of registration under sections 6(1) and 6(2) of the *Indian Act* which determines who is permitted to register for 'Indian status' and how that status can be transmitted to one's children. Persons with 6(1) or 'full-status' can pass their status onto their child regardless of the status of the other parent. In contrast, persons with 6(2) or 'partial' status can only pass on status to their child if the other parent also has status (partial or full). The two-tier system of registration has created what is known as the 'second-generation-cut-off', whereby after two generations in a row of parenting with someone who is "non-Indian", the third generation is not entitled to register for status.¹⁰²

Additionally, there still exists an evidentiary burden placed on Indigenous peoples to provide evidence of status or entitlement to status, of their parent, grandparent or other ancestor.¹⁰³ However, there are many situations where an individual is unwilling or unable to provide information about their parent, grandparent or ancestor, a phenomenon referred to as unknown or unstated parentage.¹⁰⁴

Requiring such proof is of particular concern for Indigenous women as there exists many reasons why a woman may be unwilling or unable to give the identity of her child's father. For example, the child could be the product of a relationship where the mother is fearful and is unable or unwilling to give the identity of the father; the pregnancy was the result of a relationship with a relative, or the spouse or partner of someone else; the pregnancy was a result of abuse, sexual assault or incest; or the mother may have had several sexual partners.¹⁰⁵

Thus, this evidentiary burden placed on Indigenous women and their descendants to prove their entitlement to status under a particular section of the *Indian Act* has the likely potential to result in a re-traumatizing experience. Additionally, the possibility of the denial of 'Indian status', and the bundle of rights that come with it, further perpetuates sex-based discrimination and the continued fragmentation of Indigenous women being able to belong to, and participate in, their community.

Finally, NWAC would like to draw to the attention of the Human Rights Committee an important individual petition on gender-based discrimination which is currently pending before the UN Committee on the Elimination of Discrimination against Women, referred to as

¹⁰² Government of Canada, *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship: Fact Sheets* (2019) 13.

¹⁰³ Government of Canada, Plain Text Description of Bill S-3, *An Act to amend the Indian Act in Response to the Superior Court of Quebec decision in Descheneaux c. Canada* (Procureur général) (1 January 2018): <<https://www.sac-isc.gc.ca/eng/1478177979520/1572460398953>> accessed 15 May 2021.

¹⁰⁴ *supra* note 99.

¹⁰⁵ *ibid.*

Communication No.68/2014.¹⁰⁶ The petition concerns the historical and on-going discrimination which the complainant and his family have faced under the *Indian Act*, aptly capturing the past and present discriminatory character of the *Indian Act* as well as the related challenges of securing access to justice for Indigenous women and their descendants.

Recommended question 16: *Please provide information to the Human Rights Committee of the measures being undertaken by the Government of Canada to ensure that the Indian Act, and in particular, the registration provisions of the Indian Act, are amended or - if determined consistent with the rights of Indigenous peoples - repealed in a manner that ensures the laws of Canada are inconsistent with the self-determination and membership rights of Indigenous peoples protected under the United Nations Declaration on the Rights of Indigenous Peoples?*

Recommended question 17: *Please provide information to the Human Rights Committee of how the Government of Canada will ensure that Indigenous women and 2SLGBTQQIA persons are meaningfully and equitably engaged in the relevant reform processes.*

Recommended question 18: *Please provide information of the measures the Government of Canada envisions to address the phenomenon known as 'second-generation-cut-off', whereby after two generations in a row of parenting with someone who is "non-Indian", the third generation is not entitled to register for status. Please inform the Human Rights Committee about how the Government of Canada intends to evaluate and decide what is "relevant evidence" to determine parentage to obtain "Indian status", and how this new evidentiary burden introduced in Bill S-3 is in practice different from the prior evidentiary burden.*

¹⁰⁶ UN Committee on the Elimination of Discrimination against Women, *Communication No. 68/2014*, 18 October 2013.

(9) The implementation of the UN Declaration on the Rights of Indigenous Peoples in Canada

As Canada's leading organization representing Indigenous women and gender-diverse people, NWAC welcomed the Government of Canada's introduction to Parliament on 3 December 2020 of Bill C-15, *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*.¹⁰⁷ In late 2019 NWAC had similarly welcomed the coming into effect of *British Columbia's Declaration on the Rights of Indigenous Peoples Act*. At the time of writing, British Columbia was still the only jurisdiction in Canada to have placed UNDRIP on a formal legislative footing, despite the considerable challenges faced in the province of transforming the basic tenets of UNDRIP into an everyday reality for Indigenous Peoples.¹⁰⁸

If enacted effectively in law, it is hoped that Bill C-15 will pave the way for the eventual implementation of UNDRIP in practice at the domestic level in Canada and that it will thereby make a valuable contribution to the long overdue need to work towards greater reconciliation in the country. As such, NWAC commended the Government of Canada on the tabling of Bill C-15 before the House of Commons in December 2020, particularly as the draft law recognizes the importance of the National Inquiry into Missing and Murdered Indigenous Women and Girls and the Final Report's 231 Calls for Justice.¹⁰⁹

At the time of writing, Bill C-15 had passed its second reading in the House of Commons on 19 April 2021, having entered the 'committee stage' of hearings from 11 March 2021 onwards. Different organizations and experts had appeared as witnesses before the House of Commons' Standing Committee on Indigenous and Northern Affairs throughout the first weeks of March and April 2021. Furthermore, the Senate's Standing Committee on Aboriginal Peoples adopted a motion on 20 April 2021 to embark on a so-called 'Pre-study' of Bill C-15 prior to it coming before the Senate. Several hearings were held for this purpose in the early part of May 2021.

Despite this generally positive development, NWAC equally recognizes that Bill C-15 will not be a panacea for the numerous ills currently besetting Indigenous communities in Canada. Nonetheless, Bill C-15 remains a welcome first step in the direction of attaining greater reconciliation with Indigenous Peoples in Canada. NWAC therefore remains committed to working with the Government of Canada to facilitate the passage of Bill C-15 during its transition through Parliament and, to date, has appeared in a witness capacity before both the House of Commons' Standing Committee on Indigenous and Northern Affairs and the Senate's Standing Committee on Aboriginal Peoples.

¹⁰⁷ The full text of Bill C-15, *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*, can be found at the following link: <<https://parl.ca/DocumentViewer/en/43-2/bill/C-15/first-reading>> accessed 12 May 2021.

¹⁰⁸ Please see the related discussion in: K. Hayden (ed), *The UN Declaration on the Rights of Indigenous Peoples in Canada: Lessons from B.C.* (The Yellowhead Institute, Toronto, Canada December 2020).

¹⁰⁹ Bill C-15, *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples* – Preamble.

Recommended question 19: *Please provide updated information to the Human Rights Committee of the legislative status of Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples.*

Recommended question 20: *Please also inform the Human Rights Committee of how the Government of Canada intends to meaningfully engage Indigenous peoples and their representatives in devising the related national action plan, as currently foreseen in Bill C-15.*

(10) Follow-up to UN special procedures fact-finding missions to Canada

Since 2015, Canada’s human rights track-record has continued to be closely scrutinized by key United Nations human rights bodies. Through a combined process of periodic treaty body examinations and visits to the country by the UN special procedures, Canada’s performance in relation to its range of international human rights obligations has repeatedly come into the spotlight.

Listed in the table below are the UN special procedures which have visited Canada as part of their country-visit functions since 2015, when the Human Rights Committee last examined Canada. The table lists the UN special procedures by mandate, the date of the visit, and the date of the publication of the related country report.

| Mandate | Date of Visit | Date of Report |
|---|----------------------|-----------------------|
| Special Rapporteur on hazardous substances and wastes ¹¹⁰ | 2019 | 2020 |
| Special Rapporteur on the rights of persons with disabilities ¹¹¹ | 2019 | 2019 |
| Special Rapporteur on health ¹¹² | 2018 | 2019 |
| Special Rapporteur on violence against women ¹¹³ | 2018 | 2019 |
| Working Group on the issue of human rights and transnational corporations and other business enterprises ¹¹⁴ | 2017 | 2018 |
| Working Group of Experts on People of African Descent ¹¹⁵ | 2016 | 2017 |

From the perspective of Indigenous women’s rights, the visits to Canada by the UN Special Rapporteur on Violence against Women from 2018 and the Special Rapporteur on Hazardous Substances and Wastes were especially relevant. Even though other UN experts may have had less

¹¹⁰ Please see: Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, *Visit to Canada* (UN Doc. A/HRC/45/12/Add.1, 27 November 2020).

¹¹¹ Please see: Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Canada (UN Doc. A/HRC/43/41/Add.2, 19 December 2019).

¹¹² Please see: The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Visit to Canada* (UN Doc. A/HRC/41/34/Add.2, 21 May 2019).

¹¹³ Please see: Report of the Special Rapporteur on violence against women, its causes and consequences, *Visit to Canada* (UN Doc. A/HRC/41/42/Add.1, 3 June 2019).

¹¹⁴ Please see: Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Canada (UN Doc. A/HRC/38/48/Add.1, 23 April 2018).

¹¹⁵ Please see: Report of the Working Group of Experts on People of African Descent on its mission to Canada (UN Doc. A/HRC/36/60/Add.1, 16 August 2017).

to say directly in relation to Indigenous women, their comments and recommendations nevertheless remain highly relevant.

It bears noting that several of the experts also issued recommendations of a wider, sweeping nature which invariably pertained to the broader communities in which Indigenous peoples live in Canada. As an illustrative case in point, in his 2019 end-of-mission statement on Canada the then *Special Rapporteur on hazardous substances and wastes* stated the following:

*There exists a pattern in Canada where marginalized groups, indigenous peoples in particular, find themselves on the wrong side of a toxic divide, subject to conditions that would not be acceptable elsewhere in Canada. While the principle and right of non-discrimination is found in the Canadian Constitution, it does not appear to have served as a significant protection or recourse for affected communities in cases of action or, more often than not, inaction by the Government.*¹¹⁶

Quite simply, Indigenous peoples are directly affected by environmental contamination and degradation. Similarly, the report of the mission to Canada by the *Working Group on the issue of human rights and transnational corporations and other business enterprises* from 2018 contained recommendations which impacted on the wider communities of Indigenous peoples.¹¹⁷ In particular, the Working Group found that one of the main grievances expressed by Indigenous peoples was the lack of meaningful consultations and non-compliance with the requirement of free, prior, informed consent in the context of business activities on their lands.¹¹⁸ In certain highlighted cases business activities had negatively impacted on Indigenous communities and their environments.¹¹⁹ Recommendations were consequently issued on the basis of such concerns.¹²⁰

The Human Rights Committee should therefore refer to the aforementioned reports as a basis of formulating the List of Issues Prior to Reporting in relation to Canada's seventh periodic report.

It is also notable that the findings of the aforementioned thematic special procedures have also been echoed to a significant extent by the UN treaty bodies which have examined Canada's periodic reports in recent years. As can be seen from the table below, Canada has undergone frequent examination by the UN treaty body system in past years.

¹¹⁶ End-of-visit statement by the United Nations Special Rapporteur on human rights and hazardous substances and wastes, Baskut Tuncak on his visit to Canada, 24 May to 6 June 2019 (OHCHR, Geneva, Switzerland, 6 June 2019: <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24678&LangID=E>> accessed 13 May 2023).

¹¹⁷ Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Canada (UN Doc. A/HRC/38/48/Add.1, 23 April 2018) §49-55.

¹¹⁸ *ibid* §51.

¹¹⁹ See for example: Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Canada (UN Doc. A/HRC/38/48/Add.1, 23 April 2018) §49-50, and 61-62.

¹²⁰ *ibid* §79(q) and 82.

| UN Treaty Body | Date |
|--|-------------|
| Committee against Torture | 2018 |
| Committee on the Elimination of Racial Discrimination | 2017 |
| Committee on the Rights of Persons with Disabilities | 2017 |
| Committee on the Elimination of Discrimination against Women | 2016 |
| Committee on Economic, Social and Cultural Rights | 2016 |
| Human Rights Committee | 2015 |

For reasons of brevity, this submission will not discuss the Concluding observations of these different treaty bodies in relation to Canada. Regrettably, however, far too often beyond the UN discussion rooms of Geneva and New York, little seems to happen at the national level to implement the outputs of the different UN review mechanisms.

Canadian civil society has repeatedly criticized the Federal Government of Canada for failing to institute an effective mechanism to facilitate the implementation of Canada's international human rights obligations at the domestic level. Most recently, a coalition of 26 civil society organizations which participated in the 9-10 November 2020 *Federal, Provincial and Territorial Meeting of Ministers Responsible for Human Rights* criticized the absence of such a mechanism at the national level.¹²¹

Different UN mechanisms have recently commented on shortcomings in this same respect, including the UN Committee on the Elimination of Racial Discrimination, UN Committee on the Elimination of Discrimination against Women and UN Committee on Economic, Social and Cultural Rights.¹²² In short, if Canada is genuinely committed to advancing its international human rights obligations domestically, it should institute an effective mechanism to act on these international human rights obligations and recommendations.

Recommended question 21: *In view of the fact-finding missions of several UN special procedures to Canada, please provide information to the Human Rights Committee of how the Government of Canada is responding to their overall concerns and multiple recommendations in relation to Indigenous women, girls and their communities.*

Recommended question 22: *Please also provide information of how the Government of Canada is addressing domestic and international concerns about the lack of an effective mechanism to*

¹²¹ Various organizations, *Federal-Provincial-Territorial Ministers Meeting: Collaborative action to uphold human rights in Canada still lacking* (12 November 2020): <<https://www.amnesty.ca/news/federal-provincial-territorial-ministers-meeting-collaborative-action-uphold-human-rights>> accessed 13 May 2021.

¹²² Please see: UN Committee on the Elimination of Racial Discrimination, Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada (CERD/C/CAN/CO/21-23, 13 September 2017) §7-8; UN Committee on the Elimination of Discrimination against Women, Concluding observations on the combined eighth and ninth periodic reports of Canada (CEDAW/C/CAN/CO/8-9, 25 November 2017) §10-11; and UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of Canada (E/C.12/CAN/CO/6, 23 March 2016) §5-8.

facilitate the implementation of Canada's international human rights obligations at the domestic level.

International Unit
21 May 2021