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ISSUES

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# 1. INTRODUCTION

This brief outlines Amnesty International's concerns and associated recommendations with respect to violations of the rights of children in Canada for consideration in relation to the upcoming adoption of the list of issues and subsequent review of Canada by the Committee on the Rights of the Child. The brief includes a number of issues related to Indigenous children, children in immigration detention, access to health care for Canadian children of individuals without regularized immigration status, intersex children and inadequate consular protection of Canadian children in Syria.

## 2. DISCRIMINATION AGAINST FIRST NATIONS CHILDREN (ARTICLES 2, 3, 4, 19, 20, 27)

Since February 2007, the First Nations Child and Family Caring Society and the Assembly of First Nations have led a legal challenge to the Canadian government's chronic, systemic and discriminatory underfunding of child welfare services for First Nations children and families living on reserve and in the Yukon, in violation of the Canadian Human Rights Act. Underfunded child welfare agencies lack the resources to specifically tailor their interventions to the needs of children and families, and are therefore over reliant on removing children from their communities.

In January 2016, the Canadian Human Rights Tribunal rendered a decision which affirmed that the federal government was systematically violating the rights of 163, 000 First Nations children and their families by delivering flawed and inequitable child welfare services, and in providing lesser funding than what provincial counterparts were providing for child welfare services in other communities, despite the greater needs and higher costs of delivering services in small and remote First Nations communities.<sup>1</sup> The Tribunal ultimately found that the government's persistent underfunding constituted a form of willful and reckless discrimination, which perpetuated historical disadvantage and which violated Canada's legal obligations and commitments, both at the domestic and international level, towards First Nations children and their families.<sup>2</sup>

Amnesty International has been an intervening party throughout these legal proceedings, emphasizing the need for the Canadian government to respect its international obligations under various international human rights instruments, including the Convention on the Rights of the Child and the UN Declaration on the Rights of Indigenous Peoples, and for Canada to interpret domestic human rights legislation in conformity with international human rights standards.<sup>3</sup>

This case is emblematic of the insidious and pervasive forms of discrimination and inequitable treatment afforded to Indigenous people, and specifically First Nations children living on reserve, when it comes to the

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<sup>1</sup> Amnesty International Canada, Discrimination Against First Nations Children in Canada, online at: <https://www.amnesty.ca/our-work/issues/indigenous-peoples/indigenous-peoples-in-canada/discrimination-against-first-nations>; First Nations Child and Family Caring Society et. al. v. Attorney General of Canada, 2016 CHRT 2, online at: <http://canlii.ca/t/gn2vg>.

<sup>2</sup> *Ibid*, 2016 CHRT 2.

<sup>3</sup> Amnesty International Canada Legal Database, First Nations Child and Family Caring Society et. al. v. Canada, online at: <https://www.amnesty.ca/legal-brief/first-nations-child-and-family-caring-society-et-al-v-canada>

provision of services from the government that are necessary to enjoy fundamental human rights, such as education, safe housing, and clean water. Moreover, these cases of child apprehension represent a continuation of longstanding government policy dating back to the era of Residential Schools, which have caused, and continue to cause, serious harm and trauma to First Nations children, including loss of culture, language and identity.<sup>4</sup>

Throughout this entire period, the Canadian government has spent millions of dollars on legal fees and taken many steps to unduly delay and protract the lengthy legal proceedings, including repeatedly seeking to have the legal challenge thrown out on technical grounds.<sup>5</sup> Despite the Tribunal's 2016 order to the federal government to take immediate action to end this discrimination, in October 2019, the Canadian government initiated a judicial review of the Tribunal's September 2019 decision, calling into question the legality of its conclusions and its compensation order. A November 2019 decision from the Federal Court of Canada dismissed the government's attempts to stay the application of the Tribunal's ruling, and ordered the parties to continue working together in good faith to implement the decision.<sup>6</sup>

Every day that the Canadian government fails to abide by the Tribunal's nine compliance orders to commit to adequate and equitable funding and to provide compensation to aggrieved children and their family members, represents a continued violation by Canada of its obligations under the Convention on the Rights of the Child.<sup>7</sup>

Amnesty International recommends that Canada:

- Immediately withdraw its judicial review before the Federal Court, and undertake not to engage in further protracted legal proceedings.
- Engage in negotiations with respect to the implementation of the compensation process with all relevant stakeholders in good faith, ensuring that adequate compensation is provided to all affected parties.
- Immediately pledge and implement adequate and equitable funding for child welfare services within the federal government's jurisdiction, including independent oversight and monitoring processes to ensure that such problems do not reoccur.
- Take concrete steps to demonstrate its commitment to pursuing a Nation-to-Nation relationship with Indigenous peoples across Canada that is based on recognition, rights, respect, equality, and co-operation, and fully acknowledging Canada's responsibility for past and present harms against Indigenous peoples.

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<sup>4</sup> Amnesty International Canada, Celebrating a great day for human rights in Canada, 26 January 2016, online at: <https://www.amnesty.ca/blog/celebrating-great-day-human-rights-canada>.

<sup>5</sup> Kenneth Jackson, "Documents suggest Canada paid millions more than admitted to fight Cindy Blackstock", APTN, February 5 2020, online at: <https://aptnnews.ca/2020/02/05/documents-suggest-canada-paid-millions-more-than-admitted-to-fight-cindy-blackstock/>.

<sup>6</sup> Attorney General of Canada v. First Nation Child and Family Caring Society of Canada et. al., 2019 FC 1529, online at: <http://canlii.ca/t/j3pdt>.

<sup>7</sup> Canada's actions also represent a continued failure to abide by the CRC Committee's instruction in its General Comment No. 11, to undertake positive and special measures in order to "eliminate conditions that cause discrimination and to ensure [Indigenous children's] enjoyment of the rights of the Convention on equal level with other children." See: Committee on the Rights of the Child, General Comment No. 11: Indigenous children and their rights under the Convention, 12 February 2009, CRC/C/GC/11 at paras 25-26, 30, 46.

# 3. NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS (ARTICLES 2, 3, 9 AND 19)

Indigenous women and girls in Canada face a significantly heightened risk of experiencing violence compared to other women and girls in the country. The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, released in June 2019, outlines the scale, scope, and severity of the violence. The report indicates that “thousands of women’s deaths or disappearances have likely gone unrecorded over the decades.”<sup>8</sup> This crisis of violence is a direct result of colonization and intergenerational trauma, social and economic marginalization, loss of culture, and the biases inherent in colonial governments and institutions, notably the justice, health care, and child welfare systems.

The report outlines how the child welfare system fails to protect Indigenous youth from violence, and it establishes a “direct link” between current child welfare systems and the murder, disappearance of, and violence experienced by Indigenous women, girls, and two-spirit persons.<sup>9</sup> The report further emphasizes that the existing child welfare system in Canada promotes non-Indigenous models of parenting to the detriment of Indigenous values and contributes to a lack of safety for Indigenous women, girls, and two-spirit persons.<sup>10</sup> Testimonies from Indigenous families shared that Indigenous children were “targeted by a lack of basic respect for their rights” in the context of child welfare.<sup>11</sup> Indigenous children are 12 times more likely to go into child welfare care as a result of violations of rights in areas related to culture, health, and physical security; and they are often placed in situations that exacerbate the likelihood of harm and violence.<sup>12</sup>

The Committee on the Rights of the Child has recognized that poverty in Indigenous communities results in a higher risk of children—particularly girls—experiencing violence, and has called on States to ensure protection against these harms.<sup>13</sup> The violence faced by Indigenous children more broadly contravenes the right to be free from all forms of violence, contrary to Article 19 of the Convention. Moreover, the Committee has recognized that the challenges faced by Indigenous children constitutes “serious discrimination” contrary to Article 2 of the Convention, which calls on states to respect the rights of the child without discrimination.<sup>14</sup> The disproportionate impact of harm and violence on Indigenous girls also breaches Canada’s non-discrimination obligations under Article 2.

The National Inquiry notes that the prevalence of family separation in Indigenous communities is a form of violence against both the child and the mother, and the “best interests” wording of Article 3 and Article 9(1) of the Convention is often applied through a colonial, racist, and discriminatory lens that contributes to this

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<sup>8</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, “Executive Summary of the Final Report” (June 2019) at 3, online at: [mmiwg-ffada.ca/wp-content/uploads/2019/06/Executive\\_Summary.pdf](https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Executive_Summary.pdf) [Executive Summary]

<sup>9</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, “Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1a” (June 2019) at 355, online (pdf): < [https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final\\_Report\\_Vol\\_1a-1.pdf](https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf)>. [Final Report].

<sup>10</sup> *Ibid* at 354.

<sup>11</sup> *Ibid* at 189.

<sup>12</sup> *Ibid* at 340.

<sup>13</sup> Committee on the Rights of the Child, General Comment No. 11: Indigenous children and their rights under the Convention, 12 February 2009, CRC/C/GC/11 at para 72, in reference to Articles 34 and 34 of the Convention regarding the sexual exploitation of children.

<sup>14</sup> *Ibid* at para 5.

violence.<sup>15</sup> This has been addressed by the Committee on the Rights of the Child, which urges State Parties to consider the cultural rights of the Indigenous child when assessing their best interests.<sup>16</sup>

In light of the National Inquiry's final report and Canada's obligations under the Convention and other international human rights instruments, violence against Indigenous women, girls, and two-spirit persons must be addressed with urgent and concrete action, commensurate to the severity of this human rights crisis. The federal government stated in December 2019 that a National Action Plan to respond to the Inquiry and implement its findings will be released by June 2020, a year after the final report was published.<sup>17</sup>

With respect to the National Action Plan, Amnesty International calls on the federal government to develop a human rights-based approach that centres the needs, voices, and expertise of Indigenous women, girls, and two-spirit persons in order to effectively address systemic causes of violence. In keeping with the report's findings, this involves addressing the impacts of colonization, intersectional discrimination, social and economic marginalization, and the heightened risk of violence as a result of poor housing and infrastructure, poverty, homelessness, commercial sex, and the biases inherent in systems and institutions.

Amnesty International recommends that Canada:

- Ensure that the process to create the National Action Plan to implement the National Inquiry's 231 Calls for Justice is led by Indigenous women, girls, and two-spirit people, with substantive engagement of First Nations, Métis, and Inuit girls.
- As part of a comprehensive national response to the National Inquiry's final report, implement concrete actions that directly address the impacts of the child welfare system in Canada on First Nations, Métis, and Inuit girls.
- Work with Indigenous governance and civil society advocates to ensure substantive equality in access to all government services and programs (i.e. housing, health, and education), including culturally relevant programs to prevent violence and support violence survivors, with specific initiatives for First Nations, Métis, and Inuit youth.

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<sup>15</sup> Final Report, *supra* note 9 at 339 and 341.

<sup>16</sup> Committee on the Rights of the Child, General Comment No. 11: Indigenous children and their rights under the Convention, 12 February 2009, CRC/C/GC/11 at para. 8.

<sup>17</sup> Teresa Wright, "Action plan on missing, murdered Indigenous women inquiry to be released in June: minister", *Global News*, 4 December 2019, online at: <https://globalnews.ca/news/6255882/missing-murdered-indigenous-women-inquiry-june/>

# 4. MERCURY POISONING IMPACTS ON CHILDREN AND YOUTH FROM GRASSY NARROWS FIRST NATION

Indigenous children and youth from the Anishinaabe community of Grassy Narrows First Nation in northwestern Ontario continue to face devastating health problems and the erosion of their cultural traditions as a result of a mercury poisoning crisis.<sup>18</sup> For over 50 years, government authorities have failed to provide effective remedies for violations of the rights to health and culture as a result of the mercury contamination, and continue to delay action needed to address the ongoing impacts of mercury contamination on the community's health and wellbeing.<sup>19</sup>

Catching, preparing and consuming fish caught in local rivers and lakes is an essential part of Anishinaabe culture and identity in Grassy Narrows. However, since there has been no clean up following the dumping of 10 tons of toxic mercury into the English-Wabigoon river system upstream from Grassy Narrows in the 1960s and 1970s despite commitments by the government in 2017 to deal with the mercury crisis “once and for all”,<sup>20</sup> levels of mercury remain very high in fish. Dealing with the mercury crisis in Grassy Narrows requires cleaning-up the river, providing specialized health care and compensating the community. Beyond words, the government has done very little to improve this health crisis.<sup>21</sup>

Maintaining cultural identity through fishing carries high health risks from increased exposure to methylmercury.<sup>22</sup> Because mercury poisoning poses a heightened risk to the developing child in utero and just after birth, the impact of mercury poisoning is particularly high for children and people who may become pregnant.<sup>23</sup> Fish consumption, particularly during childhood, contributes to the poorer health of individuals

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<sup>18</sup> Amnesty International, “Canada: “Our Community Can’t Wait Any Longer”: Grassy Narrows Youth” (14 October 2019), AI Index: AMR 20/0749/2019, online: < <https://www.amnesty.org/en/documents/amr20/0749/2019/en/>>.

<sup>19</sup> Although many studies have been commissioned, the province has not yet taken action to clean-up the river system: David Bruser, ‘Second mercury dump site alleged near Grassy Narrows being probed by Ontario,’ Toronto Star, 23 September, 2019. The government’s failure to respond to the impacts of the mercury crisis in Grassy Narrows contravenes international human rights law, see: “Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.” *UN Declaration on the Rights of Indigenous Peoples*, Article 20. See also, Committee on Economic, Social and Cultural Rights, *General Comment 21: Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc E/C.12/GC/21, para. 36.

<sup>20</sup> Amnesty International, “Canada: “Our Community Can’t Wait Any Longer”: Grassy Narrows Youth” (14 October 2019), AI Index: AMR 20/0749/2019, online: < <https://www.amnesty.org/en/documents/amr20/0749/2019/en/>>.

<sup>21</sup> *Ibid.*

<sup>22</sup> Methylmercury—produced from inorganic mercury in aquatic ecosystems—is the most dangerous form of mercury when it comes to human health. It is highly toxic and readily absorbed into the human body, most commonly when eating contaminated fish; Environment and Climate Change Canada, *Canadian Mercury Science Assessment Report*, 2016, pp. 720-721, available at [publications.gc.ca/collections/collection\\_2017/eccc/En84-130-3-2016-eng.pdf](http://publications.gc.ca/collections/collection_2017/eccc/En84-130-3-2016-eng.pdf) (hereinafter: *Canadian Mercury Science Assessment*).

<sup>23</sup> People who may become pregnant are subject to a heightened health advisory such that fish from Grassy Narrows Lake are not considered safe to eat for women of childbearing age and children under 15 years of age. The general population is advised to limit consumption of walleye fish to two to four meals a month, depending on the size of the fish. Ontario Ministry of the Environment, *Fish consumption advisory: Grassy Narrows Lake*, 27 March 2019, available at: [www.ontario.ca/environment-and-energy/sport-fish-consumption-advisory?id=50099359](http://www.ontario.ca/environment-and-energy/sport-fish-consumption-advisory?id=50099359).



in Grassy Narrows.<sup>24</sup> To this day, children and youth in Grassy Narrows continue to experience chronic and severe physical and mental health problems such as seizures, speech impairments and learning disabilities that studies report are linked to the inter-generational impacts of mercury contamination.<sup>25</sup>

In the context of Indigenous communities, human rights law recognizes that health has a collective dimension, encompassing ties to culture, community, and to the land.<sup>26</sup> As a result, fulfilment of the right to health for Indigenous children and youth of Grassy Narrows requires not only the provision of culturally appropriate health services, but also protection of traditional sources of nutrition and medicine, as well as protection of the relationship between Indigenous peoples and their lands and sources of nutrition.<sup>27</sup> Because of the impacts of mercury poisoning in the community, children and youth of Grassy Narrows face significant obstacles to learning and maintaining their cultural traditions: the more someone engages in and maintains language and cultural identity centered on fishing and eating fish, the higher the risk of personal health impacts from mercury exposure.

In May 2018, the Asubpeeschoseewagong Netum Anishinabek Community Health Assessment Report revealed that the physical and mental health of the people of Grassy Narrows is considerably worse than that of other First Nations in Canada, highlighting that rates of health conditions not associated with mercury exposure were the same as in other First Nations, while rates of conditions associated with mercury exposure were much higher in Grassy Narrows.<sup>28</sup> As part of their recommendations, the Community Health Assessment called for elimination of mercury from the lakes and rivers, better food security programs that support cultural harvesting traditions and will help restore land-based cultural practices, increased support for mothers, emergency and long-term programs for children and youth, and specialized care for community members suffering from mercury poisoning.

The right to health of Indigenous peoples is also inextricably linked to self-determination, requiring that states provide “resources for [I]ndigenous peoples to design, deliver and control” their own health services.<sup>29</sup> Further, as stressed by the Committee on the Rights of the Child, maintaining the “integrity of Indigenous families and communities” should be a primary consideration in the provision of health and social services affecting Indigenous children.<sup>30</sup> Canada also has particular human rights obligations under the Convention on the Rights of the Child to ensure to the maximum extent possible the survival and development of the child and to realize the child’s right to health.<sup>31</sup>

Amnesty International recommends that Canada:

- Ensure that all First Nations in northwestern Ontario have access to specialized health care necessary to treat mercury poisoning, including by fully funding the construction and operation of a Mercury Survivors Home and Care Centre sought by Grassy Narrows.
- Ensure the federal government works with the province of Ontario to implement existing commitments to complete remediation of English and Wabigoon River system to address the mercury health crisis.
- Fully implement the recommendations of the Grassy Narrows Community Health Assessment, including the need for food security programs that support cultural harvesting traditions, increased support for mothers, emergency and long-term programs for children and youth, and specialized care for community members suffering from mercury poisoning.

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<sup>24</sup> Donna Mergler et al, “The legacy of mercury poisoning in Grassy Narrows First Nation” First Nations Food, Nutrition and Environment Forum (Ottawa, 5 November 2019) online: < <https://www.afn.ca/wp-content/uploads/2019/12/Judy-DaSilva-and-Myriam-Fillion-Presentation-Compressed.pdf>>.

<sup>25</sup> ‘New report first to show mercury impacts on Grassy Narrows kids,’ Amnesty International Canada, 5 December 2018; Jody Porter, ‘New generation suffering mercury poisoning at Grassy Narrows, Ont.,’ CBC, 20 September 2016; and Keith Leslie, ‘90% of Grassy Narrows residents show mercury poisoning signs: researchers,’ Globe and Mail, 20 September 2016; Glen Dawkine, ‘Plight of Grassy Narrows to be focus of Amnesty International letter-writing campaign,’ Winnipeg Sun, 4 November 2019; Melissa Martin, ‘Poisoned truth, preposterous reconciliation,’ Winnipeg Free Press, 9 November 2019.

<sup>26</sup> CESCR, *General Comment No. 14*, para. 27.

<sup>27</sup> CESCR, *General Comment No. 14*, para. 27.

<sup>28</sup> Asubpeeschoseewagong Netum Anishinabek Community Health Assessment Report, May 2018, p. 97-98; see also: Donna Mergler et al, “The legacy of mercury poisoning in Grassy Narrows First Nation” First Nations Food, Nutrition and Environment Forum (Ottawa, 5 November 2019) online: < <https://www.afn.ca/wp-content/uploads/2019/12/Judy-DaSilva-and-Myriam-Fillion-Presentation-Compressed.pdf>>.

<sup>29</sup> CESCR, *General Comment No. 14*, para. 27.

<sup>30</sup> Committee on the Rights of the Child, *General Comment No. 11: Indigenous Children and their Rights under the Convention*, UN Doc CRC/C/GC/2009/11, 2009, para. 46

<sup>31</sup> *UN Convention on the Rights of the Child*, Articles 6 and 24.1

# 5. FORCED AND COERCED STERILIZATION (ARTICLES 6, 19, AND 27)

Racial bias against Indigenous peoples in the provision of public services in Canada is a well-known problem and has been acknowledged by governments across the country. There is little doubt that this discrimination has led to medically unnecessary sterilizations—mostly tubal ligations—without the patient’s free, full, and informed consent.

Forced or coerced sterilization of Indigenous women in Canada has been documented from the 1800s to the present.<sup>32</sup> In the 1970s, there were about 1,200 cases of coerced sterilization of Indigenous women, reportedly intended to reduce the numbers of Indigenous persons in Canada.<sup>33</sup> It is unknown how many Indigenous people in Canada have been sterilized without their consent, but there is compelling evidence that the practice has not ceased.<sup>34</sup>

In July 2017, the Saskatoon Regional Health Authority released the report of an external review commissioned after at least four Indigenous women reported in the media that they had been coercively sterilized in a Saskatoon hospital, primarily between 2008 and 2012.<sup>35</sup> The report documented the experiences of 16 women, most of whom reported being coercively sterilized between 2005 and 2010, and noted that “pervasive structural discrimination and racism in the health care system in general (despite attempts to remedy these) remains unmistakable.”<sup>36</sup>

A class action law suit filed in Saskatchewan in October 2017 began with two Indigenous women who reported being sterilized without their consent.<sup>37</sup> Waves of media coverage of the issue in the fall of 2018 led to over 100 more Indigenous women from five provinces (Alberta, British Columbia, Manitoba, and Ontario) coming forward with allegations that they too were sterilized without their free, full, and informed consent.<sup>38</sup>

All but one of the women who allege they were sterilized without their consent are Indigenous.<sup>39</sup> It is possible that non-Indigenous women and girls have also been sterilized without their consent. It has been well documented that, “forced sterilization is disproportionately practiced on those from stigmatized groups, such

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<sup>32</sup> Maurice Law, “[Request for a thematic hearing on the forced sterilization of Indigenous women in Canada, File no. 434.01](#),” Submission to Inter-American Commission on Human Rights, 6 December 2017; and Dr. Judith Bartlett and Dr. Yvonne Boyer, [External Review: Tubal Ligation in the Saskatoon Health Region: The Lived Experience of Aboriginal Women](#), Saskatoon Regional Health Authority, 2017.

<sup>33</sup> Roger Collier, “[Reports of Forced Sterilization of Indigenous Women in Canada Mirror Shameful Past](#),” *Canadian Medical Association Journal*, Vol. 21, Issue 33, August 2017.

<sup>34</sup> “Indigenous women kept from seeing their newborn babies until agreeing to sterilization, says lawyer,” CBC, 13 November 2018, <https://www.cbc.ca/radio/thecurrent/the-current-for-november-13-2018-1.4902679/indigenous-women-kept-from-seeing-their-newborn-babies-until-agreeing-to-sterilization-says-lawyer-1.4902693>.

<sup>35</sup> “[Saskatoon health region apologies after aboriginal women felt pressured by staff to have tubes tied](#),” *National Post*, 17 November 2015; and “[Another Saskatoon Woman Says She Was Sterilized Against Her Will](#),” *CBC*, 16 December 2015.

<sup>36</sup> Dr. Judith Bartlett and Dr. Yvonne Boyer, [External Review: Tubal Ligation in the Saskatoon Health Region: The Lived Experience of Aboriginal Women](#), Saskatoon Regional Health Authority, 2017, p. 31.

<sup>37</sup> *M.R.L.P and S.A.T. v The Attorney General of Canada, the Government of Saskatchewan, Saskatchewan Health Authority, Athabasca Health Authority, Dr. Kristine Mytopher, Dr. Ahmed Ezzat, Dr. Ian Lund, John Doe, and Jane Doe*, QB 1485 (2017), filed 16 February 2018; and meeting with Alisa Lombard, Maurice Law, Ottawa, 15 March 2018.

<sup>38</sup> Interview with Alisa Lombard, Maurice Law, 27 February 2019.

<sup>39</sup> Interview with Alisa Lombard, Maurice Law, 27 February 2019.

as women living with HIV, poor women, ethnic or national minorities, women with disabilities, and gender non-conforming individuals.”<sup>40</sup>

The number of Indigenous girls sterilized without their consent is unknown. The class action law-suit includes women who were sterilized when they were girls. One of these women is Morningstar Mercredi, who “reports having been subject to the forcible termination of a late-term pregnancy at the age of 14 which also resulted, as she later discovered, in the removal of her right ovary and fallopian tube. She had a son couple of years later, but a tubal pregnancy in the right tube at the age of 19 left her infertile.”<sup>41</sup>

The forced and coerced sterilization of children and adolescents contravenes the Convention on the Rights of the Child, particularly Article 19, which prohibits all forms of physical or mental violence against children. In its General Comment no. 13, the Committee on the Rights of the Child clarifies that there are no exceptions to the Article 19 prohibition on violence against children, and that violence includes “violence in all its forms against children...to force children to engage in activities against their will.” The Committee notes that victims of this form of violence are “often children who are marginalized, disadvantaged and discriminated against...this includes...minorities and indigenous children.”<sup>42</sup> In the context of children with disabilities, who are particularly vulnerable to being subject to forced and coerced sterilization, the Committee identifies the forced sterilization of girls as a specific form of violence against children prohibited by Article 19.<sup>43</sup>

In its General Comment no. 11, the Committee also noted that states must take reasonable measures to ensure non-discriminatory access to quality health-care services for Indigenous children and families, which includes providing access to education and information regarding, inter alia, child and adolescent health as well as pre- and post-natal care.<sup>44</sup> The Committee also stresses the need for states to ensure an adequate standard of living for Indigenous children, per Articles 6 and 27 of the Convention.<sup>45</sup>

Sterilization without consent is also considered torture by the UN Committee against Torture (UNCAT). In its December 2018 concluding observations following its seventh periodic review of Canada, the UNCAT expressed serious concerns regarding the forced and coerced sterilization of Indigenous women and girls. They noted forced and coerced sterilization as an area of pressing follow-up by the government of Canada and urged Canada to adopt legislative measures to “prevent and criminalize the forced or coerced involuntary sterilization of women” and to ensure that claims of forced and/or coerced sterilization are impartially investigated, that persons responsible are held accountable, and that victims receive adequate redress.<sup>46</sup>

Sterilization without consent further violates the internationally-protected rights of women and girls to access specific educational information pertaining to health and family planning; the right to be free from discrimination in the provision of health care; and the right to decide freely on the number and spacing of their children and to have access to information, education and means to enable the exercise of this right free from discrimination, as enshrined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>47</sup> In April 2018, the UN Special Rapporteur on violence against women expressed concern regarding forced and/or coerced sterilization in the context of systemic discrimination against Indigenous peoples, and she called on the government of Canada to “ensur[e] justice and remedies including reparations to survivors and their families, explicitly prohibit sterilization without free, full, and

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<sup>40</sup> *Cynthia Soohoo and Farah Diaz-Tello*, American University, “Torture and Ill-Treatment: Forced Sterilization and Criminalization of Self-Induced Abortion” in *Gender Perspectives on Law and Torture: Law and Practice*, American University, p. 283.

<sup>41</sup> Standing Senate Committee on Human Rights, testimony from Alisa Lombard, 3 April 2019, <https://sencanada.ca/en/Content/Sen/Committee/421/RIDR/54643-e>.

<sup>42</sup> UN Committee on the Rights of the Child, General Comment No. 13: The right of the child to freedom from all forms of violence, CRC/C/GC/13, (18 April 2011) at para 26. (At para 17, the Committee indicates that there are no exceptions to Article 19.)

<sup>43</sup> *Ibid* at para 23.

<sup>44</sup> UN Committee on the Rights of the Child, General Comment No. 11: Indigenous children and their rights under the Convention, CRC/C/GC/11, (12 February 2009) at paras 50 – 51, 53.

<sup>45</sup> *Ibid* at para 34.

<sup>46</sup> UNCAT, *Concluding observations on the seventh periodic report of Canada*, CAT/C/CAN/CO/7 (21 December 2018) at paras 50-51, 54.

<sup>47</sup> UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women* (18 December 1979), arts 10h, 12, 16e. The CEDAW Committee has expressed that non-consensual sterilization in the context of health care represents a violation of women’s rights to informed consent and dignity, see: CEDAW, *General Recommendation No. 19: Violence against women* (1992), online: [www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx](http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx), at para 22.

informed consent and enforce healthcare professional accountability.”<sup>48</sup> Sterilizing girls without their consent also contravenes General Comment no. 12 of the UN Committee on the Rights of the Child. In General Comment no. 12, the Committee noted that children have the right to participate and be heard in decisions concerning their own health according to their evolving capacities.<sup>49</sup>

The government of Canada has never comprehensively addressed the historic and current reports of forced and coerced sterilization, though it has recognized the issue as a “serious violation of human rights.”<sup>50</sup> Despite the concerns raised by the UNCAT and other organizations, as of February 2020, the federal government has been hesitant to take any apparent, concrete action to address concerns regarding forced and coerced sterilization or to implement any of the recommendations by the UNCAT. The federal government has made little effort to meet with survivors and their representatives, or to appoint a high-level focal point to do so.

Amnesty International recommends that Canada:

- Implement outstanding recommendations from UNCAT and other international human rights bodies regarding measures to prevent and address involuntary sterilization in Canada.
- Ensure that allegations of forced or coerced sterilizations of Indigenous women and girls in Canada are thoroughly investigated and ensure measures are put in place to stop the practice, and that survivors and their families have access to justice.
- Establish policies and accountability mechanisms across Canada that provide clear guidance on how to ensure sterilizations are only performed with free, full, and informed consent.

## 6. CHILDREN AND IMMIGRATION DETENTION (ARTICLES 2, 3, 19, 22, 24, 27, 37)

Canada’s treatment of children in the context of immigration detention continues to violate the Convention on the Rights of the Child.<sup>51</sup> In its last period report, the Committee on the Rights of the Child noted deficiencies in Canada’s child detention practices.<sup>52</sup> Specifically, the Committee expressed serious concern that the ‘best interest of the child’ is not appropriately applied in asylum-seeking and immigration detention cases.<sup>53</sup> This continues to be the case.

Under section 60 of the *Immigration and Refugee Protection Act*, a child should only be detained as a last resort, “taking into account the other applicable grounds and criteria including the best interest of the

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<sup>48</sup> HRC, *Report of the Special Rapporteur on violence against women, its causes and consequences*, A/HRC/41/42/Add.1, 41st Sess, (24 June-12 July 2019) at 19.

<sup>49</sup> UN Committee on the Rights of the Child, General Comment No. 12: The right of the child to be heard, CRC/C/GC/12 (1 July 2019) at paras 98-102.

<sup>50</sup> Comments from Jane Philpott when she was Canada’s Minister of Indigenous Services, “Class-action lawyer told of 2 coerced sterilizations of Indigenous women in Manitoba”, 14 November 2018, CBC News, online at: <https://www.cbc.ca/news/canada/manitoba/manitoba-indigenous-women-forced-sterilization-lawsuit-1.4904421>

<sup>51</sup> The CRC states that “no child shall be deprived of his liberty arbitrarily” and that detention must “be used only as a measure of last resort and for the shortest appropriate period of time” (Article 37(b)), and “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration” (Article 3).

<sup>52</sup> United Nations Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic report of Canada*, 61st Sess, UN Doc CRC/C/CAN/CO/3-4 (5 October 2012) at para 73;

<sup>53</sup> *Ibid* at paras 34, 73–74.

child.”<sup>54</sup> Despite Canada’s commitment to reducing the rates of children in immigration detention “except in extremely limited circumstance,”<sup>55</sup> recent government statistics reveal that 118 children were detained or housed in detention centres in 2018-2019.<sup>56</sup> While the numbers have decreased from previous years, the average length of detention has increased to 18.6 days (compared to 14.9 days in 2017-2018).<sup>57</sup>

In November 2017, the Minister of Public Safety and the Canada Border Services Agency issued policy directives<sup>58</sup> that emphasize non-detention of children and the need to preserve family unity. They also acknowledge that the best interest of the child must be a primary consideration,<sup>59</sup> rather than only one factor weighed against many others. Unfortunately, in practice, these directives are implemented inconsistently,<sup>60</sup> and the best interest of the child is often left out of CBSA arguments at detention reviews before the Immigration and Refugee Board.<sup>61</sup> Moreover, these policy directives do not have the force of law.

Additionally, in order to avoid family separation,<sup>62</sup> children can be “housed” in detention as “guests” (*de facto* detainees) rather than under formal detention orders, subject to the parent/legal guardian’s request and a best interest of the child assessment.<sup>63</sup> From a children’s rights perspective, being housed in a detention centre entails the same harms as those under formal detention orders.<sup>64</sup> *De facto* child detainees are subjected to the same detention conditions, and in fact have access to fewer legal safeguards than those who are detained.<sup>65</sup> Canadian research has documented the negative psychological impact on children who have been held in detention, revealing that even a short period of time in a detention facility has a long-lasting negative impact on a child’s health and wellbeing.<sup>66</sup>

Detention can never be in a child’s best interest<sup>67</sup> and alternatives to immigration detention that prioritize family unity should be considered.<sup>68</sup> This has been reaffirmed by the United Nations Special Rapporteur on

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<sup>54</sup> *Immigration and Refugee Protection Act* (SC 2001, c 27) s 60.

<sup>55</sup> Canada Border Services Agency, “National Directive for the Detention or Housing of Minors” (6 November 2017) online: <https://www.cbsa-asfc.gc.ca/security-securite/detent/nddhm-dndhm-eng.html>.

<sup>56</sup> Canada Border Services Agency, “Annual Detention Statistics – 2012-2019” (20 August 2019) online: <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2019-eng.html>.

<sup>57</sup> *Ibid.*

<sup>58</sup> Public Safety Canada, “Ministerial Direction to the Canada Border Services Agency: Minors in Canada’s Immigration Detention System,” (6 November 2016), online: <[www.publicsafety.gc.ca/cnt/trnsprnc/ns-trnsprnc/mnstrl-drctn-cbsa-en.aspx](http://www.publicsafety.gc.ca/cnt/trnsprnc/ns-trnsprnc/mnstrl-drctn-cbsa-en.aspx)>; and *supra* note 5.

<sup>59</sup> “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration” (*Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), Article 3.1.)

<sup>60</sup> Canadian Council for Refugees, “Immigration detention and children: Rights still ignored, two years later” (November 2019), online: [ccrweb.ca/sites/ccrweb.ca/files/children-detention-nov-2019.pdf](http://ccrweb.ca/sites/ccrweb.ca/files/children-detention-nov-2019.pdf), at 3, 5; For instance, there is heavy regional disparity, where the majority of children housed or detained in 2018-2019 were in Montreal. More people (and their children) are also detained on identity grounds in Montreal than elsewhere in the country.

<sup>61</sup> *Ibid* at 8 (CCR report).

<sup>62</sup> To justify the detention of children with their parents, states like Canada often rely on Article 9 of the CRC which asserts that a child should not be separated from their parents against their will. However, Article 2 of the CRC also states that children are not to be punished for the acts of their parents or guardians.

<sup>63</sup> While a “detained” minor is a child who is has been deemed “inadmissible” in their own right and is subject to a formal detention order, a “housed” minor is a child who remains in detention with a parent or legal guardian but is not subject to a formal detention order, and thus may leave or re-enter detention facilities with the parent or legal guardian’s consent.

<sup>64</sup> *Supra* note 60 (CCR report) at 5.

<sup>65</sup> *Ibid* at 4. “The Immigration and Refugee Board (IRB) reviews the situation of anyone detained, but a child who is housed is not detained and therefore does not legally “appear” before the IRB.”

<sup>66</sup> Society for Research in Child Development, “The Science is Clear: Separating Families has Long-term Damaging Psychological and Health Consequences for Children, Families, and Communities” (June 2018) online: <<https://www.srcd.org/briefs-fact-sheets/the-science-is-clear>>; Janet Cleveland et al, “Asylum-seeking children’s experiences of detention in Canada: A qualitative study” (2015) *American Journal of Orthopsychiatry* 85(3) 287.

<sup>67</sup> See: Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, available at: <https://www.refworld.org/docid/5a12942a2b.html> (e.g. para 5: “Every child, at all times, has a fundamental right to liberty and freedom from immigration detention. The Committee on the Rights of the Child has asserted that the detention of any child because of their or their parents’ migration status constitutes a child rights violation and contravenes the principle of the best interests of the child. In this light, both Committees have repeatedly affirmed that children should never be detained for reasons related to their or their parents’ migration status and States should expeditiously and completely cease or eradicate the immigration detention of children. Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice.”)

<sup>68</sup> *Supra* note 60 (CCR report) at 8: “ The question that the IRB should be addressing is not where the child should be housed, but rather whether to release the detained parent(s), taking into consideration the best interests of affected

the Human Rights of Migrants who has called on states to “preserve the family unit by applying alternatives to detention to the entire family,”<sup>69</sup> as well as the United Nations Committee on the Elimination of Racial Discrimination, which has expressed regret about Canada’s use of immigration detention in relation to children.<sup>70</sup>

Amnesty International recommends that Canada:

- Preserve children’s rights to family unity and ensure that the best interest of the child is, in law and in practice, a primary consideration in all immigration and refugee decision-making.
- End the practice of detaining or housing children under immigration legislation.
- Implement an independent accountability mechanism to oversee the CBSA and receive complaints about non-compliance with the 2017 directives on detention of minors.
- Develop alternatives to immigration detention that accommodate the entire family, including children, such as non-custodial, community-based measures that may include reporting requirements, case-management or supervised release, and reasonable bail or surety/guarantor. Alternatives to detention must respect children’s rights to liberty, to family life, to education, to the highest possible standard of health, to religion and language, to an adequate standard of living, and to rest, leisure and play.

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children”; UN High Commissioner for Refugees, UNHCR’s position regarding the detention of refugee and migrant children in the migration context, January 2017, available at: <https://www.refworld.org/docid/5885c2434.html>; UN Special Rapporteur on Torture, Thematic Report on torture and ill-treatment of children deprived of their liberty, 5 March 2015 (A/HRC/28/68) – (e.g. para. 80 “Within the context of administrative immigration enforcement, it is now clear that the deprivation of liberty of children based on their or their parents’ migration status is never in the best interests of the child, exceeds the requirement of necessity, becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children [...] The Special Rapporteur shares the view of the Inter-American Court of Human Rights that, when the child’s best interests require keeping the family together, the imperative requirement not to deprive the child of liberty extends to the child’s parents, and requires the authorities to choose alternative measures to detention for the entire family.”)

<sup>69</sup> United Nations General Assembly, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, UNGA, 20th Sess, A/HRC/20/24 (2012) at paras 40 and 72(h). *United Nations General Assembly, Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante*, 11th Sess, UN Doc A/HRC/11/7 (14 May 2009) at para 62 (“Migration-related detention of children should not be justified on the basis of maintaining the family unit”)

<sup>70</sup> United Nations Committee on the Elimination of Racial Discrimination, “Letter Addressed to Her Excellency Ms. Leslie Norton, Permanent Representative of Canada to the United Nations Office Geneva,” CERD/100<sup>th</sup> session/FU/MJA/ks (13 December 2019).

# 7. ACCESS TO HEALTHCARE FOR CANADIAN CHILDREN OF PEOPLE WITH IRREGULAR IMMIGRATION STATUS IN THE PROVINCE OF QUEBEC

The right to health is enshrined in the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, to which Canada is a party and to which the province of Quebec is therefore bound. Nonetheless, thousands of Canadian children are victims of discrimination with regards to accessing public healthcare services in Quebec.

According to Quebec's Health Insurance Act, children's eligibility for public healthcare in Quebec should not be linked to the immigration status of their parents.<sup>71</sup> However in practice, the Régie d'assurance maladie du Québec (RAMQ) - the provincial healthcare administrative body - requires parents who are not themselves eligible for public healthcare to provide proof that they are in the process of regularizing their immigration status at the federal level, in order for their children to be eligible. The RAMQ therefore refuses to insure children who were born in Quebec—who are Canadian citizens—if neither of their parents is insured. According to a report published by the Quebec Ombudsman in 2018, this requirement is the result of an overly restrictive interpretation of the Act by the RAMQ.<sup>72</sup> If the parents have precarious status or no legal status in Canada, their Canadian citizen children will not be able to access publicly funded healthcare services in Quebec until they are 18 years old.

This practice deprives young Canadians of the access to healthcare their peers have access to, simply because of their parents' immigration status. It also increases the financial vulnerability of their families, who will have to bear high costs for their health care when it is needed.

The *Observatoire des tous petits* describes how children of parents in a variety of migratory circumstances can find themselves in this situation:

*“A child may have been born in Quebec to parents who fled their native country to escape persecution. If their application for refugee status has not been accepted, they are required to submit an application for permanent residence in Canada. The RAMQ refuses, however, to issue health insurance to this child, who is a Canadian citizen, until the parents' status has been regularized—a process that can take from several months to several years. Another example: a child whose father is an international student and whose mother has a work permit. Although the family intends to settle permanently in Quebec, they cannot apply for permanent residence because they do not yet meet the requirements. They are therefore not covered under the RAMQ during this period.”<sup>73</sup>*

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<sup>71</sup> Observatoire des tous petits, *Access to Healthcare for pregnant women and young children in migrant families*. Montreal, 2016. pp. 17.

<sup>72</sup> Protecteur du citoyen (Quebec Ombudsman). *Donner accès au régime québécois d'assurance maladie aux enfants nés au Québec de parents au statut migratoire précaire*, 2018.

<sup>73</sup> Observatoire des tous petits, *Not all children living in Quebec have access to health care*, 8 April 2019, <https://tout-petits.org/salle-de-presse/2019/not-all-children-living-in-quebec-have-access-to-health-care/>.

Early childhood is a critical period for human development. Timely medical attention can prevent future complications that may be complex to treat and costly to the health care system. Ensuring equal access to health care for all Canadian citizen children in Quebec is not only a matter of guaranteeing their right to health, but also of public health.

Amnesty International recommends that Canada:

- Ensure that all children in Quebec who are born and live in Canada have equal entitlement and access to public healthcare services.

## 8. MEDICALLY UNNECESSARY SURGERIES ON INTERSEX CHILDREN (ARTICLES 2, 3, 16, 19, 24, 37)

Every year, approximately 1.7% of people around the world are born with sex characteristics (i.e. genitals, gonads, hormones, chromosomes or reproductive organs) that vary from the established norms or conventional binary classifications of 'male' and 'female'.<sup>74</sup> Many, though not all, of these people self-identify as intersex.

The widespread use of medically unnecessary, non-urgent, invasive, and irreversible surgical interventions and hormonal treatments to 'standardize' or 'normalize' the sex characteristics and genitalia of infants and children continues to have long-lasting consequences on the mental and physical well-being of intersex persons.<sup>75</sup> Children with atypical sex characteristics who have been subject to involuntary genital normalizing surgery, performed without their informed consent are often left with severe problems, including: permanent, irreversible infertility; severe mental suffering; feelings of shame, stigma and trauma; needing lifelong hormonal medication and/or follow-up care; and reduced quality of life.<sup>76</sup>

United Nations treaty bodies, including the Committee on the Rights of the Child, the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, and the Human Rights Committee, have determined on multiple occasions that medically unnecessary surgical interventions performed on intersex children constitute human rights violations.<sup>77</sup> Furthermore, the Committee on the

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<sup>74</sup> Amnesty International, *No Shame in Diversity: The Right to Health for People with Variations of Sex Characteristics in Iceland*, 2019 EUR 28/9498/2019; Amnesty International, *First, Do No Harm: Ensuring the Rights of Children with Variations of Sex Characteristics in Denmark and Germany*, 2017 EUR 09/6086/2017; and Free & Equal: United Nations for LGBT Equality, Fact Sheet – Intersex, online: <https://www.unfe.org/wp-content/uploads/2017/05/UNFE-Intersex.pdf>.

<sup>75</sup> Amnesty International, *No Shame in Diversity: The Right to Health for People with Variations of Sex Characteristics in Iceland*, 2019 EUR 28/9498/2019; Egale Canada, "Egale Canada urges the Federal Government to meet domestic and International Human Rights requirements of Intersex People on International Intersex Awareness Day," 26 October 2018; and UN interagency statement (OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF, WHO), *Eliminating forced, coercive and otherwise involuntary sterilization*, May 2014, at p. 7.

<sup>76</sup> Juan E. Mendez, Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment, A/HRC/22/53, 1 February 2013, at para 77; Amnesty Iceland report, *supra* note 1 at pp. 9, 15, 28.

<sup>77</sup> See, for example: Concluding Observations from the CRC with regards to harmful practices, for Austria (CRC/C/AUT/CO/5-6 at para 27(a)), Portugal (CRC/C/PRT/CO/5-6 at para 28(b)), Belgium (CRC/C/BEL/CO/5-6 at paras 25(b), 26(e)), Italy (CRC/C/ITA/CO/5-6 at para 23), South Africa (CRC/C/ZAF/CO/2 at paras 37-38), New Zealand (CRC/C/NZL/CO/5 at paras 25), United Kingdom (CRC/C/GBR/CO/5 at paras 45-46), Nepal (CRC/C/NPL/CO/3-5 at paras 41-42), and Chile (CRC/C/CHL/CO/4-5 at paras 48-49); Concluding Observations from the CAT with regards to cruel,



Rights of the Child explicitly condemned this practice in its General Comment No. 20 (2016).<sup>78</sup> Nevertheless, this harmful practice has persisted in many parts of the world, including in Canada, where human rights protections for intersex persons continue to be weak and social stigma persists.

In Canada, medically unnecessary surgeries and interventions on intersex children are specifically allowed by section 268(3) of the Criminal Code, which permits parents and medical practitioners to undertake non-consensual, cosmetic surgeries on intersex infants “for the benefit of the physical health of the person or for the purpose of that person having normal reproductive functions or *normal* sexual appearance or function” (emphasis added).<sup>79</sup> As it stands, the current law functions to normalize surgical interventions based on narrow-minded assumptions about medically “correct” bodies, and largely unproven assertions that these surgeries actually benefit patients.<sup>80</sup>

Despite calls from civil society and non-governmental organizations like Egale Canada for the government to “Investigate cases of intersex genital mutilation and other medical malpractices pertaining to nonconsensual, cosmetic surgeries on intersex children; and follow best practices by providing free and informed consent, in compliance with its international treaty body obligations,”<sup>81</sup> the government of Canada had yet to take such action (as of February 2020).

Amnesty International recommends that Canada:

- End medically unnecessary sex-normalizing surgeries, sterilization, and hormone treatments on intersex children without their free, full, and informed consent in a manner that does not entail criminal penalties.
- Initiate a national consultation with intersex persons to inform amendments to the Criminal Code to prohibit non-consensual and medically unnecessary surgeries on intersex children.
- Ensure that intersex people and their families can receive adequate counselling and support, including from peers.
- Ensure medical and healthcare professionals receive training on gender and body diversity, focusing on individuals with variations in sex characteristics, which does not perpetrate gender stereotypes and which is respectful of the intersex person’s autonomy and physical integrity.

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inhuman or degrading treatment, for the Netherlands (CAT/C/NLD/CO/7 at paras 52-53), France (CAT/C/FRA/CO/7 at paras 32-33), and Denmark (CAT/C/DNK/CO/6-7 at paras 42-43); Concluding Observations from CEDAW with regards to harmful practices, for Mexico (CEDAW/C/MEX/CO/9 at paras 21-22), Germany (CEDAW/C/DEU/CO/7-8 at paras 23-24), and Ireland (CEDAW/C/IRL/CO/6-7 at paras 24-25); and Concluding Observations from the Human Rights Committee with regards to cruel, inhuman or degrading treatment, harmful practices, and non-consensual medical or scientific experimentation, for Australia (CCPR/C/AUS/CO/6 at paras 25-26), and Switzerland (CCPR/C/CHE/CO/4 at paras 24-25).

<sup>78</sup> Committee on the Rights of the Child, General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016, at para 34: “[the Committee] condemns the imposition of so-called “treatments” to try to change sexual orientation and forced surgeries or treatments on intersex adolescents. It urges States to eliminate such practices, repeal all laws criminalizing or otherwise discriminating against individuals on the basis of their sexual orientation, gender identity or intersex status and adopt laws prohibiting discrimination on those grounds”.

<sup>79</sup> *Criminal Code*, RSC 1985, c C-46, s 268(3).

<sup>80</sup> Egale Canada, *supra* note 75.

<sup>81</sup> *Ibid.*

# 9. CANADIAN CHILDREN IN NORTH EAST SYRIA (ARTICLES 2, 3, 6, 8, 9, 19, 24, 25, 27, 28, 29, 37, 38, 39)

The conflict with the Islamic State in Iraq and Syria (ISIS) has resulted in a complex human rights, humanitarian and security situation requiring an urgent response to the children's rights violations that have occurred in the region.<sup>82</sup> Approximately 25 Canadian children, whose families have alleged links to ISIS, are detained in inhumane conditions in North East Syria (NES).<sup>83</sup>

Canadian women and children who are allegedly linked to ISIS live in two camps in NES: Al-Hol (in a separate area referred to as the 'Annex'), and Al-Roj camp. The conditions in these camps raise serious human rights concerns for all detainees, including children. For example, the UN Commission of Inquiry on Syria has noted a lack of access to essential services including adequate food, clean water, sanitation and medicine, and malnutrition and infectious disease are of particular concern for children in the camps.<sup>84</sup> UNICEF notes that children have witnessed acts of extreme violence and have received little or no schooling.<sup>85</sup> A recent resolution by the Council of Europe's Parliamentary Assembly notes that children are particularly at risk of violence, exploitation and sexual abuse, harassment and radicalization.<sup>86</sup> In spite of these facts, the Government of Canada insists that its ability to assist Canadian citizens in Syria, including children, is limited.

In breach of its obligations under the Convention on the Rights of the Child,<sup>87</sup> Canada has failed to take appropriate steps to repatriate and reintegrate Canadian children from the camps in Syria.<sup>88</sup> The return of

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<sup>82</sup> Position of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Consultation meeting with Experts on the return of "Foreign Fighters" and their families to Europe (Paris, 25 September 2019) at 3.

<sup>83</sup> Save the Children has reported that at least 25 Canadian children are being held in North-East Syria camps (The Canadian Press, "Charity calls on Ottawa to rescue 25 Canadian kids trapped in Syria," *The Star*, 10 October 2019, online: <https://www.thestar.com/news/canada/2019/10/10/charity-calls-on-ottawa-to-rescue-25-canadian-kids-trapped-in-syria.html>).

<sup>84</sup> In September 2019, the UN Commission of Inquiry on Syria recorded at least 390 preventable deaths of children due to dehydration, malnutrition or untreated wounds; UN Commission of Inquiry on Syria, "Escalating violence and waves of displacement continue to torment civilians during eighth year of Syrian conflict" (Geneva, 11 September 2019).

<sup>85</sup> UNICEF, "Syrian Arab Republic" (3 December 2019), online: [www.unicef.org/appeals/syria.html](http://www.unicef.org/appeals/syria.html); see also: UNICEF, "North East Syria Response: Situation Report #12-05" (November 2019).

<sup>86</sup> Council of Europe - Parliamentary Assembly, "International obligations concerning the repatriation of children from war and conflict zones," Resolution 2321 (2020), at para 1.

<sup>87</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3: "States Parties shall ensure to the maximum extent possible the survival and development of the child" (Article 6) and "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child" (Article 19)

<sup>88</sup> The mandate of the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism has "seen first-hand that partnerships can be optimized to extract individuals and ensure their safe return to home countries. Steps can be taken to ascertain nationality, obtain assistance from state and non-state actors to move individuals from camps, assist in air transport, and provide humanitarian assistance and medical care." (Statement of the mandate of the United Nations Special Rapporteur on the promotion and protection of human rights while countering

children must be treated as a humanitarian and human rights priority.<sup>89</sup> Canada must respect the fundamental vulnerability of children caught up in armed conflict and the unique protection afforded to children under the Convention. Canadian children in NES must be treated primarily as victims and permitted to have their rights fulfilled and their interests accounted for, in keeping with the principle of family unity and the best interest of the child,<sup>90</sup> with the ultimate goal of fostering and encouraging the children's security, mental health, wellbeing, and emotional development into young adulthood.<sup>91</sup> Canada also has an obligation to individually and comprehensively assess the integration needs of Canadian children, without stigmatization or discrimination based on nationality, birth status, immigration status and statelessness.<sup>92</sup>

Amnesty International recommends that Canada:

- Take all necessary measures to repatriate and reintegrate Canadian children from North East Syria in a manner which fully respects the best interest of the child and the principle of family unity.

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terrorism, Joint Regional High-level Conference convened by the OSCE, UNOCT and Switzerland, in cooperation with the Albanian OSCE Chairmanship on “Foreign Terrorist Fighters – Addressing Current Challenges” (11-12 February 2020).

<sup>89</sup> See: Position of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Consultation meeting with Experts on the return of “Foreign Fighters” and their families to Europe (Paris, 25 September 2019), at 3. More widely, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has also proposed that, “[s]tates have a positive obligation to take necessary and reasonable steps to intervene in favour of their nationals abroad, should there be reasonable grounds to believe that they face treatment in flagrant violation of international human rights law.” Statement of the mandate of the United Nations Special Rapporteur on the promotion and protection of human rights while countering terrorism, Joint Regional High-level Conference convened by the OSCE, UNOCT and Switzerland, in cooperation with the Albanian OSCE Chairmanship on “Foreign Terrorist Fighters – Addressing Current Challenges” (11-12 February 2020).

<sup>90</sup> The best interest of the child must always be a primary consideration (Position of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Consultation meeting with Experts on the return of “Foreign Fighters” and their families to Europe (Paris, 25 September 2019), at 3).

<sup>91</sup> The ongoing detention of Canadian children in the camps in NES is also incompatible with the standards set by the 2017 Vancouver Principles on Peacekeeping and Prevention of the Recruitment and Use of Child Soldiers which specify that children must be “treated in a manner that is consistent with international norms and standards, as well as the special status, needs, and rights of children and to ensure that detention is used as a measure of last resort, for the shortest possible time, and with the best interests of the child as a primary consideration (Government of Canada, *The Vancouver Principles on Peacekeeping and the Prevention of the Recruitment and Use of Child Soldiers*, 15 November 2017, Para 9).

<sup>92</sup> *Supra* note 87.



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WHEN INJUSTICE HAPPENS  
TO ONE PERSON, IT  
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# CANADA

## SUBMISSION TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD, 87<sup>TH</sup> PRE-SESSIONAL WORKING GROUP, 1-5 JUNE 2020, LIST OF ISSUES

This brief outlines Amnesty International's concerns and associated recommendations with respect to violations of the rights of children in Canada for consideration in relation to the upcoming adoption of the list of issues and subsequent review of Canada by the Committee on the Rights of the Child. The brief includes a number of issues related to Indigenous children, children in immigration detention, access to health care for Canadian children of individuals without regularized immigration status, intersex children and inadequate consular protection of Canadian children in Syria.