Submission of the Assembly of First Nations to the United Nations Committee on the Elimination of Racial Discrimination

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Response to Canada's 19th and 20th Periodic Reports

Introduction

The Assembly of First Nations (AFN) is the national organization for First Nations (Indian) peoples in Canada. This includes more than 800,000 citizens living in 633 First Nations communities, as well as rural and urban areas. The AFN is an advocacy organization for First Nations and our role is to advance First Nation priorities and objectives as mandated by the Chiefs-in-Assembly. This includes providing an organizing and coordinating role, providing legal and policy analysis, communicating with governments and the general public, facilitating national and regional discussions and facilitating relationship building between the Crown and First Nations.

GENDER BASED VIOLENCE (Canada's 19th and 20th Reports - Paragraphs 44-55)

For many years, the AFN has been involved in advocacy that aims to address an end to violence against First Nations women and girls. We have continuously denounced violence in our communities and the consistent violation of First Nations' women and girls' human right to safety and security in Canada.

Contextualizing Violence

For centuries prior to colonization in Canada, Indigenous women were honoured, respected, and revered for being the *givers of life*, and as such it was often customary for women to hold leadership positions in the family, community, and government[1] through clan systems and other traditional legal systems. Furthermore, Indigenous nations espoused and practiced principles of gender equality, equity, and empowerment in governance and general societal structure[2]. However, implementation of euro centric doctrines, discriminatory policy and law in Canada has caused the gradual and devastating erosion of traditional principles and practices of gender balance in Indigenous societies.

First Nations women's tradition roles were first challenged during the fur trade when the European fur traders refused to negotiate trade with First Nations women[3], and then with the implementation of the *Indian Act* and its' various discriminatory sections that restricted the "Indian status" and band membership of women [4]. The gender-discriminatory policy and law has persisted through the *Indian Act* with respect to property, the residential school system, the restoration of "Indian status" through Bill C-31, the criminal justice system, and social services. First Nation women have become the most marginalized demographic in Canada.

Today, Indigenous women struggle to practice and defend their rightful place in society, and they are often faced with poverty, inadequate housing, extreme violence, and various barriers to accessing human rights. Barriers to accessing a good education are presented at a young age with an inadequately funded First Nations school system and barriers to education often lead to exposure and vulnerability to poverty and violence.

Barriers to adequate and safe housing are often an issue for First Nations women, particularly if they are being abused by their partner or a family member. As well, until recently the *Canadian Human Rights Act* was not applicable to the *Indian Act*, fostering an environment ignorant and apathetic to the equality rights of First Nations women and girls. Additionally, First Nations families struggle with the legacy and impact of the residential school system, which contributed to a legacy of learned violence.

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[1] *Volume 4: Perspectives and Realities: Report of the Royal Commission on Aboriginal Peoples*. Royal Commission on Aboriginal Peoples. 1996.

[2] Report of the Aboriginal Justice Inquiry of Manitoba. Aboriginal Justice Implementation Commission 1999.

[3] This was due to the notoriously strong bargaining and negotiating skills of First Nations women.

[4] Forsyt, Janice. *After the Fur Trade: First Nations Women in Canadian History, 1850 – 1950*.

The Native Women's Association of Canada estimates that around 600 Indigenous women in Canada have gone missing or have been murdered over the last two decades. Unfortunately, the majority of these cases remain unsolved, and, arguably, the justice system is allowing this violence to persist. There have been many reports of Canadian law enforcement services across the country displaying apathetic attitude towards reports of missing or murdered Indigenous women.

Further to the prevalence of violence against Indigenous women and girls in Canada is the situation of gangs, particularly in the prairie regions of Alberta, Saskatchewan, and Manitoba. There are many Indigenous gangs that engage in criminal activity, violence, and the trafficking of Indigenous girls. Much trafficking and prostitution results from gang coercion, and most trafficked First Nations women and girls become vulnerable to violence, disappearance, and death[5].

The government's apology regarding the Indian Residential Schools policy issued in May of 2005 is met with scepticism, as our Indigenous leaders continue to advocate for equality and equity in the administration of education, child welfare, housing, economic opportunities and recognition of Aboriginal and Treaty rights to our lands and resources. The reality is that suicide rates are triple the national average, the rates of children in care are greater than during the residential school period, over-representation in the criminal justice system is growing including that the rates of indigenous female incarceration[6].

The existing criminal and child welfare justice system has contributed to the violence against Indigenous women and girls, and the lack of government improvements or response has led to some tragic consequences for Indigenous women and girls. As recent as 2007, David William Ramsay, a former British Columbia court judge, pled guilty to breach of trust, sexual assault, and buying sex from minor Indigenous girls age 12 to 16 years of age. All of Ramsay's victims were in the care of the Ministry of Children & Family Development (MCFD) at the time of his crimes against the girls. This is an example of a violation of trust by a member of the judiciary and the complicity of child protection agencies subjecting the Indigenous girls to violence and abuse.

In 2010, Canada announced a $10 million fund to address Violence Against Aboriginal Women. The majority of funds are targeted at existing police services to improve investigations, database, wiretapping and victim services with very little targeted to community based interventions that could better serve Indigenous women and girls. There is no sustained level of funding and there is a lack of coordination between different government agencies to address violence against Indigenous women and girls.

Currently, there are various justice, victim services, and community initiatives as well as several federal, provincial, and territorial working groups intended to address violence, missing and murdered women, human rights, and discrimination for Aboriginal peoples. However, there is considerable concern with how the funding

[5] *Aboriginal Youth and Violence Gang Involvement in Canada: Quality Prevention Strategies*. 2009. Institute for the Prevention of Crime.

[66] *Acting on What We Know: Preventing Youth Suicide in First Nations*. Health Canada. 2011.

for these activities and initiatives has been devised and distributed, and how effective they will be in improving the safety of Indigenous women and girls in Canada.

There was no consultation or partnership with Indigenous people in the allocation and distribution of these funds, and it is not clear how this influx of funding will effectively address the issues of violence. A significant portion of the funding has been allocated directly to law enforcement bodies, but it is unclear what role Indigenous peoples are able to play in spending activities. Distressingly, law enforcement in Canada has an abysmal track record in responding to violence against Indigenous women in Canada. Given this reality, law enforcement should have been directed to work in concert and partnership with Indigenous peoples to strategize and act in modifying policies and practices that deal with violence against Indigenous women. This would include collaboration in funding allocation and use.

The Family Violence Initiative is primarily a policy and information sharing initiative that provides no funding outside the Family Violence Prevention Program (FVPP). The Shelter Enhancement Program provides funding for repairing and improving existing shelters, but there is no additional funding for shelter programming outside of what's available for the FVPP. The evaluation of the FVPP has found that the Government of Canada has no mechanism to determine the impact of the program. Additionally, the costs of family violence are somewhere in the $4 billion mark through their own evidence, the government shows that Aboriginal women are more susceptible to violence, yet the flagship prevention program, the FVPP only provides $10 million per year. AFN has been a part of the evaluation advisory committee a report is forthcoming and expected to be out by February 2012.

Denial of funding for legal representation for parties that secured intervener status at the current Missing Women Commission of Inquiry in British Columbia will deprive families and organizations from adequately addressing police investigations and prosecutorial assessments into murdered Indigenous women, especially jurisdictions between Vancouver City Police and the federal Royal Canadian Mounted Police. The active participation of indigenous interveners would have provided valuable insight into the circumstances that may lead to violence against Indigenous women and girls as well as recommendations to improve the safety and security of Indigenous women and girls.

Successful intervention into violence against Indigenous women and girls must be community based through restoration of traditional Indigenous values of respect for women and girls. Understanding the root causes and intergenerational impacts of violence and abuse is critical to stopping the violence against Indigenous women and girls. Best practices must include community based initiatives where Indigenous women and girls lead the development, implementation and successful outcomes of combating violence and abuse.

Current policies adversely affect Indigenous women and girls in numerous ways. Policing or crown based policies do nothing to protect Indigenous women and girls from violence. The safety and security required is absent for Indigenous women and girls following domestic violence, part due to the lack of infrastructure for safe

houses for security and safety purposes and the lack of a policing and justice services within the communities themselves.
Community based initiatives have the best outcomes for violence against Indigenous women and girls. For example, Alkali Lake in British Columbia developed various protocols to intervene into violence against Indigenous women and girls and work jointly with the RCMP and Crown Counsel for improved responses to family and domestic violence.

Manifestations of Violence

It has become painfully obvious that indigenous women and girls have become the primary, and at times, sole caregivers of children. In some instances, perhaps influenced by colonial thinking, indigenous societies have assumed that it is the indigenous women and girls that have such responsibility with minimal active participation by the fathers. The contributions of indigenous women and girls in the political, economic, cultural and civil matters of the society are not invited. Absent the contributions of indigenous women and girls in the well being of their communities the identification of issues and remedies suffers. Absent the active participation of males in the raising of children, the development of children, teenagers and young adults is not whole.

It is even more prevalent in the setting where indigenous women and girls have had to relocate from their communities to urban settings. The poverty and marginalization are even greater when indigenous women and girls simply get added to the non-indigenous reality of urban poverty and marginalization.

The vulnerability factor is greater due to discriminatory and stereo-typical views and perspectives being applied from government agencies and policing services regarding indigenous peoples in general

Issues of Jurisdiction and Policing

In the Canadian federation the issues of responsibility for indigenous women and girls and matters such as policing, the administration of justice, the provision of social and family supports is complex. For instance, the federal government has primary responsibility for “Indians and, lands reserve for Indians”. The Federal government also has responsibility for Criminal law and the enforcement thereof. The provincial governments have primary responsibility for policing, the administration of justice and social matters including child welfare.

In a national context, the federal and provincial governments do have coordinating structures such the Council of Justice Ministers. The Council is fully aware of the extent of the violence against indigenous women and girls and, yet, has not been able to formulate a national, coordinated strategy and plan to address the situation.

Certainly cost issues and inter-jurisdictional cooperation and collaboration would likely required structural and organizational enhancement. No doubt, cost factors and unwillingness on the part of any of the governments involved to absorb costs

associated with these matters factors into the reality that the parties have not acted in a meaningful way to show leadership and assume responsibility.

It must be understood that the choice not to act has great cost consequences as well and that such cost may in fact be greater than identifying and applying resources to address the situation at the front end instead of paying for in the back end through inquiries, incarcerations and apprehensions.

Anti-Violence

The strategies and measures required to develop and promote anti-violence requires input from the indigenous women and girls. There is a requirement for an inventory of existing local, regional and national programs, capacities and strategies. Furthermore, the planning and assessment approach needs to be comprehensive in accordance with the view that the situation requires political, economic, social, cultural and civil elements.

The International Covenant on Economic, Social and Cultural Rights states:

> "... the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights."

Recommendations

There have been many judicial inquiries, countless conferences and extensive research to discuss violence against Indigenous women and girls, and from these there have been hundreds of recommendations for action.

Addressing violence against indigenous women and girls must be achieved through a strategy that is comprehensive and expansive to ensure the enjoyment of the political, economic, social, cultural and civil rights by indigenous women and girls. This approach will help overcome the usual characterization of these matters as "social" matters requiring corrective behaviour in family relations and community safety and well-being.

Yet, current discussions at a national and international level are not identifying and committing to action to address the rights of indigenous women and girls. Many reasons exist for this reality including a lack of political will, the rationalization that the violence against indigenous women and children is a social issue, the lack of clarity in identifying lead responsibility in a jurisdictional context and the continued domination of male voices in the political and economic world order.

The CERD Committee is encouraged to emphasize the need for addressing the rights of indigenous women and children as requiring prioritization and coordination from any and all levels of government as the means by which results can be achieved. As pointed out in Canada's 19th and 20th Reports there are many Federal/Provincial and Territorial mechanisms that can be utilized to apply a meaningful, coordinated and results oriented approach to addressing the rights of indigenous women and girls in Canada. Of course, it must be

stated that the involvement of indigenous women and girls is absolutely critical as well as indigenous communities and their leadership. It must be understood that the future integrity of our societies require that the rights of indigenous women and girls be respected and safeguarded.

EQUALITY BEFORE THE LAW (Canada's 19th and 20th Reports - Paragraph 99)

Crime rates in Canada have been falling steadily for over a decade, but the aboriginal incarceration statistics have continued to grow. The federal government approach in Bill C-10 (*Safe Streets and Communities Act*) appears designed to increase spending on imprisonment which will affect the most vulnerable population in Canada, aboriginal peoples.

The proposed mandatory minimum penalties policy has been applied in many U.S. States which has caused massive overcrowding and U.S. States are reversing these decisions because of human rights violations and because cost considerations. These States, including Texas have also found that mandatory minimum penalties do not deter crime.

Under this new legislation, Judges will not be able to consider case circumstances and must impose mandatory minimum sentences, which will see a rise in the general population, and an increasing rate of incarceration for people with mental illness, aboriginal youth, and people from economically marginalised communities.

The AFN is of the view that bundling distinct criminal justice legislation into one fast tracked, omnibus Bill is inappropriate and does not allow one to fully study and provide informed perspectives on the contents of such legislation or the impacts the legislation will have on society. The AFN notes that Bill C-10 is a compendium of prior draft legislation that was previously under consideration by Parliament prior the rejection of such bills or their termination due to closing of certain parliamentary sessions. In past examinations of these various bills much of the changes requested by citizens had not accepted by the government sponsor of the bills and the current version of the proposed legislation does not incorporate changes into the current draft of Bill C-10.

In AFN's view, the contents of Bill C-10 are contrary to First Nation perspectives of Justice. The current Bill adopts a hostile and punitive approach to criminal behaviour, rather than one that is corrective, based on rehabilitation of offenders, and or provides restoration to victims of crime. First Nations view all their citizens as being essential to the collective wellbeing. As most offenders will one day return to their communities, we know that prevention and rehabilitation is the best approach to protecting public safety.

Increased Penalties for Serious Drug Crime:

Bill C-10 seeks to amend the *Controlled Drugs and Substances Act* to address serious organized drug crime. As seen in the prosecution of the Manitoba Warriors in Winnipeg a number of years ago, First Nation Youth and Young Adults who are part of the street gang culture will be lumped in with "serious organized drug crime".

It is well known that Aboriginal gangs are often recruited to do street work on behalf of the serious organized drug crime groups. The mandatory minimum sentences for organized crime purposes will likely be applied to Aboriginal Street Gangs, ignoring all *Gladue* considerations regarding the examination of the aboriginal background and circumstances of the offenders.

Bill C-10 does provide a small reprise where an offender is an addict and is in a drug treatment program. While this is a positive step towards a "healing" approach, most offenders from a First Nation community have difficulty in securing a bed in an off-reserve treatment facility. Thus, this small reprieve will be only available to those in urban centres and the availability of such centres is grossly inadequate.

Ending House Arrest for Property and Other Serious Crimes:

Removing judicial discretion in a sweeping manner has the potential to harden individuals who otherwise may have been given a more restorative sentence that is required to start the healing process. The Canadian court system has provided judges with discretion in sentencing offenders. Even thought the application of such measures may have been minimal in aboriginal cases, the AFN is of the view that the elimination of house arrest will result in the incarceration of more First Nations offenders and youth for non-violent offences related to property (theft over $5,000), motor vehicle theft, and Break and Enter. The offences are being lumped in with prison breach, criminal harassment, sexual assault, kidnapping, trafficking in persons, and abduction, thereby, ignoring the difference between violent and non-violent offences and making them one and the same.

Protecting Children

Bill C-10 seeks to amend the *Criminal Code* to increase or impose mandatory minimum penalties for certain sexual offences involving children. The bill creates two new offences, namely that of making sexually explicit material available to a child and of agreeing or arranging to commit a sexual offence against a child. Bill C-10 expands the list of specified conditions that may be added to prohibition and recognizance orders.

While the AFN agrees children should be protected from predators, First Nations children have been victimized and sexually assaulted by non-native offenders over the last 100 years. Government policy, the residential schools, the sixties scoop and current underfunding of First Nation child welfare agencies have lead to the repeated victimization of First Nation children. In all cases where the federal government was implicated, successive governments denied any wrong doing and covered up their conduct. Legal teams within the Department of Justice have been set up to shield the federal government from any liability for their conduct. Thankfully, the Indian Residential School settlement has compensated many victims of for abuse they suffered.

Today, First Nation children continue to be victimized by non-native offenders. In many cases police fail to press charges, crown attorneys make plea bargains for lesser offenses, and judges show considerable leniency for non-native offenders

who prey on First Nation children. The ongoing bias in the criminal justice system has effectively sanctioned the abuse of First Nation children and many non-native predators know they will likely get away with their crimes by specifically targeting First Nation children. All too often, judges and other law enforcement officials blame

First Nation victims for sexual assaults committed against them. As in the case of a 12 year old First Nation girl in Saskatchewan where Judge Fred Kovatch concluded in 2003 that the victim was partially responsible for three young white men picking her up, giving her beer and sexually assaulting her on a desolate country road. Similarly in 2006, *First Nations were outraged* when an RCMP officer who abused First Nations girls in Prince George evaded punishment because the RCMP took too long to investigate his abuse.

These and other similar stories are too common place in Canada. The AFN and First Nation governments are of the view that First Nation children will continue to be denied justice, as the police and courts continue to deal with these situations in an unsatisfactory manner. First Nations communities and leaders would welcome a meaningful opportunity to examine this issue in more detail to ensure protection and strengthen provisions in the Criminal Code to justice for indigenous children.

Unfortunately, the closure of debate and examination of the proposed legislation will deny Canada the opportunity to truly reflect the standards and procedures required in its legislation to achieve justice for indigenous children and youth.

Protecting Society from Violent and Repeat Young Offenders:

At the heart of Bill C-10 is the notion that an increase in the severity and extent of punishment will deter crime and criminal behaviour. It is agreed that violent and repeat young offenders need to be held fully accountable and responsible for their acts and furthermore that the protection of society is necessary. However, the AFN disagrees with the notion that youth need to be incarcerated for their transgressions. Rather, the principles of “deterrence and denunciation” should be complemented with principles of healing and rehabilitation.

The AFN is of the view that property offences are not serious and do not warrant the same strict classification as a “serious” offence congruent with offences where there is personal violence. The inclusion of minor property infractions with acts of violence is unbalanced. Judicial discretion should be restored such that the experts in the courtroom are able to delineate the serious from the non-serious, rather than having an arbitrary monetary value.

Rehabilitation, healing and protection of society from reckless and violent youth are not mutually exclusive as suggested by the legislation. If a youth is considered violent and dangerous and has not undergone any process of rehabilitation or healing, such a youth offender probably will not change. However, incarcerating such a youth is not the answer. The notion that we can punish the potential for violent behaviour is archaic and misleading. Underlying issues, drug use or mental illness will remain. Rehabilitation, on the other hand, will assist youth in changing behaviour enabling them to lead productive lives.

Eliminating Pardons for Serious Crimes:

Bill C-10 proposes to extend ineligibility periods for applications for record suspensions from three to five years for summary convictions and from five to ten years for indictable offences. The conviction of a number of offences will make certain persons ineligible for a record suspension, being those convicted of more than three offences prosecuted by indictment or where the offence is subject to a maximum punishment of life, and for each person where the person was sentenced to imprisonment for two years or more.

This purports to "criminalize" individuals forever removing any hope of ever having a "clean slate". Firstly, the increase in eligibility periods is arbitrary and self-serving since there is no evidence to suggest that those convicted of indictable offences are less likely to re-offend five years post warrant. With respect to making persons ineligible if they have three or more offences prosecuted by indictment, this will leave an entire segment of the population "criminalized" forever for the mistakes of a misguided youth or young adult life.

The lengthier period of ineligibility proposed by the legislation are a form of "double jeopardy" which will simply prevent persons from ever having a clean record i.e., record suspension. Historically, there are likely thousands of individuals in their early 20's who have three or more offences prosecuted by indictment resulting in sentences of two or more years...review of historical cases would reveal that the majority of these individual would have gone on to live crime-free lives well into their 40's, 50's and 60's...the legislation will "criminalize" these individuals indefinitely.

The AFN submits that the current focus of the government's tough on crime legislation through Bill C-10, (Safe Streets and Communities Act) will unfairly impact First Nations peoples and the problem of over-representation will increase, therefore, the systemic discrimination will be elevated to a new level.

The AFN respectfully submits that the government should focus its efforts on programs that rehabilitate offenders and on crime prevention. In the alternative, should the federal government pursue a tough on crime stance, attention should be placed preventing police and Crown prosecutor's practice of applying the full measure of the law and punishment against indigenous accused versus leniency to non-native offenders. All too often, the law is not applied equally to all peoples. First Nation citizens are almost always charged and prosecuted to the fullest measure, while others are not.

The AFN encourages the CERD Committee to request Canada to explain the rationale for imposing a legislative approach that has not proven effective in other jurisdictions and almost certainly will impact more harshly on aboriginal peoples in Canada.

MEASURES TO ENHANCE THE SOCIAL, ECONOMIC AND CULTURAL RIGHTS OF ABORIGINAL PEOPLE – (Canada's 19th and 20th Reports – paragraphs 101-105)

The ICERD endeavours to uphold racial equality and the removal of discriminatory practices of state parties. However, the Canadian government's policies and administration of First Nations health and social programming and services appears to disregard principles maintained by the ICERD. Canada's most recent report on the ICERD is silent on the majority of key issues regarding First Nations health and social concerns and services. The report fails to provide any discussion on the critical health and social status of First Nations peoples, and it also fails to provide any redress or course of action to help improve First Nations health and social policy and programming. The following is a discussion on how Canada is falling short on its commitments under the ICERD in a First Nations health and social context; and, how these shortfalls could be to addressed in order for Canada to meets its commitments under this international human rights instrument.

First Nations Health Care, Policy, and Funding in an ICERD Context

While the average Canadian receives primary health care and social services from their province or territory, First Nations citizens receive their health care and social services through a mixed approach of Federal and Provincial administration, however, with respect on-reserve services via the federal government [7]. Due to a combination of extreme health needs, remoteness of First Nations communities, jurisdictional disputes, and Health Canada's restrictive funding policies and caps, First Nations have been consistently and persistently prevented from enjoying the same standard of health care as other Canadian citizens. In Canada's report, the only activity to address this discriminatory inequity is the brief mention of Health Canada's Aboriginal Health Transition Fund (AHTF), a funding envelope program intended to integrate the federal, provincial, and territorial health services available for Aboriginal peoples. However, there is a lack of any review of the discrimination First Nations experience in accessing health and social services. To begin to discuss removing discrimination and inequity regarding First Nations health and social services, Canada's needs to acknowledge and address the key areas of unfairness in health and social services funding administration for First Nations.

Some examples of inequity include:

- The disproportionately poor health status of First Nations due to lack of access to services, poverty, food insecurity, inadequate housing, as well as a plethora of other social determinants of health that impact health status;
- The shortage of health care providers to meet the high demands and needs of many First Nations (e.g. dental care, specialist care, maternal and child health care, dialysis, mental health care, etc.);
- Jurisdictional disputes between federal, provincial, and territorial governments regarding the responsibility of many First Nation health and social needs;

[7] First Nations Wholistic Policy and Planning Model: Discussion Paper for WHO Commission on Social Determinants of Health. Assembly of First Nations. 2007.

- The epidemic, disproportionate, and increasing occurrence of child welfare apprehensions among First Nations families; and,
- Countless other barriers and access-restrictions to equitable health care and social services for First Nations.

Many of the activities Canada discusses in its report merely address pieces of a greater national issue. While Canada is making attempts to address some discrimination experienced by First Nations in the justice system and through victim services, the aforementioned First Nations health and social discrimination and inequities must also be considered and addressed. With this in mind, Canada needs to start addressing systemic discrimination in a more universal manner.

Health Care Barriers for First Nations Children

Given the evident health status gap that exists between First Nations children and their non-Aboriginal peers, Canada's effort to eliminate discrimination against First Nations children is long overdue. For example, in 2009, UNICEF released the "Aboriginal Children's Health: Leaving No Child Behind"[8] report identified First Nations children and youth as faring significantly worse than non-aboriginal children on a variety of health issues. The following are some statistics from different sources that present the landscape of First Nations children health:

- Teen fertility is seven times higher than other Canadian youth, and early parenting compromises access to education, employment, and formal child care[9].
- First Nations infant mortality is 3 to7 times higher the national average and the leading causes of infant death are upper respiratory tract infections and sudden infant death syndrome (SIDS)[10].
- Immunization rates are 20 per cent below the general population, leading to high prevalence rates of preventable diseases[11].
- Close to 50% of children with chronic condition(s) on reserve, have difficulty accessing health services due to lack of availability of services, facility or doctor/nurse within their area[12].
- Lack of access to appropriate resources has made it challenging for First Nations children to have food security. Thus, unbalanced diets and the deterioration of traditional foods have fueled an obesity epidemic, as 62% of First Nations children living on reserve are either overweight or obese. Unhealthy weight is known to be a precursor for type 2 diabetes among children, and other chronic diseases once they reach adulthood[13].

[8] Aboriginal Children's Health: Leaving No Child Behind. UNICEF. 2009
[9] Aboriginal Children's Health: Leaving No Child Behind. UNICEF. 2009
[10] Wilson C.E. (1999). 'Sudden infant death syndrome and Canadian Aboriginals: Bacteria and infections'. FEMS Immunology and Medical Microbiology, 25: 221-226.
[11] Aboriginal Children's Health: Leaving No Child Behind. UNICEF. 2009
[12] Regional Health Survey – Phase 2. First Nations Information Governance Centre. 2007/2008
[13] Ibid

- Another implication of lack of access to a nutritional diet and proper health care services is tooth decay. 91% of Aboriginal children are affected by dental decay with children averaging 7.8 decayed teeth by the age of six[14].

Again, Canada's reports have failed to identify the health disparity of First Nations children, nor has Canada expressed its goals and objectives to address this disparity. Furthermore, the challenges faced by First Nations children with special needs to access appropriate health services, are neither identified nor addressed. Jordan's story represents the challenges that many First Nations children with special needs encounter when attempting to access health services:

> *Jordan was a First Nations child born with complex medical needs. His family did not have access to the supports needed to care for him at their home on reserve; Jordan remained in hospital for the first two years of his life as his medical condition stabilized. Shortly after Jordan's second birthday, doctors said he could go to a family home. But the federal and provincial governments could not agree upon which department (and which level of government) would pay for Jordan's at-home care. The jurisdictional dispute would last over two years during which time Jordan remained unnecessarily in hospital. Shortly after Jordan's fourth birthday, the jurisdictional dispute was settled. However, Jordan passed away in 2007, before he could live in a family home[15].*

This tragic event inspired the *child-first* approach, otherwise known as Jordan's Principle (JP). JP is a policy requiring that jurisdictional disputes between two levels of government regarding payment for health care services for *Status Indian* children should be dealt with after the child receives the care they need. This is a new standard that aims to replace the prevalent cost disputes that have caused harm to so many First Nations children, like Jordan, when seeking needed health services that would be undisputedly available to any other non-First Nations child.

Regrettably, the intended spirit and adequate implementation of JP has faced a variety of challenges, including Canada's adoption of a startlingly narrowed definition of JP, which has failed other First Nations children[16]. The current definition of the policy limits the application of JP to *Status Indian* children who reside on-reserve, have multiple special needs diagnosed by medical professionals, and require the services of multiple health providers. While this attempts to address the prevalent vacuum of care for First Nations children, various critical concerns remain. It is not clear whether Canada's narrow interpretation and application of JP will allow children to obtain a proper initial diagnosis, whether children with only one special need will be able to access care, or whether children residing off-reserve with acute special needs will be able to access care, and finally, the discriminatory principle of limiting access to needed health services based on a set of conditions that other Canadian children are not required to fulfill to access care. Consequently, families are left with the predicament of considering placing their children into the welfare system in order

[14] Best Start: Ontario's Maternal, Newborn and Early Child Development Resource Centre. "Report: A Sense of Belonging: Supporting Healthy Child Development in Aboriginal Families." 2006. p. 23.
[15] Jordan's Principle. First Nations Family Caring Society. 2007. http://www.fncfcs.com/jordans-principle
[16] *Pictou Landing Band Council and Beadle v. Canada (2011)*

to access services[17]; quandary not faced by non-aboriginal families. To ensure the removal of prevalent discrimination against First Nations children in accessing health care, Canada must address these issues and adopt a definition and application of JP that will ensure that same standard of care for all Canadian children.

Considering Canada's actions regarding JP, and considering Canada's awareness of First Nations poor health status (significantly below the national average), it is quite arguable that Canada is in violation of article 24 of the Convention on the Rights of the Child, as well as articles 2, 18, 19, 21, 22 and 24 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Such violation is a result of the discrimination that First Nations children face based solely on the basis of their race and the policies associated with their race.

First Nation Child Welfare and Endemic Separation of Families

The Auditor General (AG) of Canada audited the First Nation Child and Family Service Program and reported her findings in her spring 2008 report. She echoed the past observations and recommendations of research reports such as the *National Policy Review* and *Wen:De: We Are Coming to the Light of Day*. Specifically, the AG found that the department of Aboriginal and Northern Affairs (then known as Indian and Northern Affairs) "has not identified and collected the kind of information it needed to determine whether the program that supports child welfare services on reserves is achieving positive outcomes for children". To date, Aboriginal and Northern Affairs Canada have not made significant changes to their program in order to collect this data, and there currently is no consistent or comprehensive disaggregated data collection mechanism for First Nations children in Canada.

In 2007, the AFN and the First Nations Child and Family Caring Society of Canada (FNCFCS) launched a human rights complaint against the Government of Canada alleging that Canada is racially discriminating against First Nations children by applying inequitable child welfare funding.

Evidence for this complaint/claim has been derived from sources such as the *National Policy Review* (2000), *Wen:De Reports* (2005), and *First Nations Canadian Incidence Studies on Child Abuse and Neglect* (1998, 2003, 2008). The complaint/claim arguments is that research results show on-reserve child welfare services, under the jurisdiction of the Federal Government of Canada, do not provide the same level of funding and service as provided by the provincial/territorial governments. The Canadian Human Rights Commission (CHRC) heard the complaint initially and referred it to the Canadian Human Rights Tribunal (CHRT), and argued in favour of the AFN and FNCFCS position at the Tribunal because of the importance of this case to the public interest. Canada appealed the decision and coincidentally also appointed a new Chair to the CHRT who proceeded to suspended all hearings relating to the case.

[17] Lavallee, T. (2005). Honouring Jordan: Putting First Nations children first and funding fights second. 10 Paediatrics and Child Health 527 at 527–529.

After 15 months, the FNCFCS filed a mandamus application to Federal Court to order CHRT hearing dates. On March 14th, after no additional hearing dates, the CHRT Chair ruled in favour of the Government of Canada and dismissed the complaint on a legal technicality, instead of the merits of the case. The ruling stated that:

> *The Act does not allow a comparison to be made between two different service providers with two different service recipients. Federal funding goes to on-reserve First Nations children for child welfare. Provincial funding goes to all children who live off-reserve. These constitute separate and distinct service providers with separate service recipients. The two cannot be compared.*

A judicial review was filed by the CHRC on April 6, 2011. The dates for the hearing are February 13-15, 2012 in Ottawa, Ontario, Canada.

Summary of First Nations Jurisdictional Issues

To adequately and meaningfully address and improve the health and social status of First Nations in this country, Canada needs to commit to reforming and improving jurisdictional barriers and ambiguity regarding health and social services for First Nations. Additionally, First Nations are concerned with Canada's rigid control of funding and administration of First Nations health services and programming. An integrated approach needs to involve the movement toward First Nations control of the development and delivery of all health and social services, as First Nation are aware that this is needed to meaningfully improve health status in First Nations communities.

The UN and Canada need to engage in honest dialogue about the principles and mentalities that are espoused in Canadian judicial proceedings. As we can see in the judicial treatment of First Nations children, missing and murdered Indigenous women, and the general treatment of human rights violations and complaints in Canada, reform is needed. The health, social, and human rights matters of First Nations in Canada require a substantial jurisdictional reset, and First Nations expect and look forward to being actively engaged in such a reset process.

There are various federal, provincial, and territorial working groups that address human rights and discrimination. These working groups need to be held accountable for their responsibility to all citizens, including First Nations. With regard to honouring human rights commitments when implementing health and social policy, these working groups need to better explore ways to remove jurisdictional discrimination, and ensure that health and social services, programming, and policy adequately considers First Nations unique needs.

Recommendations

The CERD Committee is urged to inquire into Canada's perspective on the following:

I. ***Immediate access to Health Care for All Canadian Children: To create a national committee composed of members of First Nations, Provincial/Territorial, and Federal governments to work to reduce the health disparity between First Nations children and non-aboriginal children, by at least 25% over five years; and to hold official discussions between Provincial/Territorial, Federal, First Nations governments, and NGO's to create an implementation plan for Jordan's Principle, in which all First Nations children receive the same standard of care as their non-Aboriginal peers.***

II. ***Reform First Nations Child Welfare: To conduct extensive and methodologically sound research to determine the outcomes of the current child welfare system; create a First Nations child welfare data management system; and, take the necessary steps to bring the standards of the current welfare system to mirror those held by the general Canadian child welfare system within the next five years. Also, ensure that First Nations representatives actively participate in all stages of the aforementioned processes, and that sustainable and appropriate funding models be allocated to such processes.***

III. ***Jurisdictional Reform: To hold formal discussions between FN, Provincial/Territorial, and Federal governments to discuss learned lessons from existing tripartite processes and develop a national framework.***

Education

The Assembly of First Nations and First Nations assert that Canada is in violation of its legal obligations resulting from the CERD (Article 5 (V)), CERD General Recommendation XXIII (Articles 4 and 6), the UN Declaration of the Rights of Indigenous Peoples (UNDRIP) (Article 14), the International Covenant on Economic, Social and Cultural Rights (IESCR) (Article13), the Convention on the Rights of the Child (CRC) (Article 17 (a), (d)) and (Article 28).

Despite years of advocacy by First Nations for equitable supports and investments in First Nations education, the government of Canada continues its systemic, discriminatory approach to the eradication of First Nations cultures and languages. Specifically, Canada continues to**:**

- Maintain an annual 2% cap on funding for education to First Nations communities (reserves) vs. a 6% annual increase in the education funding allocated to provinces and territories;
- Knowingly allow the delivery of sub-standard education supports and services to First Nations learners;
- Refuse to acknowledge indigenous languages as official languages of this country;
- Force First Nations education to align with Government of Canada Strategic Objective "The People", as stated in its "2011- 2012 Report on Plans and

Priorities", which aims at achieving "a diverse society that promotes linguistic duality (French and English) and social inclusion".

- Refuse to provide required resources to exercise our right to teach our children in a linguistically and culturally appropriate manner yet provides ample funding to provinces and territories for the provision of official second language training;
- Maintain that post secondary education for First Nations learners is a matter of public policy and not an inherent right reflected in our Treaties;
- Refuse to address the disparity that exists in our high school and post secondary graduation rates that are nowhere close to the same levels as those found in the rest of the country;
- Not provide resources necessary for the maintenance and construction of schools on reserve;
- Narrowly interpret our Treaty right to education based on archaic colonial law (*Indian Act*, 1876) which contravenes Supreme Court of Canada's direction to provide a generous and liberal interpretation of First Nations Treaty rights.

First Nations and the AFN call upon the government of Canada to implement the international human rights norms and legally binding standards that are part of general and customary international law stated in various international human rights instruments and the UN Declaration on the Rights of Indigenous Peoples to ensure protection, respect, and justice for all Indigenous rights, including the right to education, and as confirmed in treaties and affirmed and recognized in Section 35 of the Constitution Act of Canada, 1982.

Omissions from Canada's Reports

First Nations firmly believe that non-discrimination is essential to the enjoyment of one's right to education and that education is a prerequisite for the enjoyment of other human rights such as the right to economic, social, cultural, civil and political rights.

Presently, First Nations peoples do not have the means or opportunities to avail themselves of their right to education in the way that this right is enjoyed by all other segments of the Canadian population.

Canada's reports make no mention of the urgent need to address the inequities and discrimination that is standard practice in the provision and accessibility to quality education for First Nations youth of this country. As pointed out in the Royal Commission on Aboriginal Peoples Recommendations Regarding Education:

In the "UNESCO Seventh Consultation of Member States on the Implementation of the Convention and Recommendation against Discrimination in Education, Report for Canada, September 2007", Canada makes the following statements:

Under "Aboriginal Education Levels" page 34, paragraph 125:

- "Historical discrimination against Aboriginals and policies of assimilation and forced attendance at residential schools have left a deep legacy of mistrust, resentment, and a population that continues to struggle with

academic achievement. The provinces and territories have worked with the Aboriginal communities to develop innovative solutions and programs and some progress has been made. However, the educational attainment of Aboriginal students remains one of the greatest challenges in education across Canada…"

Education in Canada, page 82, under "Responsibility for Education":

- **"**In Canada, there is no federal department of education and no integrated national system of education. Within the federal system of shared powers, Canada's Constitution Act of 1867 provides that "[l]n and for each province, the legislature may exclusively make Laws in relation to Education." In the 13 jurisdictions — 10 provinces and 3 territories, departments or ministries of education are responsible for the organization, delivery, and assessment of education at the elementary and secondary levels within their boundaries…"

Education in Canada, page 88, under "Responsibility for Education":

- "…In addition, the federal government is responsible for the education of Registered Indian people on reserve, …"
- "The federal government shares responsibility with First Nations for the provision of education to children ordinarily resident on reserve and attending provincial, federal, or band-operated schools. In 2004–05, Indian and Northern Affairs Canada supported the education of 120,000 First Nations K–12 students living on reserve across Canada. Band operated schools located on reserve educate approximately 60 per cent of these students."

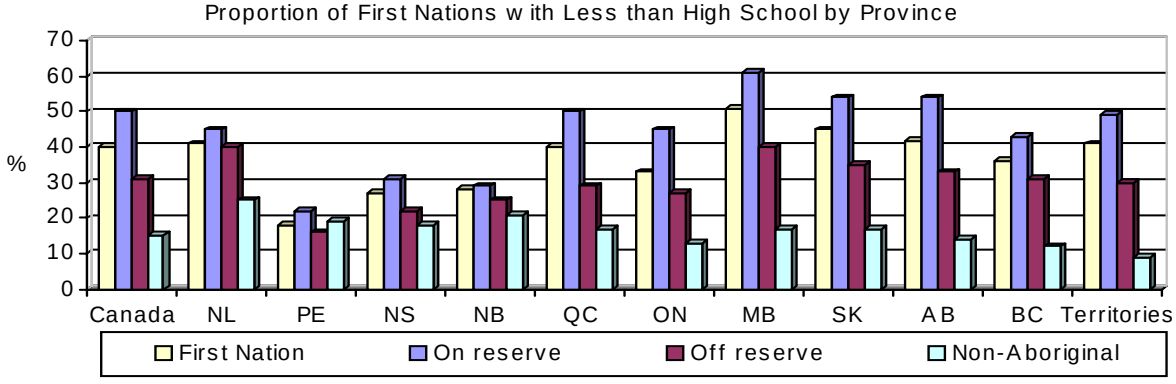
Despite recognizing its responsibility for education on reserves Canada has not acted adequately to address the inequities in the quality of education for First Nations learners.

Canada's non-compliance with its legal obligations and ongoing discriminatory practices in the delivery of education to First Nations has created an ever growing gap between the education outcomes for First Nations students and outcomes for mainstream students.

Following are examples of inequities in education in Canada:

Levels of Attainment

The chart below shows that First Nations, especially those living on-reserve, are still far more likely than the Canadian population to not complete high school.

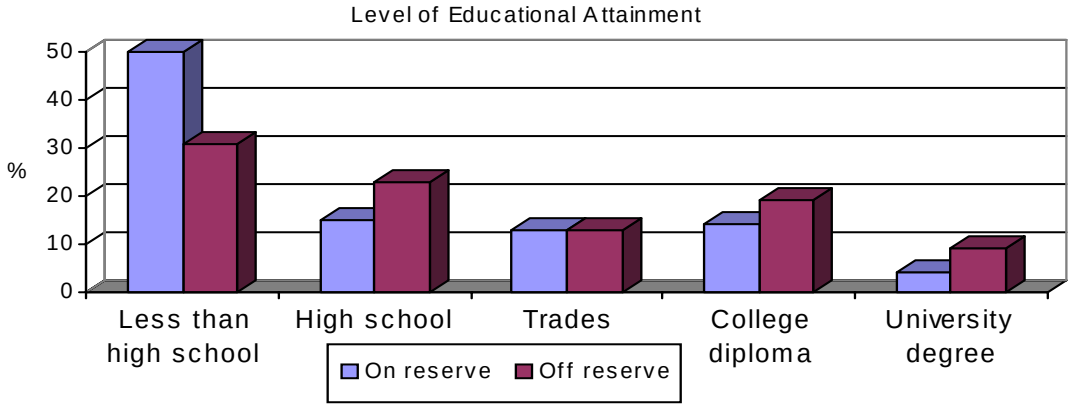


Source: Statistics Canada, Census 2006. Proportion of Registered Indians aged 25-64 years with less than High School, by Province.

In 2006, an estimated 40% (or 113,780) of the working-age First Nation population had not finished high school, compared with 15% of the Canadian population, a 25% gap. The gap is even more pronounced for First Nations living on reserve. An estimated 50% of working-age First Nations living on reserve had not finished high school (a 35% gap), compared with 31% of First Nations living off reserve (a 16% gap).

The highest level of educational attainment of about 23% of First Nations people living off reserve was a high school diploma, compared with 15% of their counterparts living on reserve.

First Nations living off reserve were also more likely to have a college diploma or a

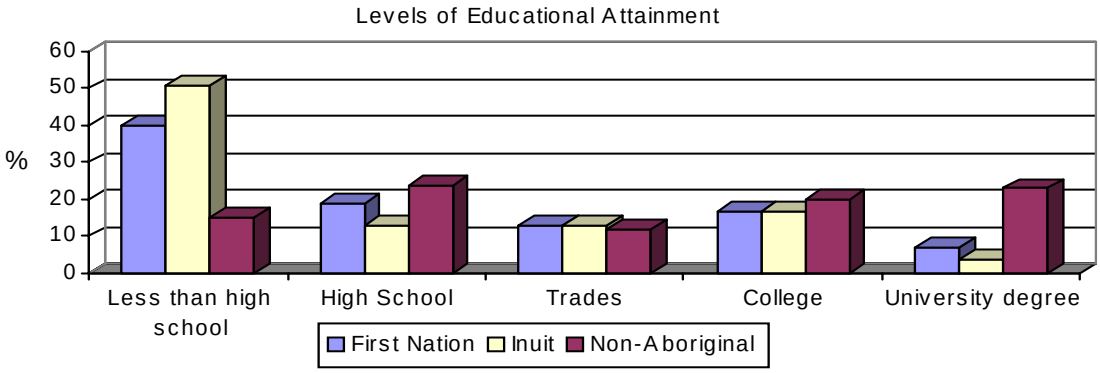


Source: Statistics Canada, Census 2006. Proportion of Registered Indians by level of educational attainment, by area of residence.

university degree. In 2006, an estimated 19% of First Nations people living off reserve had a college diploma, compared with 14% of their counterparts living on reserve. Approximately 9% of off-reserve First Nations people had a university degree, up from 7% in 2001. In comparison, 4% of First Nations people living on reserve had a university degree, up from 3% in 2001.

An equal share (13%) of First Nations living on and off reserve had a trade certificate.

In 2006, an estimated 19% of First Nations aged 25-64 years reported having a high school diploma as their highest level of educational attainment, compared with 24% of the Canadian population.



Source: Statistics Canada, Census 2006, Proportion of Registered Indians and mainstream Canadians between 25-64 years of age, by level of educational attainment.

A number of First Nations communities do not even have schools and children must leave their families and communities to attend school or forfeit their education. In addition, many existing schools require renovations to ensure children have safe and secure places to learn.

The AFN supports The First Nations Child and Family Caring Society's *"Our Dreams Matter Too" First Nations Children's rights, lives, and education,* alternate report from the Shannen's Dream Campaign to the United Nations Committee on the Rights of the Child on the occasion of Canada's 3rd and 4th periodic reviews. The latter offers the following concrete examples:

- In Attawapiskat, children go to school in run down portables sitting next to a site contaminated by a spill of over 50,000 litres of diesel fuel.
- The portables are so run down that the heat often turns off in the classrooms, driving the temperatures so low that the children have to wear mitts just to hold a pencil.
- Students in Attawapiskat often give up hope and drop out of school by grade five because their learning conditions are so bad.
- Some First Nations schools are infested with snakes, mice and contaminated with black mould.

General comments made by students included in "Our Dreams Matter Too" relate to:

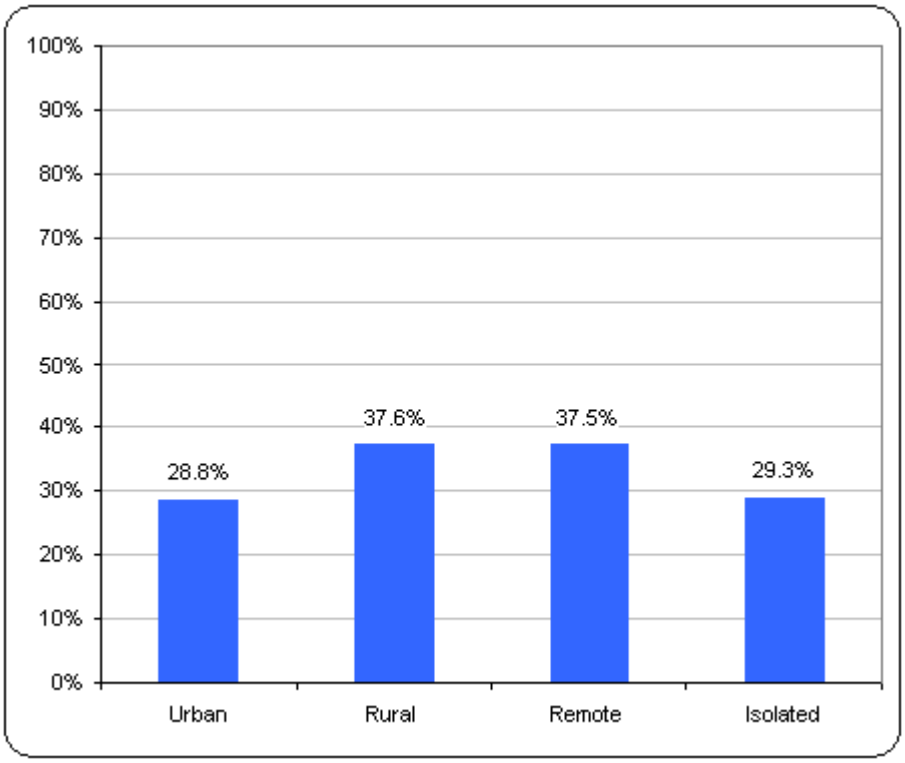
- The lack of schools in some communities;
- The disrepair and safety issues in other schools;
- The exposure to cold and extreme weather conditions and;
- The lack of basic supplies needed to ensure students receive a proper education.

Access to High School Programming

Based on most recent nominal roll and population data, following is a summary of First Nations youth who have access to a high school in their community.

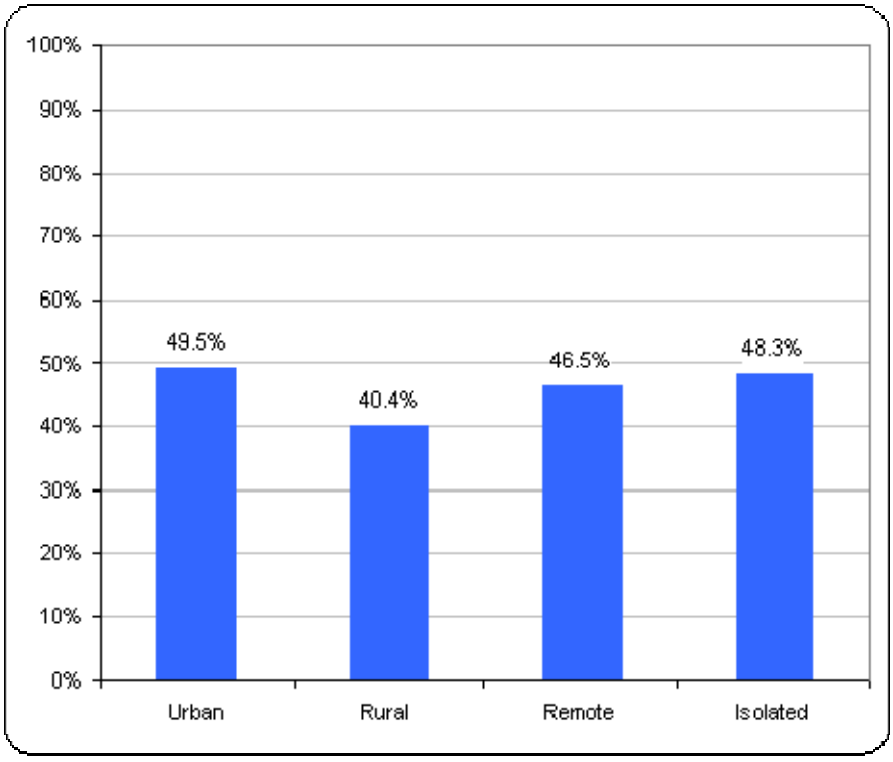
- One in 3 First Nation schools offer high school programming in 2007 (175 schools)
- Communities that are in 'urban' or 'isolated' communities are less likely to have a high school (see following chart)

Proportion of First Nation schools that offer high-school programming in their community, by community type, 2007



- When looking at the school aged population (5-19), over 46% of First Nation school aged children DO NOT have access to high-school programming in their communities.
- Students living in 'urban' or 'isolated' communities are less likely to have a high school in their community. (see following chart)

Proportion of First Nation school aged population (5-19) with no access to high school programming in their community, by community type, 2010



Funding Shortfall

Strategic investment in education is critical to building healthy, prosperous, and safe communities. Education is widely recognized as the most powerful method for bringing about improvements in all social and economic domains.

- A considerable gap in educational achievement and inputs exists with respect to First Nations education. Funding for First Nations education has been capped at 2% since 1996, whereas transfer payments to provinces have been increasing by 6% annually.
- According to First Nation studies, the total shortfall in the area of First Nations education is an estimated $2B.
- To equitably fund First Nations post-secondary education, a 149% (or $481 M) increase in federal support is required.
- Also, $126 million is needed for First Nations language instruction in schools in order to be comparable with provincial funding.[18]

This discriminatory double standard in the provision of comparable inputs has been allowed to exist despite: i) numerous pledges by the Federal Government to address the education attainment gap; ii) the fact that the First Nations population is growing at twice the rate of the mainstream Canadian population; and iii) that by 2020 over 50% of the First Nations population will be under the age of 25.

In Budget 2010, the federal Government made a commitment to achieving comparable education outcomes for First Nations students and has made comparability one area of focus of the National Panel on First Nation Elementary and Secondary Education. Comparable outcomes require comparable inputs.

Recommendations

The CERD Committee is encouraged to request information from Canada when it plans to ensure adequate financial resources will be applied to First Nations education.

LIMITATIONS ON LAND USE BY ABORIGINAL PEOPLE AND ABORIGINAL TITLE (Canada's 19th – 20th Reports - Paragraphs 106-109)

Canada's comments with respect to the expropriation of reserve lands do not adequately reflect the reality faced by many First Nation bands that are seeking to have lands returned to them, whether legally expropriated or not. Canada's process for creating new reserves (referred to as the "Additions to Reserve" process – or ATR process) is unduly cumbersome and slow. Moreover, the creation of new reserves is subject to third-party interests, as well as a de facto veto that often plays

[18] *Note that these figures do not account for additional investments needed for language nests, curriculum development and immersion programs.*

out in relation to the interests of municipalities and/or provincial governments. Canada's current policy on ATR – a 700 page "field manual" for lands officers working for Canada (referred to at paragraph 109) – is cumbersome and sometimes contradictory. While efforts are underway to jointly address Canada's flawed policy on ATR, for the time being, Canada's policy remains as it has for the past several years.

Despite Canada's references to Aboriginal title, Canada has yet to recognize Aboriginal title anywhere at all within its boundaries. Moreover, Canada's policy of negotiating modern treaties through its Comprehensive Land Claims Policy is still premised on the extinguishment of Aboriginal title, rather than its recognition.

Recommendations

The CERD Committee is encouraged to request information from Canada regarding its intentions to adjust its policies to ensure compliance with CERD.

ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE - (Canada's 19th and 20th Reports - Paragraphs 112-116)

Several communities in British Columbia, as in other parts of Canada, are seeking to address the issue of their Aboriginal rights and title outside of Canada due to the limited willingness / capacity of Canadian governments / institutions to meaningfully respond to the interests of some First Nations. Canada's failure to recognize the competence of the Committee to receive or consider complaints is another manifestation of this reality for First Nations.

The issue of loan funding to enable First Nations to enter into treaty negotiations with Canada is unique – although not isolated – to British Columbia. Canada's contention that it is not seeking repayment of a loan from the Xaxli'p First Nation, while laudable, does address that fact that many dozens of other First Nations in British Columbia have accrued loans estimated to exceeded $500M in total. Canada must review its policy on loan funding, and must begin to do so by forgiving all existing loans. The process of granting loan funding has the potential to force a First Nation to remain in a negotiation process that does not adequately respond to its interests for fear of having to assume the burden of potentially repaying an enormous loan. Moreover, where the repayment of a loan is not being sought by Canada, there is no guarantee that Canada won't alter its position at a later date, thereby placing a First Nation at risk in its relationship with Canada as its fiduciary.

The principle of *independent* mediation is central to the goal and effectiveness of mediation. While it is always appropriate to rely on British Columbia Treaty Commission staff for mediation where all parties agree, the Treaty Commission is itself a funding body for First Nations (but not governments) and, therefore, may not always be perceived as truly independent by First Nations. Canada's recent establishment of a Mediation Centre, with a roster of independent mediators, is similarly not suitable because, again, the Centre is funded directly through Canada, as are the mediators. As a result, First Nations must be free to elect truly

independent mediators, despite Canada's contention that mediation may be available through a source such as the Treaty Commission.

EFFECTIVE PROTECTION AND REMEDIES – (Canada's 19th and 20th Reports – Paragraphs 125-126)

On June 18, 2011 a three-year transition period that delayed the full application of *Canadian Human Rights Act* (CHRA) on First Nation reserves came to an end. When the CHRA was introduced in 1977, section 67 prohibited individuals residing on reserves from filing claims against the government for acts of discrimination. This exemption was used by successive governments as a basis to ignore governance and infrastructure standards in First Nations communities regarding compliance to human rights. There are no funding enhancements for First Nations programs and services, residents of reserves will be able to file discrimination complaints against First Nations governments as well as the Canadian government concerning the delivery of those services.

First Nation governments have expressed concerns for the full application of the *Canadian Human Rights Act*. Currently, First Nations lack the capacity and resources to effectively implement the required changes. After all, most programs, policies and community infrastructure in First Nation communities were put in place by the Department of Indian Affairs prior to 2008. Many of these do not stand up to the scrutiny of the CHRA and First Nation governments have inherited the responsibility for these.

For example, Public buildings and housing constructed by First Nations through government of Canada service and program funding are now required to meet the needs of the physically disabled citizens. As of this point, no funding has been provided or is available for First Nation communities to retrofit current buildings to accommodate the needs of individuals with physical disabilities. According to our assessments approximately 1636 public buildings now require modification at a cost of $50,562,128.

Furthermore, it is the *Indian Act* and colonial control asserted by the federal government and its Indian Affairs bureaucracy that has suppressed the ability of First Nations governments to evolve with respect to good governance and capacity. With respect to various social programs, the criteria, eligibility requirements, funding levels, and service standards are all currently dictated by Ottawa. The Auditor-General's report about programs on First Nations' reserves, released in May 2011 concluded that conditions in First Nations communities have worsened over the last decade. In certain areas such as education, the education gap between First Nations living on reserves and the general population has widened. As such, extending the CHRA to First Nations requires adequate funding increases to enable First Nation governments to provide levels of service and standards equal to those enjoyed by other Canadians. The Assembly of First Nations has called on the federal government to ensure enough funds are supplied to First Nations to implement the application of the CHRA.

Some have taken the view that First Nations concerns over the application of the CHRA amounts to a rejection of human rights. Nothing can be further from the truth.

First Nations fully support human rights and want to continue to work with the federal government to ensure our governments and citizens have the appropriate supports to effectively work through this change.

However, it is interesting that despite the CHRA applying to the Federal Government over the last three years, the Attorney General has opposed claims of discrimination filed by First Nation citizens. In *Louie and Beattie v Indian and Northern Affairs Canada* the case involved how the Department of Indian Affairs sought to unilaterally control every aspect of a land lease. The Canadian Human Rights Tribunal ruled that the *Indian Act* is out of harmony with guaranteed individual liberty and Indian Affairs officials should view First Nation citizens as being ***"...*** responsible Canadians capable of making their own determinations of anticipated benefits to be derived from leasing their lands".

While in the *First Nations Child and Family Caring Society et al. v Attorney General of Canada,* the Attorney General for Canada challenged the jurisdiction of the Canadian Human Rights Tribunal to hear the case arguing that the provision of funding to First Nations child welfare organizations is not a "service". The Canadian Human Rights Tribunal ruled that one cannot compare the levels of funding between the federal and provincial levels of government, resulting in the possible entrenchment of continued under funding of First Nation services and denying a whole group of citizens the benefit of Human Rights protections. The Assembly of First Nations is appealing the decision of the Tribal Chair.

Recommendations

The CERD Committee is encouraged to request clarification from Canada why it believes itself to be exempt from the application of the Canadian Human Rights Act in providing equitable funding, yet expects First Nations bands to fully be responsible for compliance with the Canadian Human Rights Act.