



# NGO Report on Canada's Sixth Periodic Report to CESCR

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Report Submitted by the Indigenous Bar  
Association in Canada

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## **I. Introduction**

The Indigenous Bar Association in Canada submits the following information in response to Canada's sixth periodic report to CESCR.

The Indigenous Bar Association in Canada (IBA) is a non-profit professional organization for Indigenous (Indian, Inuit and Métis persons) trained, in training and employed in the legal field. The membership of the IBA is comprised of lawyers (practicing and non-practicing), judges, law professors, legal consultants and law students. The IBA plays an active role in promoting the development of Indigenous law and supporting Indigenous legal practitioners. The objectives of the IBA include:

- To recognize and respect the spiritual basis of our Indigenous laws, customs and traditions;
- To promote the advancement of legal and social justice for Indigenous peoples in Canada;
- To promote the reform of policies and laws affecting Indigenous peoples in Canada;
- To foster public awareness within the legal community, the Indigenous community and the general public in respect of legal and social issues of concern to Indigenous peoples in Canada;
- In pursuance of the foregoing objects, to provide a forum and network amongst Indigenous lawyers: to provide for their continuing education in respect of developments in Indigenous law; to exchange information and experiences with respect to the application of Indigenous law; and to discuss Indigenous legal issues; and

The Indigenous Bar Association in Canada's submission to the Committee on Economic, Cultural and Social Rights will focus on several key issues: physical and mental health, water and sanitation, food security, adequate housing, employment, culture and language, participation in decision-making, land rights and self-government. Appended to this report, is a separate alternative report that focuses specifically on murdered and missing Indigenous women and girls.

In summary, Canada has failed to implement their obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) in relation to Indigenous peoples. The problem can be summarized in part as the failure of the government to recognize that their international human rights obligations must inform the social policies and programs, which they claim are the vehicles through which they implement their obligations. The chronic underfunding of services on First Nation reserves has greatly exacerbated concerns of Indigenous peoples' rights under the ICESCR. Systemic racism within government institutions further impacts the realization of Indigenous peoples' rights under ICESCR.

Issues are further complicated due to the division of responsibility between the federal and provincial governments under the Canadian constitution. Generally, provinces are responsible for social services including health, education, water and sanitation, child welfare, and housing.

However “Indians” (or First Nations) and Inuit are federal responsibilities. The issue of whether Métis people are federal or provincial responsibility is currently before the Supreme Court of Canada. In related to all social services, there is an ongoing problem where both levels of governments deny or delay responsibility for providing or funding services for Indigenous peoples in Canada.

**Recommendations:**

- Work with the provinces to eliminate disparities between the health services received by Indigenous peoples including access to and quality of services.
- Ensure that Indigenous peoples are not denied health care services due to jurisdictional disputes. When jurisdictional disputes arise between federal and provincial governments, the government department of first contact should pay for the health service and then refer the matter to an appropriate body for resolution.
- In partnership with provinces and Indigenous peoples must ensure access to appropriate mental health services and community supports for Indigenous peoples.
- Ensure that there are no legal barriers to Indigenous peoples’ ability to access, collect and use traditional medicines and healing practices.
- Take immediate steps to remedy the systemic underfunding for First Nations including in the areas of safe and adequate housing, access to clean and potable water and sanitation systems, and affordable food.
- Ensure that Canadian law properly protects and promotes the right of Indigenous peoples to their traditional foods, including hunting and harvesting flora and fauna. Ensure that wildlife officers are properly trained and understand Indigenous peoples’ right to hunt their traditional foods.
- Re-evaluate the Nutrition North program to ensure that it is an appropriate mechanism to promote food security in the North.
- Address the funding disparities for welfare, child welfare and education for First Nations on reserve.
- Ensure that child welfare laws on the best interest of the child are appropriately modified to address the specific circumstances of Indigenous peoples and that all Indigenous children have access to their culture and language.
- Work with Indigenous peoples’ organizations to develop cultural and language revitalization programs on reserve as well as in urban centers.
- Ensure Indigenous children have access to the same quality of education as other children in Canada, as well as culturally appropriate education including Indigenous methods of teaching and learning.

- Work to implement the Truth and Reconciliation Commission of Canada's calls to action.
- Amend consultation policies to fully incorporate Indigenous peoples' right to participate in decision making on the basis of free, prior and informed consent.
- Ensure environmental assessment processes conform with Indigenous peoples' right to participate in decision making on the basis of free, prior and informed consent particularly where their traditional lands and territories, or traditionally livelihoods are impacted.
- Review all legislation passed that impacts Indigenous peoples' right to self-government that was not passed with Indigenous peoples' free, prior and informed consent.

### **List of Questions**

In response to Canada's 6th periodic report to CESCR, we respectfully request the Committee pose the following questions to Canada:

- How will Canada work to implement the Truth and Reconciliation Commission's calls to action, including the UN Declaration on the Rights of Indigenous Peoples? How will implementing the Truth and Reconciliation Commission's calls to action assist Canada in meeting its international human rights obligations including under the Covenant on Economic, Social and Cultural Rights?
- What steps has Canada taken to address systemic racism in the health care system that negatively impacts Indigenous peoples' health outcomes?
- What steps has Canada taken to ensure equal access to health services including mental health for Indigenous peoples across Canada?
- When will Canada develop, implement and fund a national action plan to ensure clean drinking water and sanitation on First Nation reserves in conjunction with First Nations?
- What training do provincial wildlife officers receive on Indigenous peoples' right to hunt?
- What steps is Canada taking to ensure affordable, sustainable and adequate housing which considers regional cultural and environmental factors?
- What steps is Canada taking to work to promote and protect Indigenous languages in Canada?
- How does the Canadian law on consultation measure against the right to participate in decision-making on the basis of free, prior and informed consent?
- How does the environmental assessment process address impacts where rights are yet determined or recognized? Does the current environmental assessment processes allow

for Indigenous peoples' full participation, particularly when their traditional lands and resources may be impacted by development?

- What is the current status of modern self-government and land claims negotiations? What steps is Canada taking to address the backlog and significant delays in the negotiation process?

## **II. Health**

Widespread health disparities continue for Indigenous peoples in Canada. Indigenous peoples experience lower health outcomes than non-Indigenous peoples in Canada. Racism further impacts Indigenous peoples' health outcomes including the social determinants of health: Income and Income Distribution, Education, Unemployment and Job Security, Employment and Working Conditions, Early Childhood Development, Food Insecurity, Housing, Social Exclusion, Social Safety Network, Health Services, Aboriginal Status, Gender, Race and Disability.<sup>1</sup>

Racism is not limited to interpersonal issues during the provision of health services. Structural racism is evident throughout the Canadian health care system. Structural racism exists in the policies and practices in the Canadian public health system and other sectors, which has profound negative effects on access to health care and health disparities. Racial discrimination in the health care system as well as broader Canadian society has direct physiological effects on health. Racial discrimination negatively impacts health through:

- The direct effects of stress arising from interactions that are perceived to be discriminatory,
- The denial of access to resources such as healthcare that fits with peoples' needs,
- The internalization of stigma and discrimination, and
- The vigilance that is required in anticipation of negative treatment, which leads to stress and often tense social interactions.<sup>2</sup>

Indigenous people are affected disproportionately by diseases such as cancer, tuberculosis, and diabetes. Cancer is on the rise and is reported to be the leading cause of death in some First Nations, rivaling diabetes as the "number one killer of First Nations peoples".<sup>3</sup> Indigenous rates of Tuberculosis have been reported as 31 times more prominent than non-Indigenous people in Canada.<sup>4</sup> Diabetes is also on the rise in Indigenous communities and is connected to issues of food security and access to affordable healthy food.<sup>5</sup> Tobacco use is a particular concern related to diabetes. Smoking doubles the chances of an individual getting diabetes, and diabetes is already three to five times more prevalent amount Indigenous people than non-Indigenous

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<sup>1</sup> Raphael, Dennis, *Social determinants of health: Canadian perspectives*, 2009.

<sup>2</sup> Stuber, Meyer, & Link 2008

<sup>3</sup> Assembly of First Nations, *Annual Report 2012-2013* at 89.

<sup>4</sup> Assembly of First Nations, *Annual Report 2012-2013* at 90.

<sup>5</sup> Assembly of First Nations, *Annual Report 2012-2013* at 95.

peoples.<sup>6</sup>

The problem of Indigenous peoples lower health outcomes is compounded by inadequate access to health services, especially in remote communities. In 2015, the Auditor General concluded that “Health Canada did not have reasonable assurance that eligible First Nations individuals living in remote communities in Manitoba and Ontario had access to clinical and client care services and medical transportation benefits as defined for the purpose of this performance audit”.<sup>7</sup> Where policies and strategies exist, there is a failure to implement these.<sup>8</sup>

An additional issue is when Indigenous people do access health services, systemic racism impacts the care they receive. Recently, reports surfaced that the practice of forceful sterilization of Indigenous women continues in hospitals, at least in the province of Saskatchewan. In Manitoba, there is the example of an Indigenous man dying in the waiting room of a hospital emergency room after sitting there ignored by hospital staff for 34 hours. He died of a treatable bladder infection.

Indigenous people in Canada experience serious mental health issues. Suicide is the 2nd leading cause of death for young people aged 15 to 34, preceded only by accidents,<sup>9</sup> with rates for Indigenous youth being among some of the highest in the world.<sup>10</sup> Approximately 18% of the First Nations adult population meets criteria for major depression, while 15% attempted suicide at some time in their lives.<sup>11</sup>

Substance abuse is the most self-reported threat to health and quality of life for many First Nations.<sup>12</sup> Heavy or serious alcohol consumption, as well as prescription drug use is also more prevalent in First Nations and is linked to childhood neglect, depression, attendance at residential/boarding schools and violence.<sup>13</sup>

Addressing Indigenous peoples health disparities requires not only access to the Canadian health care system, but also better access to Indigenous health systems including traditional medicines. There are many barriers that exist, including Canadian law on harvesting of resources and development of Indigenous peoples’ traditional territories that reduces access to traditional medicines.

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<sup>6</sup> Assembly of First Nations, *Annual Report 2012-2013* at 95.

<sup>7</sup> Office of the Auditor General of Canada, 2015 Spring Reports of the Auditor General of Canada, 2015 at 26.

<sup>8</sup> Auditor General Alberta, *Report of the Auditor General of Alberta—July 2015*, 2015.

<sup>9</sup> First Nations Centre, *First Nations Regional Longitudinal Health Survey (RHS) 2002/03: results for adults, youth and children living in First Nations communities*, 2005 at 139.

<sup>10</sup> Kirmayer, L. et. al., *Aboriginal Suicidal Behaviour Research: From Risk Factors to Culturally Sensitive Interventions*, 1994.

<sup>11</sup> First Nations Centre, *First Nations Regional Longitudinal Health Survey (RHS) 2002/03: results for adults, youth and children living in First Nations communities*, 2005 at 139.

<sup>12</sup> Edwards, *The Social Determinants of Health: An Overview of the Implications for Policy and the Role of the Health Sector*, 2008.

<sup>13</sup> First Nations Centre, *First Nations Regional Longitudinal Health Survey (RHS) 2002/03: results for adults, youth and children living in First Nations communities*, 2005 at 115.

Any attempts to improve Indigenous peoples' health outcomes must include Indigenous knowledge and worldviews such as measures that target all levels of the well-being – including spiritual, emotional, physical and social balance – in order to accurately represent health and community wellness.<sup>14</sup> The Lillooet First Nation articulated the braid theory to represent the holistic unification of the three strands of mind, body, and spirit. For the Lillooet First Nation, this reflects a shift from “low self-esteem, depression, poor emotional and mental health, to a feeling of wellness and balance”.<sup>15</sup>

### **Recommendation:**

- **work with the provinces to eliminate disparities between the health services received by Indigenous peoples including access to and quality of services.**
- **ensure that Indigenous peoples are not denied health care services due to jurisdictional disputes. When jurisdictional disputes arise between federal and provincial governments, the government department of first contact should pay for the health service and then refer the matter to an appropriate body for resolution.**
- **in partnership with provinces and Indigenous peoples must ensure access to appropriate mental health services and community supports for Indigenous peoples.**
- **ensure that there are no legal barriers to Indigenous peoples' ability to access, collect and use traditional medicines and healing practices.**

### **III. Water, Food, and Housing**

In 2011, Special Rapporteur on Indigenous Peoples James Anaya acknowledged the dire situation on Attawapiskat First Nation where 1800 members living in unheated shacks or trailers with no running water. This situation is all too common on many First Nation reserves across Canada. Special Rapporteur Anaya cited “systematic” and “chronic” underfunding by the Federal government as a cause.

Many First Nations still lack basic water and sanitation systems. Two-thirds of all First Nation reserves in Canada have been under at least one drinking water advisory at some time in the last decade. 400 out of 618 First Nations in the country had some kind of water problem between 2004 and 2014.<sup>16</sup> The amount of First Nations on water boil advisories fluctuates, but on September 30, 2015, there were 138 advisories across 94 First Nations in Canada.<sup>17</sup> In Canada,

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<sup>14</sup> First Nations Centre, *First Nations Regional Longitudinal Health Survey (RHS) 2002/03: results for adults, youth and children living in First Nations communities*, 2005 at 150.

<sup>15</sup> Assembly of First Nations, *First Nations Holistic Policy and Planning Model Discussion Paper for the World Health Organization Commission on Social Determinants of Health*, 2007 at 22.

<sup>16</sup> <http://www.cbc.ca/news/canada/manitoba/bad-water-third-world-conditions-on-first-nations-in-canada-1.3269500>.

<sup>17</sup> <http://www.hc-sc.gc.ca/fniah-spnia/promotion/public-publique/water-eau-eng.php#s2d>

there is no water regulation legislation that applies on First Nations' reserves.<sup>18</sup> Past attempts to address the legislative gap between provincial and on-reserve drinking water and sanitation regulations have failed to be developed with the full participation of Indigenous peoples, to ensure that appropriate funding is available for water and sanitation systems, and to provide access qualified technicians to monitor and maintain systems.

Obtaining food security for Indigenous peoples involves providing access to both traditional food and market food. Traditional food is a source of “significant symbolic and spiritual value, and is central to personal identity and the maintenance of culture”, and is generally the most desirable choice. However, access to healthy market food is a necessity due to the “environmental contamination of traditional/country food and the impact of global climate change on ecosystems affect the availability, supply, and safety of traditional/country food”.<sup>19</sup> A significant barrier to accessing traditional foods is that provincial wildlife officers continue to arrest Indigenous hunters exercising their constitutionally protected right to hunt for food leading to seizure of guns and any harvested meat, as well as expensive and prolonged court battles.

The price of food in northern communities is astronomical and current federal programs have failed to address the cost of food contributing to food insecurity. The current federal program to address food security in the north, “Nutrition North”, is ineffective because eligibility for the program is not based on need, the program does not guarantee that northern retailers pass on the full subsidy to consumers, and the government has not collected the information needed to manage the program or measure its success, and has not implemented the Program’s cost containment strategy.<sup>20</sup> Food insecurity negatively impacts other areas: Food Banks Canada reports “The high cost of food, a lack of job opportunities, high levels of poverty, and decreasing consumption of traditional foods have combined to create a serious and pressing public health emergency.”

Housing crises exist across First Nation reserves with overcrowding being one of the biggest issues. Housing shortage often results in “respiratory illness, depression, sleep deprivation, family violence, poor educational achievement and an inability to retain skilled and professional members in the community”.<sup>21</sup> The current approach to dealing with housing shortages will lead to the housing shortage problem increasing: between 2010 and 2031, there will be a backlog of 130,000 housing units, 44% of the existing units requiring major repairs and 18% requiring replacement. Mould is an issue in many homes, yet the federal government has not undertaken any implementation of mould removal services or funding. Many First Nation reserves have been subjected to flooding, displacing members for significant periods of time. Mould and other damage caused by flooding is not always properly fixed before a people return to the reserves. Where return is not possible, significant issues have arisen including delay and government decisions made without full participation of the First Nation. Further, many people have been left in limbo for significant periods of time.

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<sup>18</sup> Office of the Auditor General, *2011 June Status Report of the Auditor General of Canada*, 2011 at 18.

<sup>19</sup> Power, *Conceptualizing Food Security for Aboriginal People in Canada*, 2008.

<sup>20</sup> Office of the Auditor General of Canada, *2014 Fall Report of the Auditor General of Canada*, 2014.

<sup>21</sup> Anaya, *Report of the Special Rapporteur on the rights of indigenous peoples*, 2014 at 8.

## **Recommendations:**

- **Take immediate steps to remedy the systemic underfunding for First Nations including in the areas of safe and adequate housing, access to clean and potable water and sanitation systems, and affordable food.**
- **Ensure that Canadian law properly protects and promotes the right of Indigenous peoples to their traditional foods, including hunting and harvesting flora and fauna. Ensure that wildlife officers are properly trained and understand Indigenous peoples' right to hunt their traditional foods.**
- **Re-evaluate the Nutrition North program to ensure that it is an appropriate mechanism to promote food security in the North.**

## **IV. Culture, Language, Education and Criminal Justice System**

The Residential School system and the 'Sixties Scoop' of Indigenous children from their family homes and into the child welfare system continues to have a lasting impact on Indigenous peoples. The Truth and Reconciliation Commission of Canada released its final report and calls to action in 2015, all which aim to address the impacts of the Residential School system in Canada including economic, social and cultural impacts.

On reserve welfare rates are significantly lower than provided off reserve contributing to poverty and related issues. Today, Indigenous children are eight times more likely to be taken into the care of child services than non-Indigenous children.<sup>22</sup> The Canadian Human Rights Tribunal recently held that the federal government discriminates against First Nation children on reserves by failing to provide the same level of child welfare services that exist elsewhere in Canada.

The current underfunding of child welfare along with the high rate of apprehending Indigenous children exacerbates the problems of Indigenous language and cultural protection and promotion. Indigenous languages are endangered to various degrees, largely due to their systemic suppression by the Canadian government.<sup>23</sup> As of 2011, only 22.4% of First Nations were able to conduct a conversation in an Indigenous language, while only 18.7% reported an Indigenous language as their Mother Tongue. The federal government's commitment to Indigenous language renewal is questionable: "The same year the federal Government apologized for the residential

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<sup>22</sup> Office of the Auditor General, *2011 June Status Report of the Auditor General of Canada*, 2011 at 11.

<sup>23</sup> Statistics Canada, *National Household Survey: Aboriginal peoples and language*, 2011.

school policy, 2008, it ... spent under \$19 million CAD annually to support indigenous language revitalization”.<sup>24</sup> Indigenous languages are not recognized as official languages in Canada.

Special Rapporteur Anaya found that, “at every level of education, indigenous people overall continue to lag far behind the general population. The gap in educational achievement is attributable to high levels of poverty, the historical context of residential schools, and systemic racism”.<sup>25</sup> The Auditor General of Canada found that despite government’s identification of seven factors that impact “the cost of First Nations education ... it did not make funding adjustments based on its findings”.<sup>26</sup> On-reserve schools across Canada are “denied access to the same standard and quality of primary and secondary education programs and services to that available to children and youth living off reserve”.<sup>27</sup> In addition to this, many youths from northern communities are forced to leave their communities to attend school due to underfunding,<sup>28</sup> echoing the IRS legacy of displacement for the sake of education.

Connected to the lack of education is the issue with under employment. In 2011, the employment rate for working-age Status Indians was 55%, while the rate for non-Aboriginal persons of working age was 76%.<sup>29</sup> There is a need for a “comprehensive set of measures to eliminate the economic gap between First Nation citizens on and off reserve and non-Indigenous Canadians, including ... First Nation employment, training, labour force and human resources development needs”.

### **Recommendations:**

- **Address the funding disparities for welfare, child welfare and education for First Nations on reserve.**
- **Ensure that child welfare laws on the best interest of the child are appropriately modified to address the specific circumstances of Indigenous peoples and that all Indigenous children have access to their culture and language.**
- **Work with Indigenous peoples’ organizations to develop cultural and language revitalization programs on reserve as well as in urban centers.**
- **Ensure Indigenous children have access to the same quality of education as other children in Canada, as well as culturally appropriate education including Indigenous methods of teaching and learning.**
- **Work to implement the Truth and Reconciliation Commission of Canada’s calls to action.**

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<sup>24</sup> Anaya, *Report of the Special Rapporteur on the rights of indigenous peoples*, 2014 at 8.

<sup>25</sup> Anaya, *Report of the Special Rapporteur on the rights of indigenous peoples*, 2014 at 7.

<sup>26</sup> Office of the Auditor General, *2011 June Status Report of the Auditor General of Canada*, 2011 at 14.

<sup>27</sup> Assembly of First Nations, *Annual Report 2012-2013* at 76.

<sup>28</sup> See <http://www.macleans.ca/news/canada/why-fixing-first-nations-education-remains-so-far-out-of-reach/>.

<sup>29</sup> See <https://www.aadnc-aandc.gc.ca/eng/1376329205785/1376329233875>.

## V. Consultation and Decision-making

Canada continues to fail to recognize Indigenous peoples' right to participate in decision on the basis of free, prior and informed consent. Canadian law recognizes the duty to consult when the Crown is contemplating conduct may affect Indigenous rights, with the additional duty to accommodate being triggered where necessary.<sup>30</sup> Canada continues to appeal decisions that affirm the government's duty resulting in expensive and drawn-out litigation. Canada denies consent as an element of consultation, even though Canadian courts have recognized consent may be required in certain circumstances. Within the last couple years, the federal has pursued legislation without appropriate consultation including Bill C-27: First Nations Financial Transparency Act, Bill S-8: First Nations Drinking Water Act and Bill S-2: Family Homes on Reserves and Matrimonial Interests or Rights Act.

Indigenous peoples have long been stewards of the environment. There is much knowledge Indigenous peoples can offer Canada in terms of environmental stewardship and sustainable development practices. Many environmental authorities fail to consider Indigenous peoples' environmental knowledge, privileging Western knowledge.<sup>31</sup> The failure to recognize Aboriginal rights and title leads to uncertainties and complications in the environmental assessment process when trying to determine impacts.

The 2014 Fall Report of the Commissioner of the Environment and Sustainable Development (which evaluated the Canadian Environmental Assessment Agency, the National Energy Board, and the Canadian Nuclear Safety Commission) found that the mechanisms for Indigenous peoples' participation are in place but not properly implemented. Many Indigenous peoples raised concerns about their capacity to participate effectively in environmental assessment processes: lack of capacity in terms of staff, expertise, and funds to respond within the set timeframes, particularly when asked to respond to several requests at once. These factors may affect the meaningfulness of public and Aboriginal participation in the environmental assessment process.<sup>32</sup>

The right to self-government is recognized under the Canadian constitution. However, there are significant barriers to the realization of the right to self-government for Indigenous peoples in Canada because the scope of application of self-government has never been fleshed out in Canadian law. Canada continues to engage in negotiations based on a 1996 policy, however the negotiation process is prolonged and expensive.

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<sup>30</sup> *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73 at paras 14, 18 and 20; *R. v Van der Peet*, [1996] 2 SCR 507 at para 31; *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)* 2005 SCC 69 at para 51; *Delgamuukw v British Columbia*, [1997] 3 SCR 1010 at para 186.

<sup>31</sup> Beckford et al, *Aboriginal Environmental Wisdom, Stewardship, and Sustainability: Lessons From the Walpole Island First Nations*, 2010 at 204.

<sup>32</sup> Office of the Auditor General of Canada, *2014 Fall Report of the Commissioner of the Environment and Sustainable Development*, 2014.

Under the *Indian Act*, First Nations self-government is stymied with reporting requirements for any decisions including “band by-laws, funding for reserve programmes and infrastructure, and the leasing of land”.<sup>33</sup> Further, legislation was introduced to further limit Indigenous peoples’ right to self-government through additional reporting burdens established under the *First Nations Financial Transparency Act*. Reliance on annual funding agreements also negatively impacts the timeliness of services and limits longer-term development plans.

Aboriginal and treaty rights, which includes Aboriginal title, were constitutionally entrenched in section 35(1) when Canada patriated the Constitution in 1982. However, this protection is weak in part because of the interpretation given by Canadian courts and by Canada’s approach to resolving these claims. Canadian courts have narrowly defined Indigenous peoples’ rights to use their lands (the inherent limit), which is justified by deeming Aboriginal title a lesser form of land holding.

The Supreme Court of Canada held that in order to prove Aboriginal title, the claimants must prove exclusive pre-sovereignty occupation; exclusive possession means an intention and capacity to retain exclusive control of the land. This test makes it extremely difficult for any Indigenous group whose use of the land was seasonal, was nomadic in their occupation, or where multiple groups used a particular area. There is gross disparity between the law and the actual protection of Indigenous peoples’ land rights. Thus, the inclusion of Aboriginal title within section 35(1) of the Constitution has not led to the effective protection of Indigenous peoples’ land rights.

#### **Recommendations:**

- **Amend consultation policies to fully incorporate Indigenous peoples’ right to participate in decision making on the basis of free, prior and informed consent.**
- **Ensure environmental assessment processes conform with Indigenous peoples’ right to participate in decision making on the basis of free, prior and informed consent particularly where their traditional lands and territories, or traditionally livelihoods are impacted.**
- **Review all legislation passed that impacts Indigenous peoples’ right to self-government that was not passed with Indigenous peoples’ free, prior and informed consent.**

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<sup>33</sup> Anaya, *Report of the Special Rapporteur on the rights of indigenous peoples*, 2014 at 8. 12.



# NGO REPORT ON CANADA'S SIXTH PERIODIC REPORT TO CESCR

Report Submitted by the Indigenous Bar Association  
in Canada

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## Introduction

In Canada, there are alarming rates of murdered and missing Indigenous women and girls (MMIWG). There are many root causes of this violence, however, the federal government has been unwilling to examine these causes and has, rather, employed a crime-driven strategy. As a result, too many Indigenous women and girls are unable to fully realize their economic, social, and cultural rights when their lives are taken from them. Additionally, Canada's failure to initially fulfil these economic, social, and cultural rights to Indigenous women and girls has only perpetuated and maintained this rate of violence.

Canada's sixth periodic report to the United Nations Committee on Economic, Social, and Cultural Rights outlined the federal and provincial governments' actions to fulfill Canada's economic, social, and cultural rights (ESCR). While the report highlights important measures taken to ensure these rights, Canada has still failed to fully guarantee Indigenous women and girls' ESCR. This failure directly contributes to the risk factors of violence and the high rates of MMIWG. Moreover, when Indigenous women and girls have their life taken from them through violence, they are no longer able to enjoy the rights guaranteed to them by the ICESCR. As such, it is crucial that Canada take measures to improve fulfillment of these rights to all.

## Questions for Canada

1. When will the Canadian government be implementing a National Inquiry into Murdered and Missing Indigenous women and girls?
2. How will the Canadian government communicate the importance of this issue and the value and worth of each murdered and missing Indigenous woman or girl?
3. What level of consultation will the government undertake with Indigenous communities throughout the inquiry?
4. What efforts will Canada take to ensure that discriminatory policies and legislation against Indigenous women are eradicated?
5. How does Canada plan to compensate the families of murdered and missing Indigenous women?
6. How will Canada resolve the chronic underfunding of organizations that address the root causes of violence against Indigenous women and girls?
7. What efforts is Canada undertaking to ensure that the police forces are properly conducting investigations into missing and murdered Indigenous women and girls?
8. How will Canada ensure that the wage gap between men and women is closed?

9. How will Canada address the social assistance rates that are inadequate to provide Indigenous women and girls with their basic needs?
10. How will the Canadian government ensure that Indigenous women and girls have access to online resources and the physical safe houses to escape violence, in their traditional languages?
11. What actions is Canada taking to ensure that Indigenous communities receive quality education?
12. What actions is Canada taking to ensure that First Nations housing provides residents with an adequate standard of living?

## Recommendations

1. The Canadian government conduct a National Commission of Inquiry into murdered and missing Indigenous women and girls.
2. A National Action Plan be developed that outlines actions taken to address the issue. This Plan should be a coordinated effort between federal, provincial, and Indigenous governments and service providers.
3. The Canadian government acknowledge and prioritize violence against Indigenous women and girls.
4. Proper consultation to Indigenous women is taken for policies regarding violence against women.
5. The establishment of a compensation and healing fund for families and victims of violence against Indigenous women.
6. The Canadian government review and undertake a law reform into discriminatory legislation towards Indigenous women.
7. The Canadian government properly fund Indigenous specific and Indigenous led programs that address the contributing factors of violence against Indigenous women and girls. This funding must be adequate to deliver services and stable through multi-year agreements. These programs should address:
  - a. Article 6 - Employment training
  - b. Article 10 - Family violence prevention for Indigenous men and women
  - c. Article 11 - Housing
  - d. Article 11 - Food security in Indigenous communities

- e. Article 15 - Programs that teach Indigenous languages
8. Measures be taken to improve the relationships between police and the indigenous community. These measures must address:
    - f. Improved cultural sensitivity training
    - g. Specific training regarding improved relations with sex trade workers
    - h. Greater accountability measures for police officers
    - i. More accessible and effective reporting measures for Indigenous individuals to report police mistreatment and misconduct
  9. That the Canadian government continue work towards closing the wage gap between men and women and that research is conducted into wage disparities between Indigenous and non-Indigenous women.
  10. Review social assistance rates in all provinces and territories and re-define “basic needs” to include transportation, telephone, and internet services.
  11. Provide accessible transportation services and physical accesses to places of safety.
  12. The Canadian government remove the funding cap for First Nations education and increase the funding according to the needs of the communities. This funding must include the provision of accessible child care for Indigenous females who require child minding to further their education.
  13. The Canadian government address inadequate Internet access in remote areas of the country.
  14. The Canadian government ensure that resources for Indigenous women and girls are available in traditional languages.

## **I. Contributing Factors to Violence Against Indigenous Women and Girls**

There are several key contributing factors to Canada’s high rate of MMIWG. These exist, in large part, due to years of systemic disadvantage and oppression of Indigenous people in Canada. Historical events, such as colonization and residential schools, have created a system that perpetuates multiple barriers for Indigenous women and girls.

## Poverty and Unemployment

Many Indigenous women and girls live in a cycle of poverty and unemployment. Some First Nations communities, for example, have a rate of unemployment as high as a 90%.<sup>34</sup> The Royal Canadian Mounted Police (RCMP)<sup>35</sup> found that Aboriginal female victims of violence were employed at a rate of 16%, compared to a rate of 40% of non-Aboriginal victims. Accordingly, 18% of Aboriginal female victims of violence had to support themselves and their families through illegal avenues.<sup>36</sup>

Poverty must be viewed in the historical context. Many Indigenous women and girls grow up in families plagued by the inter-generational trauma from residential schools and colonization, often leading to feelings of shame and self-loathing.<sup>37</sup> This makes long-term employment incredibly difficult to maintain.

Poverty is dangerous for many Indigenous women and girls. It can force women to remain in unsafe environments, such as abusive relationships, due insufficient resources to leave. Those women and girls who do leave violent situations may end up homeless or in the sex trade.<sup>38</sup>

The cycle of poverty is also linked with the many other contributing factors discussed in this report. Furthermore, poverty is a consequence of many ICESCR rights not being fulfilled. For example, without proper educational services to Indigenous women and girls, the education attainment levels are lower, leading to higher rates of unemployment and poverty.

## The Sex Trade

The Sex Trade may be a form of employment for Indigenous women and girls who need to support themselves and their families. A study found that 40% of women in Vancouver's sex trade cited poverty and financial need as a reason for engaging in the work.<sup>39</sup> The RCMP found that in 1991 to 2012, 12% of female Aboriginal victims of violence were involved in the sex trade.<sup>40</sup>

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<sup>34</sup> Parliament, Special Committee on Violence Against Indigenous Women, *Invisible Women: A Call to Action A Report on Missing and Murdered Indigenous Women in Canada*, (March 2014) (Chair: Stella Ambler) at 18 [*Invisible Women*].

<sup>35</sup> While the RCMP have provided statistics on the rates and factors contributing to MMIWG, it is important to note that the RCMP report is flawed and, as such, these numbers may be skewed. The numbers reported refer only to deaths classified as homicides by the RCMP. The RCMP has also acknowledged flaws in identifying victims as Indigenous.

<sup>36</sup> Royal Canadian Mounted Police, *Missing and Murdered Aboriginal Women: A National Operational Overview* (2014) at 13 [RCMP].

<sup>37</sup> Amnesty International Report, AI Index: AMR 20/003/2004 October 2014 at 9 [*Stolen Sisters*]. “Stolen Sisters: A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada” at 9 [*Stolen Sisters*].

<sup>38</sup> *Invisible Women* at 18.

<sup>39</sup> *Stolen Sisters* at 13.

<sup>40</sup> RCMP at 17.

Working in the sex trade is associated with stigmatization and the risk of violence. Further more, many sex trade workers may feel reluctant to report instances of violence to police<sup>41</sup> and, therefore, violence continues without a threat of arrest for perpetrators.<sup>42</sup>

## Family Violence and Addiction

The RCMP attributed spousal or other familial violence as a common factor in Aboriginal deaths. The RCMP also noted that 63% of Aboriginal female victims had consumed alcohol and drugs prior to the violent incident. While the RCMP point to familial violence and addiction as a contributing factor to MMIWG, a broader analysis is required. Violence and addictions in Indigenous families must be understood in the context of the colonial history of Canada.

The effects of residential schools in the Indigenous community have contributed to levels of family violence. Amnesty International found that many survivors of residential schools “carried a sense of shame and self-loathing. Perhaps most harmfully, they were denied the opportunity to be exposed to good examples of parenting, and instead learned violence and abuse.”<sup>43</sup> The harsh environment of residential schools<sup>44</sup> and the sixties scoop<sup>45</sup> resulted in many survivors finding it difficult to parent well.

During instances of familial violence, many Indigenous females do not have the option of calling the authorities due to economic dependence on their family or the fear of child authorities apprehending their children.<sup>46</sup> By no fault of their own, Indigenous women may remain in violent relationships, increasing their risk of further violence.

Residential school survivors often developed addictions as a means of coping to the years of abuse suffered.<sup>47</sup> Winnipeg survivor Alma Scott told the Truth and Reconciliation Commission (TRC) that,

[as] a direct result of those residential schools because I was a dysfunctional mother.... I spent over twenty years of my life stuck in a bottle in an addiction where I didn't want to feel any emotions so I numbed out with drugs and with alcohol.... That's how I raised my children, that's what my children saw, and that's what I saw.<sup>48</sup>

The inter-generational trauma from residential schools has contributed to high levels of addiction. For Indigenous women and girls, those living with addictions have a greater risk of

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<sup>41</sup> This will be expanded on below.

<sup>42</sup> *Stolen Sisters* at 16.

<sup>43</sup> *Stolen Sisters* at 9.

<sup>44</sup> Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015) at 136 [TRC].

<sup>45</sup> TRC at 138.

<sup>46</sup> *Stolen Sisters* at 7.

<sup>47</sup> TRC at 136.

<sup>48</sup> TRC at 136.

violence. For example, those who suffer addictions may also enter work in the sex trade as a way to support their addiction.<sup>49</sup>

## Relationship with the Police/Criminalization of Indigenous Women and Girls

While police are supposed to be protectors, their relationship with Indigenous women and girls is strained. Those women and girls who do report instances of violence to authorities may encounter negative responses from those in positions of power, such as the belief that the complainant created their own violent destiny. Amnesty International noted that “even when a woman does overcome these barriers and report that she has been the victim of a violent attack, she may well meet with an unsympathetic or skeptical response.”<sup>50</sup>

Many Indigenous families feel dissatisfaction in the police’s response to a report of a missing person. For example, police had failed to take basic steps like interviews or “appealing to the public for information.”<sup>51</sup>

Indigenous women and girls are also over-policed and criminalized by authorities, resulting in the over-representation of Indigenous women in the Canadian justice system. A Manitoba justice inquiry attributed this, in part, to the tendency of police to charge Indigenous people where white people would not have been charged.<sup>52</sup> This maintains the strained relationship between the police and Indigenous women and girls, and perpetuates high levels of violence.

## Sexism

Patriarchal attitudes and sexist violence in Indigenous communities can be partially attributed to colonialism. The implementation of the *Indian Act*<sup>53</sup> created a patriarchal worldview. Pre-contact, Indigenous people were often matrilineal, with women holding positions of power and leadership.<sup>54</sup> Policies in the *Indian Act*, such as an Indigenous woman losing her Aboriginal status if she married a man from a different community, contributed to the inequality between Indigenous men and women.<sup>55</sup>

Indigenous women are now subjected to inequality due to their culture **and** their sex. This inequality exists not only in the private life, but also the public life. Canada’s Royal Commission on Aboriginal Peoples found that “the dominant society has wielded ‘over every aspect of their

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<sup>49</sup> *Stolen Sisters* at 13.

<sup>50</sup> *Stolen Sisters* at 7.

<sup>51</sup> *Stolen Sisters* at 19.

<sup>52</sup> *Stolen Sisters* at 18.

<sup>53</sup> *Indian Act*, RSC 1985, c. I-5.

<sup>54</sup> Pippa Feinstein and Megan Pearce, “Review of Reports and Recommendations on Violence Against Indigenous Women in Canada” (2015) at 9 [Feinstein and Pearce].

<sup>55</sup> *Stolen Sisters* at 8.

lives, from the way they are educated and they way they can earn a living to the way they are governed.”<sup>56</sup>

## Racism

Racism often impedes all areas of Indigenous women and girls lives. They may be met with both subtle and overt racist attitudes that range from being called a “dirty Indian” to experiencing a change in treatment from non-Aboriginal counterparts.<sup>57</sup> Racism is dangerous when it creates fear of reporting violence to authorities and inadequate police investigations<sup>58</sup>, as discussed above.

## II. Rights at Stake

### Article 2; Paragraph 1 – Duty on State Parties to Take Measures Towards Full Realization to the Maximum of Available Resources

The Committee requested in their list of issues that Canada elaborate on steps taken to ensure that the 2012 federal budget “did not generate disproportionate impact on disadvantage and marginalized groups and individuals.” There have been extreme funding cuts to programs benefiting Indigenous women and girls in recent years.

The Legal Strategy Coalition in Canada recently compiled numerous reports and recommendations on the topic of MMIWG. Twenty-eight of these reports recommended that measures be taken to address the root causes of violence against Indigenous women and girls. This would include supporting services for housing, employment, education, and reducing criminalization of Indigenous women.<sup>59</sup> However, the LSC has found that many organizations addressing root causes have inadequate funding and have experienced funding cuts. Numerous organizations have been forced to close as a result, while some of the Indigenous led work was subsumed into government programs.<sup>60</sup> Aboriginal People Television Network (APTN) reported that 2012-2015 federal funding cuts to Indigenous organizations totaled \$60 million and that there was a 59% funding drop.<sup>61</sup>

According to the Canadian Centre for Policy Alternatives, the 2010 and 2011 budgets resulted in several sectors being impacted by the cuts,

Programs for Aboriginal on-reserve housing, training and primary health

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<sup>56</sup> *Stolen Sisters* at 8.

<sup>57</sup> *Stolen Sisters* at 12.

<sup>58</sup> *Invisible Women* at 20.

<sup>59</sup> Feinstein and Pearce at 8.

<sup>60</sup> Feinstein and Pearce at 10.

<sup>61</sup> Feinstein and Pearce at 10.

care; support for low income family, seniors and the unemployed; environmental programs; workplace and food safety inspectors; and Canada's international profile.<sup>62</sup>

While there have been multiple cuts, a 5-year Action Plan to Address Family Violence and Violent Crimes Against Aboriginal Women and Girls devoted \$25 million in funding to funding for different services.<sup>63</sup> These services included a missing persons database and a National Centre for Missing Persons and Unidentified Remains. These funding choices illustrate the government's approach to MMIWG as one that overlooks root causes and prevention measures, but views the issue as solely a problem of crime. Proper government funding and support is needed for Indigenous specific and Indigenous led programs that address the causes of violence against Indigenous women and girls.

## Article 2; Paragraph 2 – The Right to be Free from Discrimination

The recent funding cuts described above has disproportionately affected the Indigenous community.<sup>64</sup> Decreased support for programs that address root causes adversely affects the safety of Indigenous women and girls. For example, the Sisters in Spirit program of the Native Women's Association of Canada conducted research on violence against Indigenous women and gathered statistical data on the issue. The Aboriginal Healing Foundation supported survivors of residential schools and promoted reconciliation and healing in the community. Both of these programs are no longer operating.

The relationship between Indigenous women and the police forces in Canada also illustrates the discrimination against Indigenous women and girls. Felicia Solomon was a 16-year-old girl who was missing in Winnipeg in 2003 and later confirmed dead. The family described their frustration when Winnipeg Police failed to take any active steps to find Felicia, merely telling the family to continue looking for her themselves.<sup>65</sup>

'When we listened to the news, when something happened to someone else's child, whether they are white or from any other kind of race or culture, they do everything. It's completely different when an Indian person goes missing. We see that.'<sup>66</sup>

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<sup>62</sup> "Federal spending cuts will cost more than 60,000 jobs: study" (23 January 2012), *Canadian Centre for Policy Alternatives*, online: <<https://www.policyalternatives.ca/newsroom/news-releases/federal-spending-cuts-will-cost-more-60000-jobs-study>>.

<sup>63</sup> Feinstein and Pearce at 3.

<sup>64</sup> Feinstein and Pearce.

<sup>65</sup> *Stolen Sisters* at 33.

<sup>66</sup> *Stolen Sisters* at 33.

A Human Rights Watch report<sup>67</sup> that explored the relationship between RCMP and Indigenous women and girls in Northern BC exposed this toxic relationship. The women and girls were subjected to sexual assault, rape, violence, strip searches, injuries from police dogs, and excessive force.<sup>68</sup> Those women and girls who suffer mistreatment and abuse often have inadequate options. Reporting the complaint of mistreatment is time-consuming and complainants commonly fear retaliation.<sup>69</sup>

The relationship between the police and Indigenous women and girls has also impacted the level of safety in the sex trade. As previously discussed, women and girls in the sex trade have felt apprehensive about reporting instances of violence to authorities, which only perpetuates violent attitudes among customers.<sup>70</sup> While the RCMP does receive cultural awareness and sensitivity training<sup>71</sup>, it is clear that this training is insufficient and more work is needed to ensure that Aboriginal women and girls receive the same treatment from authorities as non-Aboriginal women and girls.

### Article 3 – Equality between Men and Women

The introduction of colonizer’s patriarchal worldview led to the inequality between Indigenous men and women. While all women may experience inequality, this is especially significant for Indigenous women who may also experience discrimination due to their culture.

In order alleviate risk factors of violence, such as poverty, Indigenous women and girls must be assured equal pay as their male colleagues. While some provinces discussed their efforts to address the wage gap between females and males in Canada’s report, wages are still not equal. Moreover, there was no discussion of any disparity of wages between Indigenous women and non-Indigenous women.

### Article 6 – Right to Work

Poverty was described as a key contributor to MMIWG. When economic opportunities are not available to Indigenous females, they may be forced to look to other avenues for income, which may be associated with high risk of violence. Poverty also precludes those who are in dangerous situations from having the resources to get to safety.

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<sup>67</sup> Human Rights Watch, *Those Who Take Us Away: Abusing Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada* (USA: Human Rights Watch, 2013) [*Those Who Take Us Away*].

<sup>68</sup> *Those Who Take Us Away* at 8.

<sup>69</sup> *Those Who Take Us Away* at 8.

<sup>70</sup> *Stolen Sisters* at 16.

<sup>71</sup> Feinstein and Pearce at 25.

Canada's sixth report notes employment training programs that are provincially and federally funded, however, the report fails to note funding that has been retracted to Indigenous specific organizations providing opportunities for individuals to alleviate themselves out of poverty.

Canada's report acknowledges that Aboriginal people were more likely to experience job loss during the recession. Aboriginal people are also among those that have recovered from these losses slower than others. The job gains as a percentage of total losses from October 2008 to 2009 for Aboriginal people off reserve was 5.9%. This is significant compared to the job gains of 45% for workers with secondary education and 31.4% for workers with less than secondary education.

While many provinces do provide employment training opportunities, and it is important to note the importance of this service delivery, there were few Aboriginal specific programs and, when there were, it is unclear if they were Aboriginal led or if Indigenous people were involved in the program development and service delivery. Many of the programs also focused on government specific job training, which is helpful for those who wish to enter the government labour force, however, a breadth of opportunities and training for all sectors is needed.

## Article 7 – The Right to Just and Favourable Conditions of Work

Reducing violence against Indigenous women can be accomplished by: 1) Ensuring a safe work environment free of physical and emotional violence; 2) Guaranteeing equal wages between men and women; and 3) Providing a wage that allows for Indigenous women and girls to properly care for themselves.

It is important to recognize the sex trade as a workplace where many Indigenous women support themselves. It is crucial that the police address violence in the sex trade in an appropriate and sensitive manner and that the government properly fund and support community programs that provide services to women in the sex trade. The Sister Watch Program, a Vancouver partnership between the police and an Aboriginal organization, provides resources and supports to sex trade workers and addresses safety issues.<sup>72</sup> Programs such as these ensure that those involved in the survival sex trade have a safe work environment.

For Indigenous women and girls who are working in mainstream labour sectors, a safe environment free of harassment that provides a livable and equal wage is vital to ensure their safety and success. Canada's sixth report did not adequately discuss the right to just and favourable conditions of work. Four provinces noted their efforts to provide this to Canadians. While there were positive efforts being imposed in those provinces, such as Ontario's *Occupational Health and Safety Amendment Act*<sup>73</sup>, which aims to prevent workplace violence

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<sup>72</sup> Feinstein and Pearce at 22.

<sup>73</sup> Bill 168, *Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace)*, 1<sup>st</sup> Sess, 29<sup>th</sup> Leg, Ontario, 2009 (royal assent received 15 December 2009) SO 2009, c 23.

and harassment<sup>74</sup>, there must be specific actions to address any racism and lack of opportunities that female Indigenous employees face.

## Article 9 – The Right to Social Security

Proper social assistance levels are imperative to ensuring Indigenous women and girls are safe and content and do not force them to acquire supplementary income through unsafe avenues. Indigenous female victims of violence are more likely to be on social assistance or disability insurance, at 24%, than their non-Aboriginal counterparts, at 10%.<sup>75</sup>

The Committee requested that Canada determine if social assistance levels are sufficient for an adequate standard of living. In Manitoba, for example, the Employment and Income Assistance (EIA) rate is said to provide a sufficient income to meet daily basic needs. These needs, however, do not include transportation, a telephone, and internet services.<sup>76</sup> These services are vital for ensuring the safety of Indigenous women and girls. A woman facing violence must have the ability to call for help, research safe resources, and find transportation to safety.

In Manitoba, a single adult living on EIA in 2014 received monthly federal and provincial benefits of \$677, however, the average monthly rent for a bachelor suite in the province was \$556.<sup>77</sup> These rates are insufficient to provide Indigenous women and girls with an adequate standard of living and resources to ensure their safety and success.

It is important for both levels of Canadian government to re-assess the social assistance levels across the country. The definition of “basic daily needs” needs to be examined in the context of the safety for Indigenous women and girls.

## Article 10 – Protection of the Family

The Committee requested that Canada describe the measures adopted to address violence against women and the impacts of preventative measures. Supporting programming such as safe houses are important to ensuring the safety of Indigenous women and girls, however, support for research and programming of the root causes of this violence is imperative. There are specific concerns about funding cuts to programs, as well as the lack of Indigenous specific program development and delivery.

Not only is proper support needed for organizations supporting Indigenous mothers and their children, but also for organizations supporting Indigenous men. Programs that educate and

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<sup>74</sup> Canada Report at 63.

<sup>75</sup> RCMP at 13.

<sup>76</sup> Canadian Centre for Policy Alternatives, *The View From Here 2015: Manitobans Call for a Renewed Poverty Reduction Plan* (Canadian Centre for Policy Alternatives, January 2015) at 33 [*The View From Here*].

<sup>77</sup> *The View From Here* at 34.

support Indigenous men on the causes and consequences of domestic violence is a crucial factor in eliminating family violence. Examples of such organizations includes Kizhaay Anishnaabe Niin and Kanawayhitowin in Ontario. Both of these programs have been financially supported by the Ontario government. Sustainable support for these programs are needed from all levels of government.

The federal government has acknowledged in their Action Plan to Address Family Violence and Violent Crimes against Indigenous Women and Girls that communities are in the best position to lead solutions to family violence.<sup>78</sup> This is an imperative observation. Programs must be Indigenous specific, Indigenous led, and must be properly funded.

It is important that Canada increase consultation with Indigenous women in developing policies that affect them, such as restorative justice programs for violence against Indigenous women and girls.<sup>79</sup> In order to properly ensure protection of the family, the Canadian government must gather knowledge from those who have experience in, and knowledge of, the issue of violence against Indigenous women and girls.

Transportation services are also crucial to ensuring the safety of Indigenous women and their children. As many Indigenous families live in rural areas, accessible and safe transportation to organizations, such as emergency shelters, is needed in order to provide support and safety in instances of violence.

Many Indigenous families are not together due to the involvement of Child and Family Services. Indigenous children being taken away from their families is rooted in history. Children were forcefully taken away to attend residential schools. Government officials often threatened to put parents in jail if they refused to allow their children to leave.<sup>80</sup>

The 1960s brought, once again, apprehension of Indigenous children from their families. The sixties scoop, as it is commonly referred to, removed 11,000 Indigenous children from their homes between 1960 and 1990.<sup>81</sup>

This legacy continues today with extremely high rates of Indigenous children being in the care of Child and Family Services (CFS). According to the TRC, a total of 9,241 First Nations children were in the care of First Nations CFS agencies in 2010 to 2011.<sup>82</sup>

The welfare of Indigenous children may be at risk when they under the care of CFS. Stories have emerged of foster families abusing Indigenous children, both emotional, physically, and

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<sup>78</sup> Feinstein and Pearce at 13.

<sup>79</sup> Feinstein and Pearce at 15.

<sup>80</sup> Truth and Reconciliation Commission of Canada, *The Survivors Speak: A Report of the Truth and Reconciliation Commission of Canada* (2015) at 13.

<sup>81</sup> Native Women's Association of Canada, "Fact sheet: Root Causes of Violence Against Aboriginal Women and the Impact of Colonization", online: <[http://www.nwac.ca/wp-content/uploads/2015/05/Fact\\_Sheet\\_Root\\_Causes\\_of\\_Violence\\_Against\\_Aboriginal\\_Women.pdf](http://www.nwac.ca/wp-content/uploads/2015/05/Fact_Sheet_Root_Causes_of_Violence_Against_Aboriginal_Women.pdf)>.

<sup>82</sup> TRC at 141.

sexually.<sup>83</sup> Alberta research found that 78% of children that had died under the care of CFS between 1999 and 2013 were Aboriginal.<sup>84</sup>

Systematic policies, such as high rates of child apprehension, do not protect Indigenous women and their children. This only reinforces the trauma experienced in past generations. While protecting children is critical, children must not be taken away from their families prematurely. Moreover, support must be given to Indigenous families to address the causes of family violence, such as the effects of residential schools. Assuring that Indigenous women and girls are united with their families in a safe environment will contribute to lowering levels of violence.

## Article 11 – Right to Adequate Standard of Living

Indigenous families on First Nations communities may live in homes that do not fulfill this right. On-reserve homes are often plagued with mould, overcrowding, insufficient infrastructure, unsafe and/or inaccessible drinking and sanitation water, inadequate heating and electrical systems, and long waits for housing.<sup>85</sup>

The federal government discussed the First Nations Market Housing Fund in their report, which set aside \$300 million to build new housing for community members to privately own.<sup>86</sup> However, as of 2015, the fund had built 99 homes. The fund had a target of 25,000 homes by 2018.<sup>87</sup> This strategy also only addressed those individuals on communities who are financially able to own a home.

There are clear deficiencies in the First Nations Market Housing Fund and the Federal government's efforts to address on-reserve housing must be assessed, in consultations with Indigenous communities, in order to fulfil Canada's obligation in article 11.

The housing situation on First Nations communities is yet another factor that keeps Indigenous women and girls in dire situations. An adequate standard of living, including housing, is a key factor in determining their self-worth, emotional, mental, and physical state.

For many Indigenous women and girls who are living in poverty, homelessness is a reality, increasing their risk of violence.<sup>88</sup> Aboriginal people in general are over-represented in the

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<sup>83</sup> TRC at 140.

<sup>84</sup> TRC at 141.

<sup>85</sup> Assembly of First Nations, "Fact Sheet – First Nations Housing on Reserve" (June 2013), Assembly of First Nations, online: <<http://www.afn.ca/uploads/files/housing/factsheet-housing.pdf>> at 1.

<sup>86</sup> Canada Report at 28.

<sup>87</sup> Dean Beeby, "First Nations \$300M federal housing fund builds just 99 homes" (27 May 2015), CBC, online: <<http://www.cbc.ca/news/politics/first-nations-300m-federal-housing-fund-builds-just-99-homes-1.3086954>>.

<sup>88</sup> Vancouver, Vancouver Police Department, *The Tragedy of Missing and Murdered Aboriginal Women in Canada* (June 2011) online: <<http://vancouver.ca/police/assets/pdf/reports-policies/missing-murdered-aboriginal-women-canada-report.pdf>>. at 13 [*Sisterwatch*].

homeless population in Canada. Homelessness among women in particular is often caused by poverty and violence.<sup>89</sup>

Homelessness is both a risk factor for violence against Indigenous women and girls, and a result of Indigenous women and girls escaping violence. As such, culturally appropriate and Indigenous led resources must be supported.

Homelessness increases the likelihood of involvement in the sex trade for Indigenous girls. The UN Committee on the Rights of the Child has found that homeless young people are more vulnerable to risky ways of survival. “Once a child or youth loses such basic parameters as safety, shelter, and sustenance, their vulnerability forces them into situations whereby the sex trade can become the only viable alternative for survival.”<sup>90</sup> Homelessness is linked to numerous other risk factors, such as the sex trade, and, therefore, the right to adequate housing is critical in decreasing violence against Indigenous women and girls.

Food security is an area of concern for many Indigenous women and girls. Inaccessible healthy food is inter-connected to poverty and social assistance levels, whereby some may lack the resources to purchase food. Many provinces are supporting programming to address food security, however, this is still a major concern. Northern communities and territories are especially susceptible to inaccessible food. A Nunavut mayor reported spending \$600 on weekly groceries for his family of five, due to the extreme prices of goods.<sup>91</sup>

Research has shown that food insecurity has had a negative impact on the physical and mental health of Aboriginal people in Canada.<sup>92</sup> It perpetuates the cycle of poverty when Indigenous women and girls are spending excessive money on feeding themselves and their families.

### **Article 13; Paragraph 1 – The Right to Education**

Canada was specifically asked to describe measures taken to ensure that Indigenous children are adequately educated in a culturally appropriate way. By increasing educational opportunities and attainment for Indigenous women and girls, other risk factors, such as poverty and unemployment, are likely to decrease.

Inadequate education for the Indigenous community goes back to residential schools. The education provided at these schools was often limited to elementary training and was riddled

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<sup>89</sup> Stephen Gaetz et al, *The State of Homelessness in Canada* (Toronto: Canadian Homelessness Research Network Press, 2013) at 7.

<sup>90</sup> *Stolen Sisters* at 13.

<sup>91</sup> Andrea Woo, “Critics slam Canada’s northern food program” (4 November 2014), *CBC*, online: <<http://www.theglobeandmail.com/news/critics-slam-canadas-northern-food-program/article21451386/>>.

<sup>92</sup> Andrea Woo, “Critics slam Canada’s northern food program” (4 November 2014), *CBC*, online: <<http://www.theglobeandmail.com/news/critics-slam-canadas-northern-food-program/article21451386/>>.

with abuse.<sup>93</sup> The trauma from this experience has led to lower levels of education. The TRC found that,

the lowest levels of educational success are in those communities with the highest percentages of descendants of residential school Survivors: First Nations people living on reserves, and Inuit. Both groups have a high school completion rate of 41% or less.<sup>94</sup>

Inadequate education for Indigenous students continues today. The funding for schools on First Nations communities has not been updated since 1996 and the funding growth has been capped at 2%, while the funding to provincial and territorial schools has increased annually by 3.8%.<sup>95</sup> These educational deficiencies result in Indigenous women and girls having a lower rate of post secondary education.<sup>96</sup>

Inadequate education, beginning at residential schools, and continuing on through lack of appropriate funding for First Nations schools has contributed to lower success rates for Aboriginal students. This perpetuates risk factors contributing to high rates of violence.

## Article 15 – Cultural Rights

The loss of Indigenous languages can be largely attributed to residential schools. English and French were the only languages allowed in schools and children who spoke their mother tongue were punished.<sup>97</sup> This resulted in many losing their traditional languages and others refusing to pass down their language to their children, due to the psychological effects of the punishment they suffered.<sup>98</sup>

As of 2011, only 14.5% of Aboriginal individuals reported their traditional language as their first language, compared to 26% in 1996.<sup>99</sup> The loss of indigenous languages, beginning in residential schools, has created a spiritual harm to the Aboriginal culture.<sup>100</sup> When Indigenous women and girls are not connected to their tradition and cultural spirit, their level of belonging and self-worth may suffer.

Education on traditional languages is greatly needed for Indigenous women and girls. For those that speak their traditional language, programming and resources must be provided in those languages.

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<sup>93</sup> TRC at 144.

<sup>94</sup> TRC at 146.

<sup>95</sup> TRC at 148.

<sup>96</sup> TRC at 151.

<sup>97</sup> TRC at 153.

<sup>98</sup> TRC at at 154.

<sup>99</sup> TRC at at 154.

<sup>100</sup> Native Women's Association of Canada, "Violations of Indigenous Human Rights" (December 2002), online: <<http://www.nwac.ca/wp-content/uploads/2015/05/2002-NWAC-Violations-of-Indigenous-Human-Rights-Submission.pdf>> at 24.

The Committee's list of issues requested that Canada report on the level of internet access for marginalized group. As many Indigenous women and girls are living in poverty, access to internet may not be available. The resources on the internet for women and girls is invaluable. Information on safe houses, for example, is an imperative online resource that should be available for all Indigenous women and girls.

Access to internet is also helpful for data gathering on murdered and missing indigenous women and girls, such as the ability to report missing women and girls online. For those Indigenous families living on First Nations communities or living in poverty in urban centres, access to the internet is not a reality. This highly restricts the mode in which loved ones can report those that are missing.<sup>101</sup>

## Conclusion

The Indigenous Bar Association respectfully submits that Canada has failed to fulfill Indigenous women and girls' economic, social, and cultural rights by not properly addressing MMIWG. We are grateful for the opportunity to submit our questions and recommendations to Canada and we are confident that the Committee will work to advance the rights of Indigenous women and girls in Canada.

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<sup>101</sup> *Sisterwatch* at 22.