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HAUT-COMMISSARIAT

UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

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1 August 2018

Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 9, 12 and 16 of the concluding observations on the report submitted by Canada (CCPR/C/CAN/CO/6), adopted at the 114th session in July 2015.

On 16 September 2016, the Committee received the reply of the State party. At its 123rd session, held in July 2018, the Committee evaluated this information. The assessment of the Committee and the additional information requested from the State party are reflected in the Report on follow-up to concluding observations (see CCPR/C/123/2). I hereby attach, for ease of reference, a copy of the relevant section of the said report (advance unedited version).

The Committee considered that the recommendations selected for the follow-up procedure have not been fully implemented and decided to request additional information on their implementation. Taking into account that the next periodic report of the State party is due by 24 July 2020, the Committee requests the State party to provide this information in the context of its next periodic report.

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant.

Please accept, Excellency, the assurances of my highest consideration.

Mauro Politi
Special Rapporteur for Follow-up to Concluding Observations
Human Rights Committee

H.E. Mrs. Rosemary McCarney
Ambassador Extraordinary and Plenipotentiary
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Report on follow-up to concluding observations of the Human Rights Committee, CCPR/C/123/2**:**

New assessment of replies[1]

A **Reply/action largely satisfactory:** The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee.

B **Reply/action partially satisfactory:** The State party took steps towards the implementation of the recommendation but additional information or action remains necessary.

C **Reply/action not satisfactory:** Response received but actions or information not relevant or do not implement the recommendation. The action taken or information provided by the State party does not address the situation under consideration.

D **No cooperation with the Committee:** No follow-up report received after reminder(s).

E **Information or measures taken are contrary to or reflect rejection of the recommendation**

Canada

Concluding observations:	CCPR/C/CAN/CO/6, 20 July 2015
Follow-up paragraphs:	9, 12 and 16
Follow-up reply:	16 September 2016[2] (annex I[3])
Committee's evaluation:	Additional information required for paragraphs 9**[B]**, **[B][C][B]**, 12 **[C]** and 16 **[B][C]**
Non-governmental organizations:	Amnesty International, 2 June 2017; Feminist Alliance for International Action, July 2017

Paragraph 9: Murdered and missing indigenous women and girls

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.

[1] Adopted by the Committee at its 118th session (17 October – 4 November 2016). The full assessment is contained in CCPR/C/119/3.

[2] See http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fFCO%2fCAN%2f25188&Lang=en.

[3] See http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fFCO%2fCAN%2f25189&Lang=en.

Summary of State party's reply

(a) The Minister of Indigenous and Northern Affairs and the Minister of Justice and Attorney General of Canada launched a national pre-inquiry process into missing and murdered indigenous women and girls. The process (2015/16) involved seeking recommendations from survivors, families, indigenous organizations and the general public on how to best address and prevent this type of violence.

In 2016, the Government appointed five Commissioners to lead the National Inquiry, which will run from September 2016 to the end of 2018, with a budget of Can$ 53.8 million;

(b) At the first two meetings of the National Round Table on Missing and Murdered Indigenous Women and Girls, held in 2015 and 2016, stakeholders identified priority areas and agreed on multiple actions.

In 2016, the Justice Framework to Address Violence against Indigenous Women and Girls, which identifies principles and priorities for improving how the justice system prevents and responds to this type of violence, was approved.

Law enforcement agencies collaborate in a variety of ways to address violence against indigenous women and girls;

(c) The 2016 federal budget provided for the construction and renovation of over 3,000 shelters and transition houses, including shelters that serve First Nations communities. In 2017, additional funding will be allocated over five years to support shelters for victims in these communities.

The Government will review existing gender- and culturally sensitive training policies for federal law enforcement officers, and will toughen criminal laws and bail conditions in cases of domestic assault.

Provincial and territorial governments had implemented numerous strategies to prevent violence against indigenous women and to support victims and families of missing or murdered indigenous women, as well as holding events and conferences on violence against women in 2015;

(d) The 2016 federal budget proposed Can$ 8.4 billion investment over five years to improve the socioeconomic conditions of indigenous peoples.

In 2016, a specific budget was allocated to the First Nations Child and Family Services Program. In 2016, the Canadian Human Rights Tribunal released a decision ordering the federal Government to reform the Program and cease its discriminatory practices. The federal Government is making progress in that regard.

A working group has been established to address the overrepresentation of indigenous children in child welfare services. The Government aims to reduce the number of children in care, and has adopted a prevention-focused approach. Measures have been taken to improve education for indigenous children and there are plans in place to improve the indigenous labour market and housing.

The State has acknowledged that indigenous people face a higher risk of human trafficking and has created the National Action Plan to Combat Human Trafficking to increase awareness and build knowledge of this issue.

Information from non-governmental organizations

Amnesty International

(c) Many root problems regarding the heightened risk of violence faced by indigenous women and girls remain unaddressed. There is no independent mechanism in place to re-examine cases where police investigations may have been inadequate or biased, and hearings with families have been delayed. The data-collection procedures used by the Government are inadequate. Furthermore, the vast

majority of First Nation reserves do not have shelters for women needing to escape violence;

(d) The plan to create a federal strategy on gender-based violence reportedly covers areas under federal jurisdiction only, which is insufficient to enact a truly national plan of action. Moreover, the strategy had not been enacted as of May 2017. Furthermore, despite the ruling of the Canadian Human Rights Tribunal, the discriminatory underfunding of on-reserve child welfare persists.

Not enough is being done to address violence against indigenous women and girls in the context of large-scale development projects and associated labour camps.

Feminist Alliance for International Action

(a) The fact that a National Inquiry was established does not mean that the State party can delay taking other recommended steps.

There are concerns about the National Inquiry's mandate and terms of reference. The Inquiry is currently in a state of collapse; it has held only one hearing since it began work in September 2016, and there have been no moves to launch a policy inquiry into systematic causes of violence;

(c) Not all cases of missing and murdered indigenous women have been duly investigated and prosecuted due to the fact that there is no consistent and reliable data being collected and to the lack of any standardized, mandatory protocols for police to follow when responding to these cases. Furthermore, there are no consistent standards or procedures to ensure that the indigenous peoples involved in these cases are not treated in a discriminatory, racist or sexist manner by the police and those in the justice system.

(d) The State party has not complied with this recommendation.

Committee's evaluation

[B] (a): The Committee appreciates the information provided regarding the establishment of the national pre-inquiry process and the appointment of Commissioners to lead the National Inquiry. The Committee notes the allocation of budgetary resources for the Inquiry, and the timeline until December 2018. The Committee regrets, however, that the State party's reply lacks specific information about the Inquiry's mandate and terms of reference. The Committee requests further information regarding: (a) the mandate and terms of reference of the Inquiry; (b) the number of hearings the Inquiry has held since its inception; and (c) the action taken by the Inquiry to address the Committee's recommendation.

[B] (b): The Committee notes the State party's engagement with non-governmental stakeholders to address violence against indigenous women through its National Round Table, as well as through the Justice Framework. The Committee regrets that the State party made no reference to any legislative review at any level that was taking place or being planned, and requires information on this point. The Committee acknowledges the examples provided in the State party's reply of collaboration between law enforcement agencies and other entities, but requires information about the coordination of police responses across the country to prevent the murders and disappearances of indigenous women and girls, which was not provided.

[C] (c): The Committee appreciates the fact that the State party is working to increase the number and quality of shelters, and that the reporting policies and practices have been updated to ensure better data collection on the indigenous origin of victims of violent crimes. The Committee regrets, however, that no information was provided on specific measures taken to effectively investigate, prosecute and punish the perpetrators of these crimes and provide reparation to victims. The Committee therefore requests information in this regard. In particular, the Committee notes that there are concerns that there is no independent mechanism to re-examine

cases where investigations carried out by the police may have been inadequate; that hearings are frequently delayed and that there are organizational problems during these processes; and that there are no national protocols and insufficient training on data-collection procedures. The Committee requests the State party to respond to these concerns. The Committee also asks the State party to clarify if there are, or will be, accessible shelters available for all First Nations communities.

[B] (d): The Committee notes that resources have been allocated in the federal budget to improve the socioeconomic condition of indigenous peoples, but requires additional information on a concrete plan for utilizing these resources. The Committee acknowledges the measures being taken to address issues in the child welfare system, housing, public health and to tackle human trafficking, but requests information about: (a) any measures being taken to address excessive use of force towards and abuse of indigenous women and girls in the context of large-scale development projects and associated labour camps; (b) measures taken to assess the impact of large-scale development projects on indigenous women and girls; and (c) measures taken to address the April 2016 Canadian Human Rights Tribunal decision ordering reform of the First Nations Child and Family Services Program and a halt to its discriminatory practices, particularly regarding the underfunding of on-reserve child welfare.

Paragraph 12: Immigration detention, asylum seekers and non-refoulement

The State party should refrain from detaining irregular migrants for an indefinite period of time and should ensure that detention is used as a measure of last resort, that a reasonable time limit for detention is set, and that non-custodial measures and alternatives to detention are made available to persons in immigration detention. The State party should review the Immigration and Refugee Protection Act in order to provide refugee claimants from "safe countries" with access to an appeal hearing before the Refugee Appeal Division. The State party should ensure that all refugee claimants and irregular migrants have access to essential health-care services, irrespective of their status.

Summary of State party's reply

The State party explained the conditions of detention under the Immigration and Refugee Protection Act and that Canada Border Services Agency officers must regularly appear before the Immigration Division of the Immigration and Refugee Board to demonstrate that continued detention is necessary. The Act was amended in 2012, adding a new provision stating that if an arrival is considered irregular, those arriving in this group may become "designated foreign nationals", who are subject to an initial mandatory arrest and detention at the time of arrival if they are 16 years of age or older. This happens only in exceptional circumstances and as at 11 May 2016, no individuals had been detained under this procedure.

There is no time limit on immigration detention, but the Supreme Court has determined that this does not constitute indefinite detention since there is an ongoing review process, which is subject to judicial review. The Canada Border Services Agency detained 6,768 individuals between April 2014 and March 2015, with an average detention of 24.5 days.

A Refugee Appeal Division was established in 2012, enabling claimants to appeal a negative Refugee Protection Division decision. In 2015, nationals of Designated Countries of Origin were denied access to the Refugee Appeal Division, but this was deemed discriminatory and has since been changed, giving these individuals access to the mechanism.

The Interim Federal Health Program has been restored as of April 2016 to provide limited and temporary health-care coverage to protected persons, refugee claimants, rejected refugee claimants and certain persons detained under the Immigration and Refugee Protection Act.

Information from non-governmental organizations

Amnesty International

Health coverage for refugee claimants was restored in 2016, but it has not been extended to irregular migrants irrespective of status, as the Committee recommended.

Adequate measures have not been taken to reform the immigration detention regime. There are insufficient safeguards against arbitrary detention and no upper time limit for immigration detention.

Three people have died in immigration detention since March 2016, owing to accountability gaps in the immigration detention regime. There is no independent oversight of Canada Border Services Agency.

The "designated foreign national" regime is of concern, as it may lead to mandatory detention, barred access to the Refugee Appeal Division, and no access to permanent residence for at least five years, contrary to article 9 of the Covenant.

Committee's evaluation

[C]: The Committee welcomes the reactivation of the Interim Federal Health Program in 2016, but requires information on its coverage, particularly regarding irregular migrants. The Committee notes the lack of specific information on measures taken after the adoption of its concluding observations on detention of irregular migrants. It requires information on: (a) measures taken to establish a reasonable time limit for detention of irregular migrants and to ensure that detention is used only as a measure of last resort; (b) the policy that "designated foreign nationals" are subject to mandatory arrest and detention, and the number of individuals detained under this policy since the adoption of the Committee's concluding observations; and (c) the access given to "designated foreign nationals" to the Refugee Appeals Division. The Committee also requests the State party's response to allegations that there is no independent oversight mechanism for the Canada Border Services Agency.

Paragraph 16: Indigenous lands and titles

The State party should consult indigenous people to (a) seek their free, prior and informed consent whenever legislation and actions impact on their lands and rights; and (b) resolve land and resources disputes with indigenous peoples and find ways and means to establish their titles over their lands with respect to their treaty rights.

Summary of State party's reply

(a) The State party will develop a new Federal Reconciliation Framework, in partnership with the First Nations, Métis and Inuit, and will work to improve partnerships with provincial, territorial and municipal governments. All laws, policies and operational practices will be reviewed to make sure that consultation and accommodation obligations are being met. The Government is working to implement the "Calls to Action" recommendations of the Truth and Reconciliation Commission, which will involve meeting international treaty obligations and commitments. Canada fully supports the United Nations Declaration on the Rights of Indigenous Peoples and will develop an action plan to implement it in 2016;

(b) "Aboriginal and treaty rights" are undefined as to their nature, scope and content, so parties rely on judicial guidance as to whether an Aboriginal right exists. As court cases dealing with indigenous issues are lengthy and costly, these issues are best addressed through negotiation, collaboration and dialogue.

There are currently 28 modern treaties and self-government agreements in effect. Modern treaties are the most comprehensive process to address section 35 Aboriginal rights. Canada is considering ways to speed up the process and renew the comprehensive claims process.

There are two alternative arrangements to modern treaties. A "specific claim" is defined as a claim made by a First Nation against the federal Government regarding land and other First Nations assets, and the fulfilment of treaties. A Specific Claims Tribunal was established in 2008 to make binding decisions on claims and award monetary compensation. A review of the Tribunal's mandate, structure and effectiveness began in 2014.

Provincial and territorial governments have processes in place to facilitate the negotiation of Aboriginal and treaty rights.

Beginning in 2004 and 2005, the Supreme Court of Canada held that the Crown has a duty to consult when conduct might adversely impact potential or established Aboriginal or treaty rights. Canada takes that duty very seriously.

The Government negotiates consultation protocols with Aboriginal communities. Consultation protocols have been concluded with multiple groups.

Information from non-governmental organizations

Amnesty International

(a) The State party continues to issue permits for resource development projects that are opposed by indigenous peoples and would have a significant negative impact on their ability to exercise their rights.

No measures have been adopted to ensure full implementation of the United Nations Declaration on the Rights of Indigenous Peoples. The permit for the Site C Dam project has not been revoked. A legal analysis of whether the Site C Dam plans are in accordance with the Government's obligations to uphold Constitutionally protected indigenous rights was refused by the federal Government.

Committee's evaluation

[B] (a): The Committee appreciates the information provided by the State party, but requires further information on: (a) the development of the new Federal Reconciliation Framework in partnership with the First Nations, Métis and Inuit; (b) measures taken to review all laws, policies and operational practices to make sure that consultation and accommodation obligations are being met; and (c) measures taken to implement the "Calls to Action" recommendations of the Truth and Reconciliation Commission, particularly regarding the State party's consultation obligations. The Committee also requires information regarding the Site C Dam project, its impact on indigenous rights and whether the State party is planning to revoke permits for the Site C Dam project.

[C] (b): The Committee appreciates the information provided by the State party on its mechanisms for resolving land and resource disputes with indigenous peoples, but requires further information on specific measures taken after the adoption of the Committee's concluding observations. In particular, the Committee requires clarification on: (a) whether the State party is planning to define the nature, scope and content of Aboriginal and treaty rights in legislation; (b) the number of claims settled since the adoption of the Committee's concluding observations and the number of claims currently being reviewed under the voluntary alternative dispute resolution process, based on the modern treaties and/or other alternative arrangements to modern treaties; and (c) if it is still possible for these cases to be brought before the courts.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party's next periodic report.

Next periodic report: 24 July 2020.