



Native Women's
Association of Canada



L'Association des
femmes autochtones
du Canada

UN Committee on the Rights of the Child - Canada's Joint 5th/6th Periodic Review

Submission to the List of Issues Prior to Reporting

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Introduction

Since Canada's examination by the UN Committee on the Rights of the Child in September 2012 Canada's human rights track-record has continued to be closely scrutinized by the United Nations' key human rights bodies. Through a combined process of periodic treaty body examinations and visits to the country by several UN special procedures, Canada's performance in relation to its range of international human rights obligations has repeatedly come under the spotlight. Unlike certain other countries, Canada remains a country which is conscious of projecting to the outside world its commitment to democracy and human rights and, as a result, the country unquestionably takes a genuinely constructive approach at the international level to the overall process of external UN scrutiny.

Notwithstanding the general gravity of Canada's overall approach and repeatedly stated commitment to respecting human rights ideals, there remains much to be done at the domestic level in ensuring that the country's international obligations are respected in practice. This fact rings wholly true vis-à-vis respect for the human rights of Indigenous women, girls and gender-diverse persons, as evidenced by the recent and highly critical findings of the National Inquiry into Missing and Murdered Indigenous Women and Girls, whose Final Report was released on 3 June 2019.

The following excerpt from the report is emblematic of the core findings of the report as a whole, meriting a closer reading of the wider report. The selected excerpt aptly highlights the chronic mismatch between Canada's international legal human rights obligations and their implementation at home, as follows:

The truths shared in these National Inquiry hearings tell the story – or, more accurately, thousands of stories – of acts of genocide against Indigenous women, girls, and 2SLGBTQQIA people. The violence the National Inquiry heard amounts to a race-based genocide of Indigenous Peoples, including First Nations, Inuit and Métis, which especially targets women, girls, and 2SLGBTQQIA people. This genocide has been empowered by colonial structures evidenced notably by the Indian Act, the Sixties Scoop, residential schools and breaches of human and Indigenous rights, leading directly to the current increased rates of violence, death, and suicide in Indigenous populations.¹

While NWAC remains gratified for the national and international attention that the highlighted human rights tragedy has received, the organization has known for far too long that violence against Indigenous women and girls in Canada has comprised a genocide. One of the key conclusions of the National Inquiry is that a slower colonial genocide took place in Canada. In its Supplementary Report, *A Legal Analysis of Genocide*, the National Inquiry found the following:

¹ *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (June 2019) 50.

Framing genocide in Canada as an unlawful act of the state spanning decades and composed of numerous distinct acts and omissions which, in aggregate, violate the international prohibition against genocide allows us to understand its true nature without the entanglement caused by an inappropriate “copy and paste” of the logic pertaining to individual criminal liability and to Holocaust-types of genocides... Rather than a uniform national policy of genocide, Canadian history, with its federalist aspirations, is permeated by assorted policies of physical, structural, and legal erasure, perpetrated not only by individual masterminds, but by a collective, burgeoning nation-state.²

Unsurprisingly, key aspects of this slower colonial genocide in Canada have also been captured by the UN human rights machinery, not least that Indigenous women and girls have long been subjected to acute and wide-ranging forms and degrees of discrimination and violence in Canada. While the UN’s human rights entities may not have labelled the overall episode as genocidal, its different manifestations have unquestionably been sources of repeated concern for the international human rights community.

Structure of the submission to the UN Committee on the Rights of the Child

What follows in this short submission to the UN Committee on the Rights of the Child is an overview of some of NWAC’s concerns in relation to Indigenous children in Canada, albeit with a greater focus on Indigenous girls. Inevitably, this discussion will also broach the precarious situation of Indigenous women in the country, so closely inter-linked are the common experiences and everyday challenges faced by Indigenous women and girls in the country.

Section I of this submission will focus on the findings of two key national inquiries which have been released into the public domain since the UN Committee on the Rights of the Child’s examination of Canada in 2012. These key reports include *Honouring the Truth, Reconciling for the Future – Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, published in 2015, and *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, published in 2019.³

In addition, section II of the paper will underscore the key recommendations advanced following the fact-finding missions to Canada by key UN special procedures, including: (1) Special Rapporteur on the right to food, (2) Special Rapporteur on the rights of indigenous peoples, (3) Special Rapporteur on the right to health, (4) Special Rapporteur on violence against women, and (5) Special Rapporteur on the rights of persons with disabilities. For reasons of brevity the Concluding observations of the UN treaty bodies have not been highlighted in this submission,

² National Inquiry into Missing and Murdered Indigenous Women and Girls – *A Legal Analysis of Genocide, Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (June 2019) 11.

³ Please see: *Honouring the Truth, Reconciling for the Future – Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015) and *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1a and 1b* (June 2019).

despite their relevance to the UN Committee on the Rights of the Child, although passing reference is made to them.

Finally, Section III of the paper will briefly highlight NWAC's concerns about *Bill C-92, An Act respecting First Nations, Inuit, and Métis Children, Youth and Families*. During its legislative passage the organization closely monitored and commented on different draft versions of the law. Despite certain improvements in the final statute, specific concerns persist.

As possible action points, the different sections of this paper advance various *recommended questions*, which the UN Committee on the Rights of the Child may wish to include in its List of Issues Prior to Reporting (LOIPR) in relation to Canada's joint 5th and 6th periodic review. NWAC believes that Canada should be required to provide more detailed information in relation to all of these recommended questions.

Section I. The Findings of the Truth & Reconciliation Commission & the National Inquiry into Murdered and Missing Women and Girls

(1) The Findings of the Truth & Reconciliation Commission

Since the examination of Canada by the UN Committee on the Rights of the Child in 2012, the findings of a key inquiry concerning Indigenous peoples, *Honouring the Truth, Reconciling for the Future – Summary of the Final Report of the Truth and Reconciliation Commission of Canada* was issued in 2015. The document issued 94 key recommendations framed as *Calls to Action* under the wider headings of *Legacy* and *Reconciliation*, many of which concerned Indigenous children and young persons, including under the domains outlined below:

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

In addition, under the rubric of *Reconciliation*, numerous other Calls to Action were issued, a number of which inevitably impacted on children and young persons.⁴ In particular, recommendations were clustered under the following categories:

- National Council for Reconciliation;
- Education for reconciliation;
- Youth Programs;

⁴ *Honouring the Truth, Reconciling for the Future – Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015) 319-337.

- Missing Children and Burial Information.

The key Calls to Action relating to Indigenous children and young persons have been included in Annex 1 of this report and merit closer scrutiny by Members of the UN Committee on the Rights of the Child

Influential international authorities have remarked positively on the overall Truth and Reconciliation Commission's eight-year-long inspective process. The UN Expert Mechanism on the Rights of Indigenous Peoples correctly noted that it was established jointly by Indigenous peoples and governments and that Indigenous peoples participated in the work of the Commission fully from the outset. Moreover, it addressed both historical human rights violations and the intergenerational roots of the current situation of Indigenous peoples.⁵ The Inter-American Commission on Human Rights has also acknowledged the broad transformative effect of the Calls to Action.⁶

By and large, however, many of the 94 Calls to Action remain disappointingly unimplemented in practice in Canada. According to one key domestic authority, namely the National Inquiry into Murdered and Missing Indigenous Women, despite several jurisdictions across Canada having stated that they are committed to implementing the TRC Calls to Action "...it is too early to assess the success of these specific initiatives."⁷

Even less favourably, the CBC News' *'Beyond 94: Truth and Reconciliation in Canada'* research database reported, as of 18 October 2019, that in relation to 26 Calls to Action no state steps towards implementation had been taken, while projects had been proposed, but had not started, in relation to a very sizeable 37 Calls to Action. In the case of just 10 Calls to Action was progress described as being 'complete'.⁸ In short, the gap between the TRC written-word and practice remains glaring in many instances. Moreover, when read together with the National Inquiry Final Report (please see below), the absence of tangible progress in relation to the rights of Indigenous women and girls is all the more alarming.

Recommended question 1: Please provide information to the UN Committee on the Rights of the Child of the concrete steps taken to address the TRC's Calls to Actions in the areas outlined above and detailed in Annex 1 of this report?

⁵ UN Expert Mechanism on the Rights of Indigenous Peoples, *Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: recognition, reparation and reconciliation* (UN Doc. A/HRC/EMRIP/2019/3, 2 May 2019) §48.

⁶ Inter-American Commission on Human Rights, *Indigenous Women and Their Human Rights in the Americas* (Inter-American Commission on Human Rights, Washington DC, USA 2017) 111.

⁷ *Interim Report – The National Inquiry into Missing and Murdered Indigenous Women and Girls: Our Women and Girls are Sacred* (2017) 12.

⁸ CBC News, *Beyond 94: Truth and Reconciliation in Canada* (CBC News, Ottawa, 18 October 2019): <<https://newsinteractives.cbc.ca/longform-single/beyond-94?&cta=1>> accessed 19 December 2019.

(2) The Findings of the National Inquiry into Murdered and Missing Women and Girls

As noted in the introduction to this submission, the much-anticipated report, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, was published in June 2019.⁹ The National Inquiry Final Report has termed the violence committed against Indigenous peoples in Canada as amounting to a race-based genocide, which illuminates both the depth and scope of the human rights violations committed against Indigenous communities in Canada.¹⁰

The broad reach of the National Inquiry’s mandate allowed it to address a range of interrelated issues concerning all forms of violence against Indigenous women and girls in a holistic manner.¹¹ The report contains 231 key recommendations framed as *Calls for Justice* which have been described in the Final Report as ‘legal imperatives’, as follows:

*Although we have been mandated to provide recommendations, it must be understood that these recommendations, which we frame as “Calls for Justice,” are legal imperatives – they are not optional. The Calls for Justice arise from international and domestic human and Indigenous rights laws, including the Charter, the Constitution, and the Honour of the Crown. As such, Canada has a legal obligation to fully implement these Calls for Justice and to ensure Indigenous women, girls, and 2SLGBTQQIA people live in dignity. We demand a world within which First Nations, Inuit, and Métis families can raise their children with the same safety, security, and human rights that non-Indigenous families do, along with full respect for the Indigenous and human rights of First Nations, Inuit, and Métis families.*¹²

The 231 legal imperatives in the form of the Calls to Justice are the means by which Canada should right past wrongs, many of which equally concern girls as well as women. Despite their being too numerous to enumerate in the space of such a short document, it was significant that some 17 Calls to Justice were directed at agencies directly implicated in the education and welfare of Indigenous children, covering an array of related issues.¹³ As an illustrative case in point, in its *Call to Educators* the Final Report states:

⁹ *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1a and 1b* (June 2019).

¹⁰ *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1a* (June 2019) 49. See also: *A Legal Analysis of Genocide – Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (June 2019) 11.

¹¹ *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1b* (June 2019) 1b 58.

¹² *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1b* (June 2019) 168.

¹³ *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1b* (June 2019) 1b 193-196.

We call upon all elementary, secondary, and post-secondary institutions and education authorities to educate and provide awareness to the public about missing and murdered Indigenous women, girls, and 2SLGBTQQIA people, and about the issues and root causes of violence they experience. All curriculum development and programming should be done in partnership with Indigenous Peoples, especially Indigenous women, girls, and 2SLGBTQQIA people. Such education and awareness must include historical and current truths about the genocide against Indigenous Peoples through state laws, policies, and colonial practices. It should include, but not be limited to, teaching Indigenous history, law, and practices from Indigenous perspectives and the use of Their Voices Will Guide Us with children and youth.¹⁴

As another illustrative example, in the *Calls for Social Workers and Those Implicated in Child Welfare* the Final Report urges the following:

We call upon on all governments, including Indigenous governments, to transform current child welfare systems fundamentally so that Indigenous communities have control over the design and delivery of services for their families and children. These services must be adequately funded and resourced to ensure better support for families and communities to keep children in their family homes.¹⁵

Please also see NWAC's concerns in this same regard in the final section of this paper. The specific 17 Calls to Justice are detailed in Annex 2 of this document, to which UN Committee Members are urged to consult for more comprehensive information.

Nonetheless, distributed through the Final Report can be found other important Calls to Justice with a bearing on children and young persons, including in relation to violence prevention in the family, language rights, and support for the children of missing and murdered Indigenous women.¹⁶ Sight should therefore not be lost of these crucial Calls to Action, which have also been included in Annex 2 of this document.

Finally, it bears noting that the Final Report calls on Canadian governments at all levels to immediately implement and fully comply with all relevant international rights instruments, including the UN Convention on the Rights of the Child and its 3rd Protocol. Similarly, Canada is also urged to act on the recommendations concerning violence against Indigenous women, girls, and 2SLGBTQQIA individuals made by international human rights bodies, including the UN treaty bodies.¹⁷

¹⁴ *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1b* (June 2019) 1b 193.

¹⁵ *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1b* (June 2019) 1b 194.

¹⁶ *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1b* (June 2019) 1b 178-179, and 181

¹⁷ *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1b* (June 2019) 1b 176-177.

In a potentially positive development, however, in early December 2019, the Crown-Indigenous Relations Minister Carolyn Bennett publicly stated that the Canadian Government is developing an Action Plan to act on the 231 Calls to Justice, which were originally intended to be published by June 2020.¹⁸ However, in view of the current COVID-19-related global health emergency it remains to be seen if this date is met in practice.

Recommended question 2: Please provide information to the UN Committee on the Rights of the Child of the concrete steps being taken to address the National Inquiry Calls to Justice in the areas outlined above and detailed in Annex 2?

Recommended question 3: More broadly, please provide information to the UN Committee on the Rights of the Child about the overall steps being taken to ensure concrete follow-up to all 231 National Inquiry Calls to Justice, including in the wake of COVID-19-related global health emergency?

Section II. The Multiple Concerns of the UN Special Procedures in relation to Indigenous Children and Young Persons in Canada, including Girls.

Since 2012 Canada’s human rights track-record has continued to be closely scrutinized by key United Nations human rights bodies. Through a combined process of periodic treaty body examinations and visits to the country by the UN special procedures, Canada’s performance in relation to its range of international human rights obligations has repeatedly come under the spotlight.

Listed in the table below are the UN special procedures which have visited Canada as part of their country-visit functions and/or which have issued reports since 2012 when the UN Committee on the Rights of the Child last examined Canada. The table lists the UN special procedures by mandate, the date of the visit, and the date of the publication of the related country report.

Mandate	Date of Visit	Date of Report
Special Rapporteur on hazardous substances and wastes	2019	Autumn 2020
Special Rapporteur on the rights of persons with disabilities	2019	2019
Special Rapporteur on health	2018	2019
Special Rapporteur on violence against women	2018	2019

¹⁸ Global News, *Action plan on missing, murdered Indigenous women inquiry to be released in June: minister* (Global News, 4 December 2019): <<https://globalnews.ca/news/6255882/missing-murdered-indigenous-women-inquiry-june/>> accessed 17 December 2019.

Working Group on the issue of human rights and transnational corporations and other business enterprises	2017	2018
Working Group of Experts on People of African Descent	2016	2017
Special Rapporteur on the rights of Indigenous peoples	2013	2014
Special Rapporteur on the right to food	2012	2012

From the perspective of Indigenous children’s rights, several of the visits of the UN special procedures were highly relevant, particularly the missions to Canada by the *UN Special Rapporteur on violence against women* from 2018 and the *Special Rapporteur on the rights of Indigenous peoples* from 2013. Even though other UN experts may have had less to say directly in relation to Indigenous children, their comments and recommendations nevertheless remain highly relevant, including on pressing issues such as the right to food and health. What follows in this second section of the paper is an overview of some of the key recommendations which have emerged in the reports of the UN experts concerning Indigenous children and young persons in recent years, including girls (presented in chronological order).

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

There exists a pattern in Canada where marginalized groups, indigenous peoples in particular, find themselves on the wrong side of a toxic divide, subject to conditions that would not be acceptable elsewhere in Canada. While the principle and right of non-discrimination is found in the Canadian Constitution, it does not appear to have served as a significant protection or recourse for affected communities in cases of action or, more often than not, inaction by the Government.¹⁹

Quite simply, children are just as affected by environment contamination and degradation as their wider communities, arguably more so, as the UN Special Rapporteur has argued:

As often said, children are not little adults. The impacts of exposure by children during sensitive periods of development are unique and multifaceted. The silent pandemic of diseases and disabilities linked to childhood exposure is adversely affecting the full realization of human rights

¹⁹ End-of-visit statement by the United Nations Special Rapporteur on human rights and hazardous substances and wastes, Baskut Tuncak on his visit to Canada, 24 May to 6 June 2019 (OHCHR, Geneva, Switzerland, 6 June 2019: <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24678&LangID=E>> accessed 10 February 2020.

*at various stages of life, with profound economic costs on individuals regarding health care, lost productivity and more.*²⁰

Similarly, the report of the mission to Canada by the *Working Group on the issue of human rights and transnational corporations and other business enterprises* from 2018 contained recommendations which impacted on the wider communities of Indigenous peoples.²¹ In particular, the Working Group found that one of the main grievances expressed by Indigenous peoples was the lack of meaningful consultations and non-compliance with the requirement of free, prior, informed consent in the context of business activities on their lands.²² In certain highlighted cases business activities had negatively impacted on Indigenous communities and their environments.²³ Recommendations were consequently issued on the basis of such concerns.²⁴

The key point here is that, while not necessarily a specific focus of such reports, Indigenous children and young persons are inevitably covered by many of the broader, community-wide recommendations which have been issued by the UN special procedures in the wake of their fact-finding missions to Canada since 2012. **The UN Committee on the Rights of the Child may therefore wish to refer to the aforementioned reports as a basis of formulating the List of Issues Prior to Reporting in relation to Canada's fifth and sixth joint periodic report.**

(1) The Special Rapporteur on the right to food

In May 2012 the then *UN Special Rapporteur on the right to food*, Olivier De Schutter, undertook a fact-finding mission to Canada, making various recommendations²⁵, the report of which noted: "Canada's record on civil and political rights has been impressive. Its protection of economic and social rights, including the right to food, has been less exemplary."²⁶ The precarious situation of Indigenous peoples in relation to the right to food constituted a core concern.²⁷ The UN Special Rapporteur noted in this regard: "A long history of political and economic marginalization has left

²⁰ End-of-visit statement by the United Nations Special Rapporteur on human rights and hazardous substances and wastes, Baskut Tuncak on his visit to Canada, 24 May to 6 June 2019 (OHCHR, Geneva, Switzerland, 6 June 2019: <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24678&LangID=E>> accessed 10 February 2020.

²¹ Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Canada (UN Doc. A/HRC/38/48/Add.1, 23 April 2018) §49-55.

²² Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Canada (UN Doc. A/HRC/38/48/Add.1, 23 April 2018) §51.

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

²⁴ Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Canada (UN Doc. A/HRC/38/48/Add.1, 23 April 2018) §79(q) and 82.

²⁵ Report of the Special Rapporteur on the right to food, Olivier De Schutter, Mission to Canada (UN Doc. A/HRC/22/50/Add.1, 24 December 2012).

²⁶ Report of the Special Rapporteur on the right to food, Olivier De Schutter, Mission to Canada (UN Doc. A/HRC/22/50/Add.1, 24 December 2012) §9.

²⁷ Report of the Special Rapporteur on the right to food, Olivier De Schutter, Mission to Canada (UN Doc. A/HRC/22/50/Add.1, 24 December 2012) §55.

many indigenous peoples living in poverty with considerably lower levels of access to adequate food relative to the general population.”²⁸

As relevant background information, Food Banks Canada²⁹, the national umbrella organization for emergency food provision, has described the differentiated experiences of food-insecure persons in the following terms:

*Not everyone in Canada has the same likelihood of experiencing food insecurity. If your primary source of income is employment, you face about a one in ten chance of experiencing it in a given year. If you are part of a female-led lone-parent family, you face a one in four chance. If you identify as Inuit, Métis or First Nations, your risk increases again. If you are on social assistance, your risk rises to seven in ten – 70% of households in receipt of social assistance are food insecure. In other words, it is the households who rely most on the government who are most likely to not have enough food at home.*³⁰

The food insecurity statistics relating to Canada’s Indigenous peoples are especially alarming, not least due to their large numbers³¹ and food insecurity’s egregious impact on children.³² Food Banks Canada has noted that average food insecurity rates were approaching twice as high across Canada’s northern Nunavut, Yukon and the Northwest Territories as well as northern Quebec (Nunavik) and Labrador (Nunatsiavut) than the national average.³³ For Indigenous peoples the causes of food insecurity relate to various mutually compounding factors, including poverty and marginalization.³⁴

²⁸ Report of the Special Rapporteur on the right to food, Olivier De Schutter, Mission to Canada (UN Doc. A/HRC/22/50/Add.1, 24 December 2012) §55.

²⁹ Food Banks Canada is a network of 10 provincial associations and more than 500 food banks located throughout Canada. See: Food Banks Canada, *Nowhere to Turn: Single Adults Living with Poverty in Canada* (Food Banks Canada, Mississauga, Ontario, Canada 2017) inside cover page.

³⁰ Food Banks Canada, *What Will it Take to Make Real Progress on Northern Food Security?* (Food Banks Canada, Mississauga, Ontario, Canada 2016) 3.

³¹ Aboriginal peoples comprise 1.4 million persons or 4.3 percent of the population. See: C. Gray, *The Promise of Canada: 150 Years – People and Ideas That Have Shaped Our Country* (1st, Simon & Schuster Canada, Toronto, Canada 2016) 245.

³² A. Blay-Palmer, ‘Power Imbalances, Food Insecurity, and Children’s Rights in Canada’ (2016) 4 *Frontiers in Public Health* 1, 11; G.M. Egeland, L. Johnson-Down, Z.R. Cao, N. Sheikh & H. Weiler, ‘Food Insecurity and Nutrition Transition Combine to Affect Nutrient Intakes in Canadian Arctic Communities’ (2011) 141 *J. Nutr.* 1746, 1746; and L.C. Findlay, K.A. Langlois & D.E. Kohen, ‘Hunger among Inuit children in Canada’ (November 2013) *International Journal of Circumpolar Health* 72, 72-73.

³³ Food Banks Canada, *What Will it Take to Make Real Progress on Northern Food Security?* (Food Banks Canada, Mississauga, Ontario, Canada 2016) 4.

³⁴ However, further food related uncertainties include a contamination of country foods, loss of traditional aboriginal lifestyles, limited economic development, local population growth and the looming effects of global warming. See: G.M. Egeland, L. Johnson-Down, Z.R. Cao, N. Sheikh & H. Weiler, ‘Food Insecurity and Nutrition Transition Combine to Affect Nutrient Intakes in Canadian Arctic Communities’ (2011) 141 *J. Nutr.* 1746, 1746; C. Huet, R. Rosol & G.M. Egeland, ‘The Prevalence of Food Insecurity Is High and the Diet Quality Poor in Inuit Communities’ (2012) 142 *Journal of Nutrition* 541, 541; and P. Watts, K. Koutouki, S. Booth & S. Blum, ‘Inuit food security in Canada: arctic marine ethnoecology’ (20) 9 *Food Security* 421, 423.

The impact of food insecurity on the physical and mental health of those affected has been well documented and includes obesity, multiple chronic conditions such as diabetes, heart disease and anemia as well as depression and anxiety.³⁵ For communities worse affected by food insecurity the impact on health is even more pronounced, including on Indigenous peoples.³⁶

In the December 2012 report key recommendations of the UN Special Rapporteur on the right to food in relation to Indigenous families and children included the following:

By recognizing access to sufficient and adequate food as a legal entitlement, the right to food provides an important tool for combating hunger and malnutrition. It protects the rights of people to live with dignity and ensures that all have either the resources required to produce enough food for themselves or a purchasing power sufficient to procure food from the market. It imposes obligations on the State, requiring that individuals and communities have access to recourse mechanisms when these obligations are not met. The right to food also requires that States identify the hungry and malnourished by adequate food insecurity and vulnerability mapping, and that they adopt policies that remove the obstacles to its enjoyment by each individual. Consistent with this understanding of the right to food as a human right, the Special Rapporteur offers the following recommendations:

(a) Formulate a comprehensive rights-based national food strategy clearly delineating the responsibilities of public officials at the federal, provincial/territorial, and municipal/local levels, identifying the measures to be adopted and the associated time frames, and ensuring that initiatives adopted at municipal and provincial levels, particularly for the rebuilding of local food systems, are adequately supported; as part of this strategy, create a nationally funded children and food strategy (including school-feeding food literacy and school garden programmes) to ensure that all children, at all times, have access to healthy and nutritious food; launch the process of adoption of a framework law on the right to food, for the regular updating of the Canadian food strategy.³⁷

In addition, brief mention should also be made to Canada's February 2016 examination by the UN Committee on Economic, Social and Cultural Rights. The Committee tackled inadequacies in relation to a range of socio-economic issues which impact on food security including unemployment, minimum wage levels, social security provisions, poverty and ensuring an adequate standard of living.³⁸ Directly on the issue of the right to food the Committee remained

³⁵ Campaign 2000: End Child & Family Poverty, *2017 Report Card on Child and Family Poverty in Canada – A Poverty-Free Canada Requires Federal Leadership* (Campaign 2000, Toronto, Canada 2017) 20; Canada Without Poverty/Citizens for Public Justice, *Dignity for All: A National Anti-Poverty Plan for Canada* (Canada Without Poverty/Citizens for Public Justice, Ottawa, Canada no date given) 26; and Council of Canadian Academies, *Security in Northern Canada: An Assessment of the State of Knowledge* (Council of Canadian Academies, Ottawa, Canada 2014) 50.

³⁶ K. Skinner, R.M. Hanning, E. Desjardins, L.J.S. Tsuji, 'Giving voice to food insecurity in a remote indigenous community in subarctic Ontario, Canada: traditional ways, ways to copes, ways forward' (2013) 13 BMC Public Health 427, 436.

³⁷ Report of the Special Rapporteur on the right to food, Olivier De Schutter, Mission to Canada (UN Doc. A/HRC/22/50/Add.1, 24 December 2012) §69a.

³⁸ Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of Canada (UN Doc. E/C.12/CAN/CO/6, 23 March 2016) §23, 25-26, 29-30 and 43-44.

concerned “... at the rates of food insecurity in the State party, the increased reliance on food banks, particularly in northern Canada, and the deficiencies of the Nutrition North Canada food programme.”³⁹ Among its various recommendations the expert body urged Canada to address the recommendations put forward in the report of the UN Special Rapporteur on the right to food following his mission to Canada in 2012.⁴⁰

Recommended question 4: In view of the recommendations of the UN Special Rapporteur on the right to food please provide information to the UN Committee on the Rights of the Child on the concrete steps which are being taken to address food insecurity on the part of Indigenous children and young persons in Canada?

Recommended question 5: In view of the food insecurity statistics relating to Canada’s Indigenous peoples and that food insecurity is nearly twice as high across Canada’s northern regions including Nunavut, Yukon and the Northwest Territories as well as northern Quebec (Nunavik) and Labrador (Nunatsiavut) than the national average, please inform the UN Committee on the Rights of the Child of the concrete steps being taken to address food insecurity on the part of Indigenous children in these particular regions?

(2) The Special Rapporteur on the rights of indigenous peoples

In the 2014 report of his visit to Canada the previous year, the then *Special Rapporteur on the rights of indigenous peoples*, James Anaya, offered a damning indictment of the predicament of Indigenous persons in Canada, as follows:

*But despite positive steps, daunting challenges remain. Canada faces a continuing crisis when it comes to the situation of indigenous peoples of the country. The well-being gap between aboriginal and non-aboriginal people in Canada has not narrowed over the last several years, treaty and aboriginal claims remain persistently unresolved, indigenous women and girls remain vulnerable to abuse, and overall there appear to be high levels of distrust among indigenous peoples towards government at both the federal and provincial levels.*⁴¹

The UN Special Rapporteur advanced various key recommendations of direct relevance to children, including under the following headings:

³⁹ Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of Canada (UN Doc. E/C.12/CAN/CO/6, 23 March 2016) §47.

⁴⁰ Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of Canada (UN Doc. E/C.12/CAN/CO/6, 23 March 2016) §48.

⁴¹ Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya - The situation of indigenous peoples in Canada (UN Doc. A/HRC/27/52/Add.2, 4 July 2014) §80.

Social and economic conditions

The Government should ensure sufficient funding for services for indigenous peoples both on and off reserve, including in areas of education, health and child welfare, in the light of the rights and significant needs of indigenous peoples and the geographic remoteness of many indigenous communities; and insure that the quality of these services is at least equal to that provided to other Canadians.⁴²

Canada must take urgent action to address the housing crisis in indigenous communities both on and off reserve, especially communities in the north, and dedicate increased funding towards this end. In particular, the Government as a matter of urgency should work with Inuit representatives to ensure affordable, sustainable and adequate housing in the Arctic, and to design and construct housing to adapt to the region's environment and culture.⁴³

The Government should work with indigenous peoples to enhance education opportunities for them, and in particular should consult with indigenous peoples, through their representative institutions, to address any outstanding concerns they may have related to the proposed First Nations Education Act, including with respect to adequate funding.⁴⁴

Missing women and girls

Bearing in mind the important steps already taken to inquire into the disturbing phenomenon of missing and murdered aboriginal women and girls and to develop measures to address this problem, the federal Government should undertake a comprehensive, nationwide inquiry into the issue of missing and murdered aboriginal women and girls, organized in consultation with indigenous peoples.⁴⁵

Recommended question 6: In view of the recommendations of the UN Special Rapporteur on the rights of indigenous peoples please provide information to the UN Committee on the Rights of the Child on the concrete steps which are being taken to address the aforementioned recommendations?

⁴² Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya - The situation of indigenous peoples in Canada (UN Doc. A/HRC/27/52/Add.2, 4 July 2014) §84.

⁴³ Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya - The situation of indigenous peoples in Canada (UN Doc. A/HRC/27/52/Add.2, 4 July 2014) §86.

⁴⁴ Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya - The situation of indigenous peoples in Canada (UN Doc. A/HRC/27/52/Add.2, 4 July 2014) §87.

⁴⁵ Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya - The situation of indigenous peoples in Canada (UN Doc. A/HRC/27/52/Add.2, 4 July 2014) §89.

(3) Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

The *Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Dainius Pūras, visited Canada in November 2018, publishing his subsequent report in May 2019.⁴⁶ In relation to Indigenous families the UN Special Rapporteur found the following:

*Despite good efforts to improve Indigenous physical and mental health, the situation is still one of the most pressing issues in-country. Official data reveals that Indigenous peoples' life expectancy is up to 15 years shorter; rates of infant mortality are two to three times higher; diabetes rates are almost four times higher for First Nations on reserve, and tuberculosis rates are 270 times higher for Inuit.*⁴⁷

The report continued:

*The quality of healthcare services in-country is overall very good if a person can actually access them. Canada still faces structural challenges regarding services that are not covered by the public health insurance; disparities among Provinces/Territories; poor access to healthcare by persons in vulnerable situations including Indigenous peoples, and lack of parity between physical and mental health.*⁴⁸

The UN Special Rapporteur issued an array of specific recommendations to address these and other health-related concerns, too numerous to cite in this short submission.⁴⁹ Nonetheless, the Members of the UN Committee on the Rights of the Child should consult the relevant paragraphs of the document.

Recommended question 7: In view of the UN Special Rapporteur on the right to health's findings and recommendations please provide information to the UN Committee on the Rights of the Child about the steps being taken to ensure that Indigenous families and children have access to adequate mental and physical health services?

⁴⁶ The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Visit to Canada (UN Doc. A/HRC/41/34/Add.2, 21 May 2019).

⁴⁷ The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Visit to Canada (UN Doc. A/HRC/41/34/Add.2, 21 May 2019) §73.

⁴⁸ The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Visit to Canada (UN Doc. A/HRC/41/34/Add.2, 21 May 2019) §101.

⁴⁹ The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Visit to Canada (UN Doc. A/HRC/41/34/Add.2, 21 May 2019) §103-115.

(4) Special Rapporteur on violence against women, its causes and consequences

In June 2019 the *UN Special Rapporteur on violence against women, its causes and consequences*, Dubravka Šimonovic, published her report of her April 2018 mission to Canada.⁵⁰ In the report, the UN expert examined the gaps and challenges in fulfilling the obligations of Canada to eliminate violence against women and recommended measures for preventing and combating violence against women in the country, including in relation to Indigenous children.

Like many of the Calls to Justice highlighted in the Final Report of the National Inquiry into Murdered and Missing Women, numerous recommendations of the UN Special Rapporteur on violence against women are directed at the Canadian authorities in relation to both women and girls. Moreover, Indigenous girls may suffer many of the same abuses experienced by Indigenous women if the *status quo* described in the Special Rapporteur's report is allowed to go unaddressed. It is with this point in mind that recommended question no. 7, cited below, has been formulated.

More specifically in relation to *Indigenous girls* the UN Special Rapporteur on violence against women advanced the following, multiple recommendations.

*The Rapporteur highlights that there is an urgent need for a more comprehensive and holistic National Action Plan on violence against women, ensuring that women and girls in all areas of the country have access to comparable levels of services and human rights protection. She, therefore, recommends adopting, in cooperation with independent human rights institutions and CSOs, a National Action Plan on Violence Against Women and Domestic violence, based on human right standards on prevention, services and prosecution of violence against women accepted by Canada, such as the CEDAW Convention and its General Recommendation No. 35 on gender-based violence against women;*⁵¹

Concerning the situation of violence against Indigenous women, the mandate holder also reiterates her full endorsement of previous CEDAW Inquiry report recommendations and calls for their full implementation. In particular:

- (i) Urgently repeal remaining discriminatory provisions in Canada's Indian Act and any other discriminatory national law and practices against Indigenous women and girls;*
- (ii) Adopt measures to improve the socioeconomic conditions of Indigenous women and girls and provide adequate funding to support dedicated Indigenous-based holistic community supports;*⁵²

Ensure systemic and comparable national data collection on all manifestations of gender-based violence against women and girls and femicide, as well as specific information on violence

⁵⁰ Report of the Special Rapporteur on violence against women, its causes and consequences, Visit to Canada (UN Doc. A/HRC/41/42/Add.1, 3 June 2019).

⁵¹ Report of the Special Rapporteur on violence against women, its causes and consequences, Visit to Canada (UN Doc. A/HRC/41/42/Add.1, 3 June 2019) §95(e).

⁵² Report of the Special Rapporteur on violence against women, its causes and consequences, Visit to Canada (UN Doc. A/HRC/41/42/Add.1, 3 June 2019) §95(g)(i)(ii).

against women and femicide of Indigenous women and establish and provide support to existing femicide watch or observatories, including Indigenous women's femicide observatories. Such observatories should focus on prevention through human rights-based analysis of cases as recommended in the SRVAW thematic report on modalities for the establishment of femicide observatories (A/71/378);⁵³

Ensure collection of data on trafficking of women and girls including Indigenous women and LGBTQ2S+ people;⁵⁴

Investigate all allegations of forced or coerced sterilizations, with particular attention to cases involving Indigenous women and girls, ensuring justice and remedies including reparations to survivors and their families, explicitly prohibiting sterilization without free, full, and informed consent and enforce healthcare professional accountability;⁵⁵

Fully implement the United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) which provides guidance for women in prison;⁵⁶

In compliance with the above mentioned rules, institute a ban on solitary confinement, segregation, intensive psychiatric care, strip searching and all other related forms of isolation of women in detention, including young women, women with mental health issues and Indigenous women, which experience high rates of segregation, and guarantee that “mother and child” and rehabilitation programs are always in place;⁵⁷

Take concrete steps to eliminate the over-representation of Indigenous women in custody (and youth corrections facilities for Indigenous girls). Issue detailed annual reports to monitor and evaluate progress and stop classifying them as bearing a low potential of reintegration when they are detained;⁵⁸

⁵³ Report of the Special Rapporteur on violence against women, its causes and consequences, Visit to Canada (UN Doc. A/HRC/41/42/Add.1, 3 June 2019) §95(m).

⁵⁴ Report of the Special Rapporteur on violence against women, its causes and consequences, Visit to Canada (UN Doc. A/HRC/41/42/Add.1, 3 June 2019) §95(n).

⁵⁵ Report of the Special Rapporteur on violence against women, its causes and consequences, Visit to Canada (UN Doc. A/HRC/41/42/Add.1, 3 June 2019) §95(r).

⁵⁶ Report of the Special Rapporteur on violence against women, its causes and consequences, Visit to Canada (UN Doc. A/HRC/41/42/Add.1, 3 June 2019) §95(x).

⁵⁷ Report of the Special Rapporteur on violence against women, its causes and consequences, Visit to Canada (UN Doc. A/HRC/41/42/Add.1, 3 June 2019) §95(y).

⁵⁸ Report of the Special Rapporteur on violence against women, its causes and consequences, Visit to Canada (UN Doc. A/HRC/41/42/Add.1, 3 June 2019) §95(z)(i).

*Address the disproportionately high number of Indigenous children institutionalized by Child welfare authorities which renders Indigenous women more vulnerable to violence, as they are reluctant to seek help from authorities fearing that their children may be taken away;*⁵⁹

*Respectively with all levels of jurisdictions, establish civilian oversight of police, as an important step in monitoring police response to sexual assault and sexual assault survivors especial against Indigenous women and girls;*⁶⁰

*Establish an independent civilian oversight body for the RCMP, to monitor police response to sexual assault and sexual assault survivors, especially indigenous women and girls;*⁶¹

*Support an external review, conjointly with civil society and Indigenous communities, of the disproportionate levels of racism, abuse, and violence towards Indigenous women and girls by police and correctional officers, with a view to implement preventative measures and enforcing institutional accountability on a concept of zero tolerance for excessive use of force and sexual harassment or assault.*⁶²

In relation to the UN expert's different recommendations concerning Indigenous women and girls who are deprived of their liberty in Canada, it is relevant to note that the UN Special Rapporteur on violence against women also urged Canada to ratify the Optional Protocol to the UN Convention against Torture with a view to establishing independent oversight of the different places of detention in the country.⁶³ To date, Canada has yet to ratify this important international human rights instrument.

Recommended question 8: Please provide information to the UN Committee on the Rights of the Child about how the Government of Canada is responding to the overall concerns and multiple recommendations of the UN Special Rapporteur on violence against women as highlighted in her 2019 report?

Recommended question 9: Please provide information to the UN Committee on the Rights of the Child about how the Government of Canada is responding to the specifically highlighted concerns of the UN Special Rapporteur in relation to Indigenous girls and, more precisely, how it intends to act on the aforementioned recommendations?

⁵⁹ Report of the Special Rapporteur on violence against women, its causes and consequences, Visit to Canada (UN Doc. A/HRC/41/42/Add.1, 3 June 2019) §95(z)(ii).

⁶⁰ Report of the Special Rapporteur on violence against women, its causes and consequences, Visit to Canada (UN Doc. A/HRC/41/42/Add.1, 3 June 2019) §95(z)(iii).

⁶¹ Report of the Special Rapporteur on violence against women, its causes and consequences, Visit to Canada (UN Doc. A/HRC/41/42/Add.1, 3 June 2019) §95(z)(iv).

⁶² Report of the Special Rapporteur on violence against women, its causes and consequences, Visit to Canada (UN Doc. A/HRC/41/42/Add.1, 3 June 2019) §95(z)(v).

⁶³ Report of the Special Rapporteur on violence against women, its causes and consequences, Visit to Canada (UN Doc. A/HRC/41/42/Add.1, 3 June 2019) §95(a).

(5) Special Rapporteur on the rights of persons with disabilities

In April 2019 the Special Rapporteur on the rights of persons with disabilities, Catalina Devandas Aguilar, undertook a fact-finding mission to Canada, issuing the related report in December the same year.⁶⁴ In relation to Indigenous persons with disabilities, including children, the UN expert found the following:

*Despite these [cited positive] measures, indigenous persons with disabilities, including children, are far behind in the enjoyment of their rights. They experience higher rates of domestic violence, particularly women with disabilities, and have limited access to the products, services and supports they need, even when these are normally available to others. Consequently, many are forced to seek services outside their reserve, which means they face an increased risk of discrimination and a lack of culturally sensitive services. Moreover, it is often the case that indigenous persons with disabilities cannot access services, whether on or off reserves, due to jurisdictional disputes between different levels of government concerning who is responsible for covering the costs.*⁶⁵

The report continued:

*Many persons with disabilities, particularly children and older adults, are sent to long-term care facilities far from their communities to receive health-, residential or palliative care services that are not culturally appropriate. Indigenous children represent more than half of all children in foster care and it is estimated that more than 40,000 First Nations children live away from their families, in the care of child welfare services funded and regulated by provincial or territorial governments or by the federal government. Many of them are children with disabilities, often removed from their homes because of the lack of appropriate support services in indigenous communities. The Special Rapporteur was informed that some families are afraid of reporting the disability status of a relative due to the risk of separation.*⁶⁶

*It remains unclear how the Accessible Canada Act applies to indigenous persons with disabilities living on reserves. The Special Rapporteur encourages the federal and indigenous governments to work closely so as to ensure that all persons with disabilities benefit from the Act and enjoy all their rights on an equal basis with others. She also encourages the Government of Canada to continue working with indigenous governments to support the development of measures aimed at addressing the unique realities of indigenous persons with disabilities.*⁶⁷

⁶⁴ Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Canada (UN Doc. A/HRC/43/41/Add.2, 19 December 2019).

⁶⁵ Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Canada (UN Doc. A/HRC/43/41/Add.2, 19 December 2019) §33.

⁶⁶ Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Canada (UN Doc. A/HRC/43/41/Add.2, 19 December 2019) §34.

⁶⁷ Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Canada (UN Doc. A/HRC/43/41/Add.2, 19 December 2019) §35.

In this latter connection, the Special Rapporteur recommended that the Government make available the appropriate financial and human resources to ensure the implementation of the Accessible Canada Act, including in First Nations and Inuit communities.⁶⁸ The UN expert also issued different recommendations to ensure that persons with disabilities can live independently in the community, including that the available support is increased to enable parents to keep children with disabilities at home (please see above).⁶⁹ Similarly, she also recommended to the Canadian Government that it improve access to health care for Indigenous persons with disabilities by making comprehensive rights-based medical care available as close as possible to their homes.⁷⁰

Recommended question 10: Please provide information to the UN Committee on the Rights of the Child about how the Government of Canada is responding to the above highlighted concerns of the UN Special Rapporteur on the rights of persons with disabilities and, more specifically, how it intends to act on the aforementioned recommendations?

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

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

For reasons of brevity, this submission has not discussed the Concluding observations of these different treaty bodies in relation to Canada. Regrettably, beyond the UN discussion rooms of Geneva and New York, little often happens at the national level to implement the outputs of the different UN review mechanisms. Day has captured this point: “Unfortunately, once the reviews have taken place and the treaty bodies have issued their concluding observations, there is no process that leads to action by government ... Consequently, the compliance reviews appear to have no outcome at home.”⁷¹ The UN Special Rapporteur on the right to food also noted in his

⁶⁸ Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Canada (UN Doc. A/HRC/43/41/Add.2, 19 December 2019) §93b.

⁶⁹ Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Canada (UN Doc. A/HRC/43/41/Add.2, 19 December 2019) §98a-e.

⁷⁰ Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Canada (UN Doc. A/HRC/43/41/Add.2, 19 December 2019) §100a.

⁷¹ S. Day, ‘Minding the Gap: Human Rights Commitments and Compliance’ in M. Young, S.B. Boyd, G. Brodsky & S. Day (eds.), *Poverty: Rights, Social Citizenship, and Legal Activism* (1st, UBC Press, Vancouver, Canada 2007) 202.

fact-finding mission report to Canada from 2012 that follow-up is in practice uneven.⁷² Consequently, there exists the tangible fear that visits to Canada by the UN special procedures, if unacted upon, become mere ends in themselves.

Section III. NWAC's Concerns about *Bill C-92, An Act respecting First Nations, Inuit, and Métis Children, Youth and Families*

The over-representation of Indigenous children in care in Canada continues to be a crisis with long lasting implications for the health and status of First Nations, Inuit and Metis women, girls and gender-diverse people. First Nation, Inuit and Métis children represent just 7.7% of all children under 15 in Canada, yet they make up 52.2% of children in foster care (according to the 2016 census). *Bill C-92, An Act respecting First Nations, Inuit, and Métis Children, Youth and Families* aims to address this reality, although a lack of information and consultation with Indigenous groups has been a cause for concern.⁷³

Bill C-92 received Royal Assent and came into force on 1 January 2020. The legislation clearly indicates that no Indigenous child should be apprehended solely on the basis, or as a result of his or her socio-economic conditions, including: poverty; lack of housing or related infrastructure; or state of health of the child's parent or care provider. It also emphasizes preventative care such as prenatal care or support to parents.⁷⁴ Moreover, various factors should be taken into account to ensure that the best interests of the Indigenous child are taken into account when considering his or her placement.⁷⁵ Finally, a clear order of priority is outlined in the law to determine the placement of the child with an emphasis on his or her family and community.⁷⁶

Additionally, Bill C-92 commits to an ongoing obligation to re-assess the possibility for an Indigenous foster-child to reside with one of the parents or an adult member of his or her family and also states that, when an Indigenous child is not placed with a member of his or her family, their attachment and emotional ties to his or her family are to be promoted.⁷⁷

A critical component of Bill C-92 is the affirmation of the right to self-government of Indigenous peoples to freely determine their laws, policies and practices in relation to Indigenous child and family services. The Act is designed for Indigenous peoples to exercise partial or full jurisdiction over child and family services at their own pace and depending on the path chosen.⁷⁸

⁷² Report of the Special Rapporteur on the right to food, Olivier De Schutter, Mission to Canada (UN Doc. A/HRC/22/50/Add.1, 24 December 2012) §12.

⁷³ An Act respecting First Nations, Inuit and Métis children, youth and families, SC 2019, c 24.

⁷⁴ An Act respecting First Nations, Inuit and Métis children, youth and families, SC 2019, c 24 §15.

⁷⁵ An Act respecting First Nations, Inuit and Métis children, youth and families, SC 2019, c 24 §10(1) - (4).

⁷⁶ An Act respecting First Nations, Inuit and Métis children, youth and families, SC 2019, c 24 §16.

⁷⁷ An Act respecting First Nations, Inuit and Métis children, youth and families, SC 2019, c 24 §17.

⁷⁸ An Act respecting First Nations, Inuit and Métis children, youth and families, SC 2019, c 24 §18 - 24.

As observed previously, it should be noted that various Calls to Justice of *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* also relate to Social Workers and Those Implicated in Child Welfare.⁷⁹ Even though Bill C-92 was not tabled as a response to these calls, it bears noting that many aspects of the Bill are related to the above Calls to Justice.

Despite its positive appearance, a paucity of information about the legislation on the part of the Federal Government in terms of an implementation plan and funding have fueled serious concerns about its overall implementation in practice. A recent publication by the First Nations thinktank, the *Yellowhead Institute*, identified five areas of existing concern in relation to the enacted law, despite improvements to earlier draft versions of the legislation. These concerns relate to the implementation in practice of the concept of ‘best interest of the child’ for children in long-term care and the related national standards; a potential lack of jurisdictional clarity; a lack of commitment of funding for child and family services to Indigenous peoples; and the absence of any dispute resolution mechanism and data collection.⁸⁰ In NWAC’s view these concern may undermine the potentially positive impact of the law in practice.

Recommended question 11: please provide information to the UN Committee on the Rights of the Child about how *Bill C-92, An Act respecting First Nations, Inuit, and Métis Children, Youth and Families* is being implemented in practice by the Federal Government of Canada in the light of persisting concerns about the law?

⁷⁹ *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1b* (June 2019) 1b 194-196.

⁸⁰ The Yellowhead Institute, *The Promise and Pitfalls of C-92: An Act respecting First Nations, Inuit and Métis children, youth and families* (Ryerson University, Toronto, Ontario, Canada, July 2019) 4-10.

Annex 1.

Key Recommendations of the Truth & Reconciliation Commission & the National Inquiry into Murdered and Missing Women and Girls⁸¹

LEGACY

Child welfare

- 1) We call upon the federal, provincial, territorial, and Aboriginal governments to commit to reducing the number of Aboriginal children in care by:
 - i. Monitoring and assessing neglect investigations.
 - ii. Providing adequate resources to enable Aboriginal communities and child-welfare organizations to keep Aboriginal families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside.
 - iii. Ensuring that social workers and others who conduct child-welfare investigations are properly educated and trained about the history and impacts of residential schools.
 - iv. Ensuring that social workers and others who conduct child-welfare investigations are properly educated and trained about the potential for Aboriginal communities and families to provide more appropriate solutions to family healing.
 - v. Requiring that all child-welfare decision makers consider the impact of the residential school experience on children and their caregivers.

- 2) We call upon the federal government, in collaboration with the provinces and territories, to prepare and publish annual reports on the number of Aboriginal children (First Nations, Inuit, and Métis) who are in care, compared with non-Aboriginal children, as well as the reasons for apprehension, the total spending on preventive and care services by child-welfare agencies, and the effectiveness of various interventions.

- 3) We call upon all levels of government to fully implement Jordan's Principle.

- 4) We call upon the federal government to enact Aboriginal child-welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases and includes principles that:
 - i. Affirm the right of Aboriginal governments to establish and maintain their own child-welfare agencies.
 - ii. Require all child-welfare agencies and courts to take the residential school legacy into account in their decision making.
 - iii. Establish, as an important priority, a requirement that placements of Aboriginal children into temporary and permanent care be culturally appropriate.

⁸¹ Please see: *Honouring the Truth, Reconciling for the Future* – Summary of the Final Report of the Truth and Reconciliation Commission of Canada (2015) 319-334.

5) We call upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate parenting programs for Aboriginal families.

Education

6) We call upon the Government of Canada to repeal Section 43 of the Criminal Code of Canada.

7) We call upon the federal government to develop with Aboriginal groups a joint strategy to eliminate educational and employment gaps between Aboriginal and non-Aboriginal Canadians.

8) We call upon the federal government to eliminate the discrepancy in federal education funding for First Nations children being educated on reserves and those First Nations children being educated off reserves.

9) We call upon the federal government to prepare and publish annual reports comparing funding for the education of First Nations children on and off reserves, as well as educational and income attainments of Aboriginal peoples in Canada compared with non-Aboriginal people.

10) We call on the federal government to draft new Aboriginal education legislation with the full participation and informed consent of Aboriginal peoples. The new legislation would include a commitment to sufficient funding and would incorporate the following principles:

- i. Providing sufficient funding to close identified educational achievement gaps within one generation.
- ii. Improving education attainment levels and success rates.
- iii. Developing culturally appropriate curricula.
- iv. Protecting the right to Aboriginal languages, including the teaching of Aboriginal languages as credit courses.
- v. Enabling parental and community responsibility, control, and accountability, similar to what parents enjoy in public school systems.
- vi. Enabling parents to fully participate in the education of their children.
- vii. Respecting and honouring Treaty relationships.

11) We call upon the federal government to provide adequate funding to end the backlog of First Nations students seeking a post-secondary education.

12) We call upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate early childhood education programs for Aboriginal families.

Language and culture

13) We call upon the federal government to acknowledge that Aboriginal rights include Aboriginal language rights.

14) We call upon the federal government to enact an Aboriginal Languages Act that incorporates the following principles:

- i. Aboriginal languages are a fundamental and valued element of Canadian culture and society, and there is an urgency to preserve them.
- ii. Aboriginal language rights are reinforced by the Treaties.
- iii. The federal government has a responsibility to provide sufficient funds for Aboriginal-language revitalization and preservation.
- iv. The preservation, revitalization, and strengthening of Aboriginal languages and cultures are best managed by Aboriginal people and communities.
- v. Funding for Aboriginal language initiatives must reflect the diversity of Aboriginal languages.

16) We call upon post-secondary institutions to create university and college degree and diploma programs in Aboriginal languages.

17) We call upon all levels of government to enable residential school Survivors and their families to reclaim names changed by the residential school system by waiving administrative costs for a period of five years for the name-change process and the revision of official identity documents, such as birth certificates, passports, driver's licenses, health cards, status cards, and social insurance numbers.

Health

18) We call upon the federal, provincial, territorial, and Aboriginal governments to acknowledge that the current state of Aboriginal health in Canada is a direct result of previous Canadian government policies, including residential schools, and to recognize and implement the health-care rights of Aboriginal people as identified in international law, constitutional law, and under the Treaties.

19) We call upon the federal government, in consultation with Aboriginal peoples, to establish measurable goals to identify and close the gaps in health outcomes between Aboriginal and non-Aboriginal communities, and to publish annual progress reports and assess long-term trends. Such efforts would focus on indicators such as: infant mortality, maternal health, suicide, mental health, addictions, life expectancy, birth rates, infant and child health issues, chronic diseases, illness and injury incidence, and the availability of appropriate health services.

20) In order to address the jurisdictional disputes concerning Aboriginal people who do not reside on reserves, we call upon the federal government to recognize, respect, and address the distinct health needs of the Métis, Inuit, and off-reserve Aboriginal peoples.

Justice

33) We call upon the federal, provincial, and territorial governments to recognize as a high priority the need to address and prevent Fetal Alcohol Spectrum Disorder (FASD), and to develop, in collaboration with Aboriginal people, FASD preventive programs that can be delivered in a culturally appropriate manner.

36) We call upon the federal, provincial, and territorial governments to work with Aboriginal communities to provide culturally relevant services to inmates on issues such as substance abuse, family and domestic violence, and overcoming the experience of having been sexually abused.

38) We call upon the federal, provincial, territorial, and Aboriginal governments to commit to eliminating the overrepresentation of Aboriginal youth in custody over the next decade.

39) We call upon the federal government to develop a national plan to collect and publish data on the criminal victimization of Aboriginal people, including data related to homicide and family violence victimization.

41) We call upon the federal government, in consultation with Aboriginal organizations, to appoint a public inquiry into the causes of, and remedies for, the disproportionate victimization of Aboriginal women and girls. The inquiry's mandate would include:

- i. Investigation into missing and murdered Aboriginal women and girls.
- ii. Links to the intergenerational legacy of residential schools.

National Council for Reconciliation

53) We call upon the Parliament of Canada, in consultation and collaboration with Aboriginal peoples, to enact legislation to establish a National Council for Reconciliation. The legislation would establish the council as an independent, national, oversight body with membership jointly appointed by the Government of Canada and national Aboriginal organizations, and consisting of Aboriginal and non-Aboriginal members. Its mandate would include, but not be limited to, the following:

- i. Monitor, evaluate, and report annually to Parliament and the people of Canada on the Government of Canada's post-apology progress on reconciliation to ensure that government accountability for reconciling the relationship between Aboriginal peoples and the Crown is maintained in the coming years.
- ii. Monitor, evaluate, and report to Parliament and the people of Canada on reconciliation progress across all levels and sectors of Canadian society, including the implementation of the Truth and Reconciliation Commission of Canada's Calls to Action.
- iii. Develop and implement a multi-year National Action Plan for Reconciliation, which includes research and policy development, public education programs, and resources.
- iv. Promote public dialogue, public/private partnerships, and public initiatives for reconciliation.

55) We call upon all levels of government to provide annual reports or any current data requested by the National Council for Reconciliation so that it can report on the progress towards reconciliation. The reports or data would include, but not be limited to:

- i. The number of Aboriginal children—including Métis and Inuit children—in care, compared with non-Aboriginal children, the reasons for apprehension, and the total spending on preventive and care services by child-welfare agencies.
- ii. Comparative funding for the education of First Nations children on and off reserves.
- iii. The educational and income attainments of Aboriginal peoples in Canada compared with non-Aboriginal people.
- iv. Progress on closing the gaps between Aboriginal and non-Aboriginal communities in a number of health indicators such as: infant mortality, maternal health, suicide, mental health, addictions, life expectancy, birth rates, infant and child health issues, chronic diseases, illness and injury incidence, and the availability of appropriate health services.
- v. Progress on eliminating the overrepresentation of Aboriginal children in youth custody over the next decade.
- vi. Progress on reducing the rate of criminal victimization of Aboriginal people, including data related to homicide and family violence victimization and other crimes.
- vii. Progress on reducing the overrepresentation of Aboriginal people in the justice and correctional systems.

Education for reconciliation

62) We call upon the federal, provincial, and territorial governments, in consultation and collaboration with Survivors, Aboriginal peoples, and educators, to:

- i. Make age-appropriate curriculum on residential schools, Treaties, and Aboriginal peoples' historical and contemporary contributions to Canada a mandatory education requirement for Kindergarten to Grade Twelve students.
- ii. Provide the necessary funding to post-secondary institutions to educate teachers on how to integrate Indigenous knowledge and teaching methods into classrooms.
- iii. Provide the necessary funding to Aboriginal schools to utilize Indigenous knowledge and teaching methods in classrooms.
- iv. Establish senior-level positions in government at the assistant deputy minister level or higher dedicated to Aboriginal content in education.

63) We call upon the Council of Ministers of Education, Canada to maintain an annual commitment to Aboriginal education issues, including:

- i. Developing and implementing Kindergarten to Grade Twelve curriculum and learning resources on Aboriginal peoples in Canadian history, and the history and legacy of residential schools.
- ii. Sharing information and best practices on teaching curriculum related to residential schools and Aboriginal history.
- iii. Building student capacity for intercultural understanding, empathy, and mutual respect.
- iv. Identifying teacher-training needs relating to the above.

64) We call upon all levels of government that provide public funds to denominational schools to require such schools to provide an education on comparative religious studies, which must include a segment on Aboriginal spiritual beliefs and practices developed in collaboration with Aboriginal Elders.

Youth Programs

66) We call upon the federal government to establish multi-year funding for community-based youth organizations to deliver programs on reconciliation, and establish a national network to share information and best practices.

Missing Children and Burial Information

71) We call upon all chief coroners and provincial vital statistics agencies that have not provided to the Truth and Reconciliation Commission of Canada their records on the deaths of Aboriginal children in the care of residential school authorities to make these documents available to the National Centre for Truth and Reconciliation.

72) We call upon the federal government to allocate sufficient resources to the National Centre for Truth and Reconciliation to allow it to develop and maintain the National Residential School Student Death Register established by the Truth and Reconciliation Commission of Canada.

73) We call upon the federal government to work with churches, Aboriginal communities, and former residential school students to establish and maintain an online registry of residential school cemeteries, including, where possible, plot maps showing the location of deceased residential school children.

74) We call upon the federal government to work with the churches and Aboriginal community leaders to inform the families of children who died at residential schools of the child's burial location, and to respond to families' wishes for appropriate commemoration ceremonies and markers, and reburial in home communities where requested.

75) We call upon the federal government to work with provincial, territorial, and municipal governments, churches, Aboriginal communities, former residential school students, and current landowners to develop and implement strategies and procedures for the ongoing identification, documentation, maintenance, commemoration, and protection of residential school cemeteries or other sites at which residential school children were buried. This is to include the provision of appropriate memorial ceremonies and commemorative markers to honour the deceased children.

76) We call upon the parties engaged in the work of documenting, maintaining, commemorating, and protecting residential school cemeteries to adopt strategies in accordance with the following principles:

- i. The Aboriginal community most affected shall lead the development of such strategies.
- ii. Information shall be sought from residential school Survivors and other Knowledge Keepers in the development of such strategies.
- iii. Aboriginal protocols shall be respected before any potentially invasive technical inspection and investigation of a cemetery site.

Annex 2.

Key recommendations of the National Inquiry into Murdered and Missing Women and Girls⁸²

Calls for Educators:

11.1 We call upon all elementary, secondary, and post-secondary institutions and education authorities to educate and provide awareness to the public about missing and murdered Indigenous women, girls, and 2SLGBTQQIA people, and about the issues and root causes of violence they experience. All curriculum development and programming should be done in partnership with Indigenous Peoples, especially Indigenous women, girls, and 2SLGBTQQIA people. Such education and awareness must include historical and current truths about the genocide against Indigenous Peoples through state laws, policies, and colonial practices. It should include, but not be limited to, teaching Indigenous history, law, and practices from Indigenous perspectives and the use of Their Voices Will Guide Us with children and youth.

11.2 We call upon all educational service providers to develop and implement awareness and education programs for Indigenous children and youth on the issue of grooming for exploitation and sexual exploitation.

Calls for Social Workers and Those Implicated in Child Welfare:

12.1 We call upon all federal, provincial, and territorial governments to recognize Indigenous self-determination and inherent jurisdiction over child welfare. Indigenous governments and leaders have a positive obligation to assert jurisdiction in this area. We further assert that it is the responsibility of Indigenous governments to take a role in intervening, advocating, and supporting their members impacted by the child welfare system, even when not exercising jurisdiction to provide services through Indigenous agencies.

12.2 We call upon on all governments, including Indigenous governments, to transform current child welfare systems fundamentally so that Indigenous communities have control over the design and delivery of services for their families and children. These services must be adequately funded and resourced to ensure better support for families and communities to keep children in their family homes.

12.3 We call upon all governments and Indigenous organizations to develop and apply a definition of “best interests of the child” based on distinct Indigenous perspectives, world views, needs, and priorities, including the perspective of Indigenous children and youth. The primary focus and objective of all child and family services agencies must be upholding and protecting the rights of

⁸² Please see: *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1b* (June 2019) 1b 176-177, 181 and 193-196.

the child through ensuring the health and well-being of children, their families, and communities, and family unification and reunification.

12.4 We call upon all governments to prohibit the apprehension of children on the basis of poverty and cultural bias. All governments must resolve issues of poverty, inadequate and substandard housing, and lack of financial support for families, and increase food security to ensure that Indigenous families can succeed.

12.5 We call upon all levels of government for financial supports and resources to be provided so that family or community members of children of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people are capable of caring for the children left behind. Further, all governments must ensure the availability and accessibility of specialized care, such as grief, loss, trauma, and other required services, for children left behind who are in care due to the murder or disappearance of their caregiver.

12.6 We call upon all governments and child welfare services to ensure that, in cases where apprehension is not avoidable, child welfare services prioritize and ensure that a family member or members, or a close community member, assumes care of Indigenous children. The caregivers should be eligible for financial supports equal to an amount that might otherwise be paid to a foster family, and will not have other government financial support or benefits removed or reduced by virtue of receiving additional financial supports for the purpose of caring for the child. This is particularly the case for children who lose their mothers to violence or to institutionalization and are left behind, needing family and belonging to heal.

12.7 We call upon all governments to ensure the availability and accessibility of distinctions based and culturally safe culture and language programs for Indigenous children in the care of child welfare.

12.8 We call upon provincial and territorial governments and child welfare services for an immediate end to the practice of targeting and apprehending infants (hospital alerts or birth alerts) from Indigenous mothers right after they give birth.

12.9 We call for the establishment of a Child and Youth Advocate in each jurisdiction with a specialized unit with the mandate of Indigenous children and youth. These units must be established within a period of one year of this report. We call upon the federal government to establish a National Child and Youth Commissioner who would also serve as a special measure to strengthen the framework of accountability for the rights of Indigenous children in Canada. This commissioner would act as a national counterpart to the child advocate offices that exist in nearly all provinces and territories.

12.10 We call upon the federal, provincial, and territorial governments to immediately adopt the Canadian Human Rights Tribunal 2017 CHRT 14 standards regarding the implementation of Jordan's Principle in relation to all First Nations (Status and non-Status), Métis, and Inuit children. We call on governments to modify funding formulas for the provision of services on a needs basis,

and to prioritize family support, reunification, and prevention of harms. Funding levels must represent the principle of substantive equity.

12.11 We call upon all levels of government and child welfare services for a reform of laws and obligations with respect to youth “aging out” of the system, including ensuring a complete network of support from childhood into adulthood, based on capacity and needs, which includes opportunities for education, housing, and related supports. This includes the provision of free post-secondary education for all children in care in Canada.

12.12 We call upon all child and family services agencies to engage in recruitment efforts to hire and promote Indigenous staff, as well as to promote the intensive and ongoing training of social workers and child welfare staff in the following areas:

- history of the child welfare system in the oppression and genocide of Indigenous Peoples
- anti-racism and anti-bias training
- local culture and language training
- sexual exploitation and trafficking training to recognize signs and develop specialized responses

12.13 We call upon all governments and child welfare agencies to fully implement the Spirit Bear Plan.⁷

12.14 We call upon all child welfare agencies to establish more rigorous requirements for safety, harm-prevention, and needs-based services within group or care homes, as well as within foster situations, to prevent the recruitment of children in care into the sex industry. We also insist that governments provide appropriate care and services, over the long term, for children who have been exploited or trafficked while in care.

12.15 We call upon child welfare agencies and all governments to fully investigate deaths of Indigenous youth in care.

Other Calls to Justice

1.2 We call upon all governments, with the full participation of Indigenous women, girls, and 2SLGBTQQIA people, to immediately implement and fully comply with all relevant rights instruments, including but not limited to:

i ICCPR, ICESCR, UNCRC, CEDAW, and ICERD, as well as all optional protocols to these instruments, including the 3rd Protocol to the United Nations Convention on the Rights of the Child (UNCRC).

ii American Convention on Human Rights: specifically, that Canada ratify the American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.

iii All the recommendations of the 2015 UN CEDAW Inquiry Report and cooperation with the UN Committee on the Elimination of Discrimination against Women on all follow-up procedures.

iv All recommendations made by international human rights bodies, including treaty monitoring bodies, on causes and recommendations to address violence against all, but specifically Indigenous women, girls, and 2SLGBTQQIA individuals.

1.3 We call upon all governments, in meeting human and Indigenous rights obligations, to pursue prioritization and resourcing of the measures required to eliminate the social, economic, cultural, and political marginalization of Indigenous women, girls, and 2SLGBTQQIA people when developing budgets and determining government activities and priorities.

1.5 We call upon all governments to immediately take all necessary measures to prevent, investigate, punish, and compensate for violence against Indigenous women, girls, and 2SLGBTQQIA people.

1.6 We call upon all governments to eliminate jurisdictional gaps and neglect that result in the denial of services, or improperly regulated and delivered services, that address the social, economic, political, and cultural marginalization of, and violence against, Indigenous women, girls, and 2SLGBTQQIA people.

1.8 We call upon all governments to create specific and long-term funding, available to Indigenous communities and organizations, to create, deliver, and disseminate prevention programs, education, and awareness campaigns designed for Indigenous communities and families related to violence prevention and combatting lateral violence. Core and sustainable funding, as opposed to program funding, must be provided to national and regional Indigenous women's and 2SLGBTQQIA people's organizations.

1.9 We call upon all governments to develop laws, policies, and public education campaigns to challenge the acceptance and normalization of violence.

2.3 We call upon all governments to ensure that all Indigenous women, girls, and 2SLGBTQQIA people are provided with safe, no-barrier, permanent, and meaningful access to their cultures and languages in order to restore, reclaim, and revitalize their cultures and identities. These are rights held by all segments of Indigenous communities, from young children to Elders. The programs and services that provide such access should not be tied exclusively to government-run cultural or educational institutions. All governments must further ensure that the rights of Indigenous children to retain and be educated in their Indigenous language are upheld and protected. All governments must ensure access to immersion programs for children from preschool into post-secondary education.

3.6 We call upon all governments to ensure substantive equality in the funding of services for Indigenous women, girls, and 2SLGBTQQIA people, as well as substantive equality for Indigenous-run health services. Further, governments must ensure that jurisdictional disputes do not result in the denial of rights and services. This includes mandated permanent funding of health services for Indigenous women, girls, and 2SLGBTQQIA people on a continual basis, regardless of jurisdictional lines, geographical location, and Status affiliation or lack thereof.

3.7 We call upon all governments to provide continual and accessible healing programs and support for all children of missing and murdered Indigenous women, girls, and 2SLGBTQIA people and their family members. Specifically, we call for the permanent establishment of a fund akin to the Aboriginal Healing Foundation and related funding. These funds and their administration must be independent from government and must be distinctions-based. There must be accessible and equitable allocation of specific monies within the fund for Inuit, Métis, and First Nations Peoples.

NWAC International Unit
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