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### مجلس حقوق الإنسان

#### الدورة الرابعة والخمسون

11 أيلول/سبتمبر - 6 تشرين الأول/أكتوبر 2023

البند 3 من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية

والاجتماعية والثقافية، بما في ذلك الحق في التنمية

### زيارة إلى كندا

#### تقرير المقرر الخاص المعني بحقوق الشعوب الأصلية، خوسي فرانسيسكو كالي تزاي\*

موجز

يتضمن التقرير استعراضاً لحالة الشعوب الأصلية في كندا، استناداً إلى المعلومات التي تلقاها المقرر الخاص المعني بحقوق الشعوب الأصلية، خوسيه فرانسيسكو كالي تزاي، قبل زيارته للبلاد وأثناء هذه الزيارة، التي أجريت في الفترة من 1 إلى 10 آذار/مارس 2023.

\* يعمم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق هذا الموجز، فيُعمم باللغة التي قُدِّم بها فقط.



الرجاء إعادة الاستعمال

## Annex

### Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, on his visit to Canada

#### I. Introduction

1. The present report contains a review of the situation of Indigenous Peoples in Canada, based on information received by the Special Rapporteur on the rights of Indigenous Peoples in preparation for and during his country visit, which was conducted from 1 to 10 March 2023, including 290 written submissions. The Special Rapporteur has also taken into account the observations made by his predecessors in 2004 and 2014,<sup>1</sup> communications issued by mandate holders and the recommendations of other international and regional human rights mechanisms and bodies. The Special Rapporteur aims to provide relevant information and updates on the human rights situation of Indigenous Peoples in Canada, and concrete recommendations to address existing gaps.

2. During the visit, the Special Rapporteur met with, among others: the Governor General of Canada, the Minister of Crown-Indigenous Relations, the Minister of Justice, the Minister of Indigenous Services, the Minister of Northern Affairs and representatives of Global Affairs Canada and other federal departments, as well as representatives of the provincial governments of British Columbia, Manitoba and Québec (representatives of the government of Alberta declined the invitation to meet), members of Parliament, the judiciary and the Senate, representatives of the Canadian Human Rights Commission, the Canadian Ombudsperson for Responsible Enterprise, representatives of the National Centre for Truth and Reconciliation, the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites associated with Indian Residential Schools, representatives of the International Commission on Missing Persons and former members of the Truth and Reconciliation Commission of Canada and the National Inquiry into Missing and Murdered Indigenous Women and Girls. He also visited two federal prisons.

3. The Special Rapporteur met with a broad range of First Nations, Inuit and Métis governments, organizations and individuals in Ontario, Québec, Manitoba, Alberta and British Columbia, as well as civil society organizations.

4. The Special Rapporteur expresses his gratitude to the Government and the Indigenous Peoples of Canada for the cooperation extended to him throughout the visit.

#### II. Institutional and legal framework

5. Canada is home to three Indigenous Peoples – First Nations, Métis and Inuit – who are recognized under section 35 of the Constitution of Canada. According to the 2021 Census of Population, approximately 1.8 million persons belong to Indigenous Peoples in Canada, approximately 5 per cent of the country's population – a 9.4 per cent increase from 2016. Of those, 1,048,405 identified as First Nations, 624,220 as Métis and 70,545 as Inuit.<sup>2</sup> There are 634 First Nations in Canada and more than 70 Indigenous languages.

6. In 2010, Canada endorsed the United Nations Declaration on the Rights of Indigenous Peoples. It has ratified most international human rights treaties, however, it has not ratified the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization or the American Convention on Human Rights.

7. The constitutional, legislative and judicial framework governing relations with Indigenous Peoples in Canada is set out in the report issued following the 2013 country visit of the Special Rapporteur to Canada. Since 2015, Canada has adopted additional acts and

<sup>1</sup> See E/CN.4/2005/88/Add.3, E/CN.4/2005/88/Add.3/Corr.1 and A/HRC/27/52/Add.2.

<sup>2</sup> See [https://www.statcan.gc.ca/en/subjects-start/indigenous\\_peoples](https://www.statcan.gc.ca/en/subjects-start/indigenous_peoples).

policies to advance the implementation of modern treaties.<sup>3</sup> The Collaborative Modern Treaty Implementation Policy provides direction to federal departments and agencies to ensure timely and effective fulfilment of obligations and objectives in the spirit in which the agreements were signed and with the purpose of strengthening intergovernmental relationships. First Nations without treaties are generally subject to the Indian Act, R.S.C., 1985, c. I-5.

8. Indigenous Peoples negotiate treaties, self-government agreements and other constructive agreements with Canada through the Crown-Indigenous Relations and Northern Affairs department. In some cases, these negotiations include provincial or territorial governments. Indigenous Services Canada delivers services and supports Indigenous Peoples to deliver services in their communities. These new departments were created in 2017, after the Department of Indigenous and Northern Affairs Canada was dissolved. The provinces and territories have jurisdiction, for the most part, over economic and social policies and natural resource use.

### III. Recent progress in advancing Indigenous Peoples' rights

9. Since the visit under the mandate in 2013, there have been a number of positive developments. The Federal Government of Canada, and the provinces and territories, have taken significant steps to engage in meaningful negotiations to transfer governance responsibilities to First Nations, Inuit and Métis authorities in relation to criminal justice, child and family services, health and other areas. The governments signed self-government agreements with three Métis nations, in Alberta, Ontario and Saskatchewan, to negotiate modern day treaties, and have established more than 130 new negotiation tables across the country since 2017 – important steps towards reconciliation and overcoming the negative legacies of colonialism. On 26 June 2014, the Supreme Court of Canada unanimously declared Aboriginal title in the homeland of the Tsilhqot'in Nation. This was the first time that Aboriginal title had been declared by the courts; it has contributed to a new era of recognition of Indigenous rights that is still unfolding.

10. Canada has worked towards advancing implementation of the United Nations Declaration on the Rights of Indigenous Peoples with federal legislation. On 21 June 2021, the United Nations Declaration on the Rights of Indigenous Peoples Act came into force. The Act provides a road map for the Government of Canada and Indigenous Peoples to work together to implement the Declaration. The Act requires Canada to harmonize its legislation, including the Indian Act, with the rights set out in the Declaration. Additionally, the Act requires the Federal Government to table an action plan by June 2023 and to issue annual progress reports.

11. The Department of Justice released a draft action plan to implement the United Nations Declaration on the Rights of Indigenous Peoples Act on 20 March 2023, after engaging in a series of consultations with First Nations, Métis and Inuit representatives between December 2021 and January 2023. To increase accessibility and inform consultations, the Declaration was translated into Indigenous languages.<sup>4</sup> On 21 June 2023, after the Special Rapporteur's visit was completed, Canada released the final version of the action plan.

12. The action plan includes 181 measures for implementing the legislation and the Declaration more generally, including Measure 32, on, inter alia, developing guidance on free, prior and informed consent regarding natural resource projects. The action plan has been criticized by Indigenous Peoples in Canada, who expressed the view that insufficient time had been provided for consultations, and that it lacked detailed implementation measures.

13. Provinces and territories can develop their own plans and approaches to implementation of the Declaration but, consistent with Canadian principles of federalism, are

<sup>3</sup> The Cabinet Directive on the Federal Approach to Modern Treaty Implementation, in 2015; Statement of Principles on the Federal Approach to Modern Treaty Implementation, in 2015; and Canada's Collaborative Modern Treaty Implementation Policy, in 2023.

<sup>4</sup> See <https://www.justice.gc.ca/eng/declaration/read-lire.html>.

not required to do so. To date, only the provinces of British Columbia and Québec and the Northwest Territories have undertaken similar initiatives. A 2019 law in British Columbia predates the federal legislation, and in March 2022 the province released its Declaration on the Rights of Indigenous Peoples Act Action Plan. The National Assembly of Québec unanimously adopted a motion in October 2019 that supports the principles of the Declaration, but it is not binding on the province. In March 2023, the government of the Northwest Territories introduced in the Legislative Assembly a proposed United Nations Declaration on the Rights of Indigenous Peoples Implementation Act.

14. The preambular paragraphs of the federal United Nations Declaration on the Rights of Indigenous Peoples Act include a repudiation of the doctrines of discovery and *terra nullius*,<sup>5</sup> acknowledging them as racist, scientifically false, legally invalid, morally condemnable and socially unjust. Indigenous Peoples repeatedly emphasized the role of the Catholic Church in running the residential school system and in issuing the papal bulls that led to the colonial doctrines, and urged the Vatican to rescind them. On 30 March 2023 the Holy See issued a statement, in which it declared: “The Catholic Church therefore repudiates those concepts that fail to recognize the inherent human rights of indigenous peoples, including what has become known as the legal and political ‘doctrine of discovery’.”<sup>6</sup> The Church also declared its strong support for the United Nations Declaration on the Rights of Indigenous Peoples.

15. Indigenous representative organizations in Canada have urged Canada to establish an independent Indigenous-led human rights commission, tribunal and/or ombudsperson to monitor and enforce the State’s compliance with and progress in implementing the United Nations Declaration on the Rights of Indigenous Peoples Act.<sup>7</sup> Accordingly, in Measure 19 of the federal Action Plan, the Government commits to an “Indigenous rights monitoring, oversight, recourse or remedy mechanism”.

16. Canada has taken some notable steps to address the negative legacy of residential schools, including the establishment of the Truth and Reconciliation Commission to provide an opportunity for those affected by residential schools to tell their stories. The Commission issued its final report in 2015, setting out 94 calls to action for further reconciliation under the framework of United Nations Declaration on the Rights of Indigenous Peoples. The documents collected by the Commission are housed at the National Centre for Truth and Reconciliation; the Federal Government has committed to providing funding to the Centre for future years. Canada is also funding Indigenous Peoples’ efforts to identify missing children and unmarked burials, and created the National Advisory Committee on Residential Schools Missing Children and Unmarked Burials to ensure that Indigenous Peoples have access to independent, trusted information and expertise to identify, locate and commemorate their missing children. In 2021, the Government of Canada passed legislation to mark September 30 as the National Day for Truth and Reconciliation to recognize the ongoing impacts of residential schools.

17. A number of settlement agreements between Canada and Indigenous Peoples have been signed to provide compensation for: Indigenous children taken into care during the “Sixties Scoop” and placed with non-Indigenous parents; the residential school and day school survivors and their families; the forcible relocation of Inuit people from their homelands; and harm caused by drinking water advisories. Multiple class-action lawsuits are still pending with respect to outstanding residential school claims; forced sterilization of Indigenous women; abuse suffered in “Indian hospitals”; and discrimination in policing and corrections.

18. After the visit in 2013, Canada was called upon to undertake a comprehensive, nationwide inquiry into the situation of missing and murdered Indigenous women and girls.<sup>8</sup>

<sup>5</sup> Indigenous Peoples have expressed concern over the placement of the provision in the preamble instead of in the substantive articles in the main text of the Act.

<sup>6</sup> See <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2023/03/30/230330b.html>.

<sup>7</sup> Submission from Inuit Tapiriit Kanatami; information provided by Métis National Council; and Assembly of First Nations, “Breathing life into the Calls for Justice – an action plan to end violence against First Nations women, girls and 2SLGBTQIA+ people”.

<sup>8</sup> A/HRC/27/52/Add.2, para. 89.

In response to the Special Rapporteur's recommendation, and Call to Action 41 of the Truth and Reconciliation Commission, Canada established the National Inquiry into Missing and Murdered Indigenous Women and Girls. On 3 June 2019, the National Inquiry delivered its final report, *Reclaiming Power and Place*, which set out 231 Calls for Justice directed at governments, institutions, social service providers, industries and the Canadian public.

19. Indigenous Peoples are leading conservation efforts in Canada through the Indigenous Guardian programme and other initiatives. To further these initiatives, in December 2022, at the fifteenth meeting of the Conference of the Parties to the Convention on Biological Diversity, Canada announced that it would provide Can\$ 800 million over seven years for large Indigenous-led conservation projects covering almost 1 million square kilometres of land.

20. Finally, Canada has advanced representation of Indigenous Peoples in political and public life at the highest levels by appointing Indigenous women to the office of Governor General and to the Supreme Court of Canada.

#### **IV. Key challenges remaining**

21. The socioeconomic situation of Indigenous Peoples in Canada has not significantly improved since previous reports under the mandate. The negative legacies of colonization and racial discrimination continue to cause displacement of Indigenous Peoples and dispossession of their lands and resources, creating situations of homelessness, low educational achievement, unemployment, poverty, poor health and well-being outcomes, addiction, depression and suicide. Indigenous women and girls, two-spirited, lesbian, gay, bisexual, trans and gender-diverse persons and persons with disabilities are overrepresented in almost all aspects of housing insecurity, homelessness and poverty and are disproportionately affected by violence and discrimination.

22. The challenges faced by Indigenous Peoples in Canada are all interconnected. The overrepresentation of Indigenous Peoples in the child welfare and correctional systems can lead to addiction, homelessness and becoming missing or murdered. In order to tackle the issue in an effective manner, the structural racism and intergenerational trauma caused by the residential school experience should be addressed comprehensively.

##### **A. Residential schools and the discovery of unmarked graves**

23. Indigenous Peoples continue to face serious obstacles to achieving full enjoyment of their individual and collective rights. The current human rights situation of Indigenous Peoples in Canada cannot be fully understood without considering the negative legacy of the Indian residential school system and the intergenerational trauma it created.

24. Over 150,000 First Nations, Métis and Inuit children were separated from their families and forced to attend government-funded schools between the 1870s and 1996. The residential school system was characterized as genocide by the Truth and Reconciliation Commission and the National Inquiry into Missing and Murdered Indigenous Women and Girls. The House of Commons unanimously recognized the residential school system as genocide on 27 October 2022, building on the findings of the Commission and the National Inquiry. During his "penitential pilgrimage" to Canada in July 2022, Pope Francis issued an apology at Maskwacis, Alberta, to survivors for the Catholic Church's role, pursuant to the Commission's Call to Action 58, and has acknowledged the residential school system as genocide.

25. Survivors shared with the Truth and Reconciliation Commission stories of children who were there one day then disappeared the next, of newborn babies burned in incinerators, and of children being forced to dig the graves of classmates who died.

26. "Indian residential schools", more appropriately termed "institutions", were largely hidden in the history of Canada until the 2021 discovery of 215 unmarked graves at a former residential school in Kamloops, British Columbia, which captured the world's attention. Investigations into unmarked graves and efforts to collect archival information have revealed

numerous accounts of Indigenous children who entered residential schools, hospitals and mental health facilities and went missing, often with no information provided to their families. Children were subjected to physical and sexual abuse. Many survivors now live with post-traumatic stress, substance abuse, depression and other mental health issues. Access to information is critical for affected families looking for closure and healing.

27. Since the discovery of the unmarked graves at the Kamloops residential school, there has been an alarming rise in denialism among those who reject, misrepresent or downplay the reality of the residential school system. This misinformation must be countered by creating awareness about the true history of residential schools. Providing this education requires preserving the large body of evidence collected by the Truth and Reconciliation Commission documenting the grave and systemic violations of the human rights of the Indigenous children who were forced to attend these institutions. The Supreme Court of Canada has affirmed that the Indian Residential Schools Settlement Agreement allows for the destruction of testimonies and other records in 2027. This action frustrates education efforts and may obstruct future attempts to collect evidence of physical, sexual and emotional abuse and other criminal wrongdoing, including potential information about the location of unmarked burial sites.

28. The Federal Government provided dedicated funding for Indigenous Peoples to undertake research to identify missing children and unmarked burials. However, concerns have been expressed by Indigenous representatives that the funding agreements do not allow sufficient time to conduct investigations; do not cover all burial sites; and technically do not permit funds to be used for legal assistance, exhumation and DNA matching.

29. The negative legacies of colonialism and history of abuse and discrimination have left survivors and their families with a deep mistrust of Canadian institutions. First Nations, Métis and Inuit peoples want to lead the repatriation of the remains of their children in a culturally relevant way with adequate financial support from Canada to cover the costs of forensic investigation, exhumation and/or commemoration, healing and wellness. Additionally, numerous concerns were presented about the 2023 technical arrangement with the International Commission on Missing Persons that Canada reportedly concluded without consulting Indigenous Peoples.

30. Canada has taken important steps towards recognition and redress of the abuse and trauma caused by Indian residential schools and day schools. In July 2022, the Federal Government established the National Advisory Committee on Residential School Missing Children and Unmarked Burials and appointed an Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites. The Government has settled and is continuing to resolve class action claims of survivors and their families. However, full resolution of residential school claims is necessary to achieve true reconciliation, including with regard to Catholic and other church-run institutions and residential schools established by provinces, and the claims of Métis survivors and their families. Some survivors who suffered severe trauma were not emotionally prepared to present claims by the Government's deadline but may wish to do so in the future. In accordance with the Calls to Action of the Truth and Reconciliation Commission and general principles of international law, statutes of limitations should not apply to grave crimes such as those committed in residential schools.

## **B. Child welfare system**

31. The forced removal of Indigenous children from their families continues, as children are placed in foster care or adopted, often off-reserve, reproducing the negative impacts of residential schools.<sup>9</sup> Despite comprising 7.7 per cent of the Canadian population, 53.8 per cent of children in foster care are Indigenous;<sup>10</sup> the figure is as high as 90 per cent in some provinces. Entering the child welfare system increases the risk of incarceration and of becoming murdered or missing. Indigenous youth, who make up 8 per cent of the population

<sup>9</sup> A/HRC/27/52/Add.2, para. 31; and A/HRC/41/42/Add.1, para. 79.

<sup>10</sup> See <https://www150.statcan.gc.ca/n1/daily-quotidien/220921/dq220921a-eng.htm>.

in Canada, accounted for 50 per cent of youth incarceration.<sup>11</sup> The majority of children in care are placed with non-Indigenous families, which can result in children losing their language, culture, identity and family ties.

32. Often the decision to place Indigenous children in foster care is due to a lack of adequate housing; poorly researched and ill-defined reasons for placement; racial discrimination; disparities in funding and quality of child services for Indigenous children; and lack of respect for the Nation-to-Nation relationship with Indigenous Peoples. Those concerns have been previously noted by the Special Rapporteur and treaty bodies.<sup>12</sup>

33. The Assembly of First Nations and the First Nations Child and Family Caring Society of Canada filed a complaint before the Canadian Human Rights Commission in 2007<sup>13</sup> alleging that the Government of Canada discriminated in the provision of child and family services by underfunding services to First Nations on reserves and in the Yukon territory. In 2016, the Canadian Human Rights Tribunal found that the chronic underfunding of on-reserve child and family services and the refusal of Canada to pay for essential health care was discriminatory and a violation of Jordan's Principle to provide services for Indigenous Peoples regardless of where they live.<sup>14</sup> The Tribunal ordered Canada to cease its discriminatory practices, reform the child and family services programme and take immediate action to fully implement Jordan's Principle. In 2019 the Tribunal ordered Canada to pay compensation to individual victims and their families. After announcing agreements in principle in January 2022, the parties finally reached a revised settlement agreement in April 2023 of Can\$ 23.4 billion to compensate victims and caregivers of the underfunded First Nations child-welfare system. The agreement is awaiting approval from the Tribunal and the Federal Court.

34. In January 2020, Bill C-92, entitled: "An Act respecting First Nations, Inuit and Métis children, youth and families", became law, recognizing the inherent right of Indigenous Peoples to self-governance over child welfare and reassigning the provision of such services to Indigenous Peoples in coordination with the federal, provincial and territorial governments. The law is intended to address the overrepresentation of Indigenous children in care, to help Indigenous children maintain ties with their families, communities and culture, and to affirm the inherent right of self-government, thus contributing to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. Since the statute came into force, 10 communities of Indigenous Peoples have passed their own child and family services laws under the framework of the legislation. However, the fate of the Act remains uncertain, as the province of Québec appealed its constitutionality before the Supreme Court of Canada.<sup>15</sup>

35. First Nations, Métis and Inuit peoples must be able to decide for themselves what happens to their children in accordance with their culture and their inherent right to self-determination over their internal affairs, at all times keeping in mind the best interests of the child.<sup>16</sup>

<sup>11</sup> See <https://www150.statcan.gc.ca/n1/en/daily-quotidien/220420/dq220420c-eng.pdf?st=o5g3I2Pk>.

<sup>12</sup> E/CN.4/2005/88/Add.3, para. 31; CCPR/C/CAN/CO/5-6, para. 19; and CRC/C/CAN/CO/3-4, para. 55.

<sup>13</sup> In 2013 the Special Rapporteur issued a communication to Canada expressing concern over alleged retaliation against the First Nations Child and Family Caring Society of Canada for filing the lawsuit. See communication CAN 4/2013, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=13753>.

<sup>14</sup> Jordan's Principle is a commitment by the Federal Government to ensure that all First Nations children living in Canada have access to needed products, services and supports, including health, social services and education. See <https://www.sac-isc.gc.ca/eng/1568396042341/1568396159824>.

<sup>15</sup> *Attorney General of Québec, et al. v. Attorney General of Canada et al.*, Supreme Court of Canada Court File No. 40061. See <https://www.scc-csc.ca/case-dossier/info/sum-som-eng.aspx?cas=40061>.

<sup>16</sup> See United Nations Declaration on the Rights of Indigenous Peoples, preamble and articles 4 and 7.2; and Committee on the Rights of the Child, general comment No. 11 (2009).



### C. Missing and murdered Indigenous women and girls

36. The Native Women's Association of Canada found that at least 4,000 Indigenous women and girls had been murdered or disappeared in recent decades,<sup>17</sup> and the National Inquiry into Missing and Murdered Indigenous Women and Girls has characterized the situation as an ongoing genocide.<sup>18</sup> According to Statistics Canada, almost two thirds of Indigenous women have experienced physical or sexual violence in their lifetime.<sup>19</sup> The homicide rate for Indigenous women in 2020 was more than five times higher than that of non-Indigenous women,<sup>20</sup> and a recent study found that 50 per cent of women and girls who were trafficked in Canada were Indigenous.<sup>21</sup> As the Special Rapporteur on violence against women, its causes and consequences, stated following her visit to Canada, Indigenous women are disadvantaged within their societies and at the national level. They face marginalization, exclusion and poverty because of institutional, systemic, multiple and intersecting forms of discrimination that have not been addressed adequately by the State.<sup>22</sup>

37. Numerous United Nations treaty monitoring bodies<sup>23</sup> and special procedure mandate holders<sup>24</sup> have commented on this epidemic, including with regard to the low number of cases reported to police, the insufficiency of shelters and other protective measures, the failure to effectively investigate, prosecute and convict perpetrators and the lack of data collection.<sup>25</sup>

38. Indigenous Peoples are calling for the full implementation of the 231 Calls for Justice issued by the National Inquiry into Missing and Murdered Indigenous Women and Girls. While some initiatives are under way, many of the Calls for Justice have not been addressed.<sup>26</sup> Despite the findings of the Royal Commission on Aboriginal Peoples (published in 1996), the Truth and Reconciliation Commission (published in 2015), and the National Inquiry (published in 2019), the number of missing and murdered Indigenous women and girls continues to increase, and domestic and other violence against Indigenous women and girls increased during the coronavirus disease (COVID-19) pandemic.<sup>27</sup> The National Inquiry found that violence increased with the presence of work camps providing temporary housing for employees of extraction projects located near Indigenous lands.<sup>28</sup> These fears have been expressed by Indigenous Peoples affected by the Coastal GasLink and Trans Mountain pipelines. Indigenous Peoples are also worried about the situation of missing and murdered Indigenous men and boys and are calling on the Government of Canada to conduct a separate inquiry.

39. Late in 2020, the Federal Government announced Can\$ 724.1 million for a violence prevention strategy to expand access to culturally relevant supports for Indigenous women, children and two-spirited, lesbian, gay, bisexual, trans and gender-diverse persons, including construction of new shelters and transition housing on and off reserve. The following year, the Government and various partners released a national action plan aimed at ending violence against members of those groups. In that same year, the Government published the Federal Pathway to Address Missing and Murdered Indigenous Women, Girls and 2SLGBTQIA+ People and announced the investment of Can\$ 2.2 billion over five years and

<sup>17</sup> [A/HRC/41/42/Add.1](#), para. 74.

<sup>18</sup> "A legal analysis of genocide: supplementary report of the National Inquiry into Missing and Murdered Indigenous Women and Girls" (2019).

<sup>19</sup> Canada, Statistics Canada, "Violent victimization and perceptions of safety: experiences of First Nations, Métis and Inuit women in Canada" (2022).

<sup>20</sup> *Ibid.*

<sup>21</sup> [A/HRC/41/42/Add.1](#), para. 74.

<sup>22</sup> [A/HRC/41/42/Add.1](#), para. 75.

<sup>23</sup> [CCPR/C/CAN/CO/6](#), paras. 8 and 9; and [CEDAW/C/OP.8/CAN/1](#).

<sup>24</sup> See communication CAN 1/2011, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=1459>; and [A/HRC/41/42/Add.1](#), paras. 75 and 76.

<sup>25</sup> See also United Nations Declaration on the Rights of Indigenous Peoples, art. 22 (2).

<sup>26</sup> See communication CAN 4/2021.

<sup>27</sup> See [A/75/185](#).

<sup>28</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place*.



Can\$ 160.9 million per year ongoing to end violence against Indigenous women, girls and lesbian, gay, bisexual, trans and gender-diverse persons. However, Indigenous Peoples and organizations report that little of this money is being spent and that the Government is not doing enough to address the growing crisis. They are launching their own initiatives to reduce violence against members of those groups, including national databases to track, map and publish cases, alert systems and implementation committees.

#### **D. Gender-based discrimination in the Indian Act**

40. Currently, the Federal Government has authority under section 6 of the Indian Act to determine who has First Nations status, forcibly shaping the identities of Indigenous Peoples. The Act's registration provisions do not apply equally to men and women in practice, despite revisions to the Act. Thousands of Indigenous women and their descendants are denied status and access to associated benefits, including health-care services provided by their Band Councils and on-reserve housing.

41. A number of amendments to the Indian Act were made in response to court challenges in 1985, 2010 and 2017 in an attempt to rectify the gender discrimination. The Parliamentary Budget Officer had estimated that the 2017 amendment (Bill S-3) would make hundreds of thousands of women and their descendants newly eligible for status. However, Indigenous Peoples remain concerned over the lack of information provided by the Federal Government concerning new registration procedures and the slow and bureaucratic process required to prove their Indigenous ancestry. In Views adopted in 2019,<sup>29</sup> the Human Rights Committee held that the current provisions of the Indian Act and its amendments violated the right to equal protection under the law and discriminated based on sex<sup>30</sup> and the right to culture.<sup>31,32</sup>

#### **E. Overincarceration and access to justice**

42. Disproportionately high rates of Indigenous Peoples in jails and prisons have been linked to structural racial discrimination at every level, including policing, the judicial system, and corrections. Indigenous women and two-spirited, lesbian, gay, bisexual, trans and gender-diverse persons are the most affected. Indigenous women represent about 50 per cent of federally incarcerated women in Canada, even though they make up less than 4 per cent of the country's population.<sup>33</sup> The Special Rapporteur heard that in some provinces the numbers are as high as 80 per cent. The Committee on the Rights of the Child noted that in Canada, Indigenous youth were more likely to be involved in the criminal justice system than to graduate from high school.<sup>34</sup>

43. Indigenous Peoples are disproportionately held in higher-security settings and have limited access to education, training and culturally appropriate and responsive rehabilitative programming.<sup>35</sup> They are also more likely to be classified as a higher security risk, receive longer sentences and are frequently subjected to the use of force, isolation and segregation.<sup>36</sup> Complaints have been lodged before the Canadian Human Rights Commission against Correctional Service of Canada staff by Indigenous prisoners for: making racist comments, conducting excessive cell searches, monitoring phone calls and responding violently to prisoners who self-harm. During one of the prison visits, the Special Rapporteur was

<sup>29</sup> *McIvor and Grismer v. Canada* (CCPR/C/124/D/2020/2010).

<sup>30</sup> International Covenant on Civil and Political Rights, arts. 3 and 26.

<sup>31</sup> *Ibid.*, art. 27.

<sup>32</sup> See also [A/HRC/41/42/Add.1](#), para. 18; Convention on the Elimination of All Forms of Discrimination against Women, art. 2; [CEDAW/C/OP.8/CAN/1](#), para. 24; and United Nations Declaration on the Rights of Indigenous Peoples, arts. 3, 4 and 33.

<sup>33</sup> See also Committee on the Elimination of Discrimination against Women, general recommendation No. 39 (2022), para. 24.

<sup>34</sup> [CRC/C/CAN/CO/3-4](#), para. 85 (e).

<sup>35</sup> Submission from Prisoners' Legal Services.

<sup>36</sup> [A/HRC/41/42/Add.1](#), paras. 68 and 96 (z).

informed that the institution did not provide specific accommodations for two-spirited, lesbian, gay, bisexual, trans and gender-diverse prisoners.

44. Concerns remain over the use of segregation, as almost half of prisoners held in isolation, as at 22 August 2021, were Indigenous.<sup>37</sup> The Federal Government officially abolished solitary confinement in November 2019 after provincial courts declared it unconstitutional, and replaced it with a new system comprised of structured intervention units. However, such units are being used more often and for longer than the maximum periods outlined in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). An oversight panel<sup>38</sup> found that isolated prisoners routinely were out of their cells for less than four hours per day.<sup>39</sup>

45. The National Inquiry into Missing and Murdered Indigenous Women and Girls identified several inequalities experienced by Indigenous Peoples in relation to policing, justice, and corrections, including: delays in court proceedings; discrimination and inequalities; discrediting of victim's statements; and limited access to court services. Indigenous Peoples are often victims of racial profiling, arbitrary and discriminatory arrests, and excessive use of force by law enforcement that, in some cases, has resulted in death. The overpolicing of Indigenous Peoples, coupled with a lack of diversity and representation of Indigenous Peoples in the legal system, including among members of law enforcement, judges and lawyers, has significantly contributed to their overincarceration.

46. The Government of Canada has responded to these inequalities by instituting the Aboriginal Justice Strategy that currently has provided for 110 Indigenous justice programmes serving nearly 400 Indigenous communities across Canada. This bottom-up approach recognizes Indigenous Peoples' jurisdiction over justice matters in accordance with their own legal traditions through arrangements with the provincial ministries. However, Indigenous Peoples reported that their legal orders were far from being equally included in the judicial system of Canada.

47. Other positive developments include the 2022 Criminal Code amendments to address systemic racism and the overincarceration of Indigenous Peoples.<sup>40</sup> Bill C-5 provides for the removal of mandatory minimum sentences for some offences that disproportionately affect Indigenous Peoples and brings back conditional sentences as an alternative to incarceration.<sup>41</sup> Furthermore, the decision of the Supreme Court in *R. v. Gladue* requires judges to consider the background circumstances of Indigenous offenders prior to sentencing. However, reports submitted to provide such background, known as Gladue reports, remain poorly understood and sometimes serve to reinforce stereotypes.

48. Section 81 of the Corrections and Conditional Release Act provides for incarceration alternatives, allowing Indigenous persons sentenced to federal custody to serve their sentences in their communities. The Special Rapporteur received reports that Indigenous-operated healing lodges created under section 81 are subject to the authority of Correctional Service Canada and its policies, that the Correctional Service Canada rarely authorizes applications by First Nations and Indigenous organizations to provide alternatives to incarceration and that Indigenous-operated healing lodges are woefully underfunded.

49. As a good practice, the Samson Cree Nation is developing a treaty-based restorative justice system known as *Pamihowin*, which includes a traditional courthouse, tribunal act, knowledge keepers and a police force. Indigenous Peoples have urged Canada to commence good faith negotiations with First Nations to develop a co-jurisdiction regime to respect the inherent jurisdiction of First Nations and to enable them to share equally in decision-making about their land.

<sup>37</sup> Structured Intervention Unit Implementation Advisory Panel, "Preliminary observations of the operation of Correctional Service of Canada's structured intervention units" (Public Safety Canada, 2021). See also [CAT/C/CAN/CO/7](#), para. 14.

<sup>38</sup> See <https://www.publicsafety.gc.ca/cnt/cntrng-crm/crrctns/siuiap-ccuis-en.aspx>.

<sup>39</sup> Structured Intervention Unit Implementation Advisory Panel, "Preliminary observations".

<sup>40</sup> See <https://www.justice.gc.ca/eng/trans/bm-mb/other-autre/c5/messages.html>.

<sup>41</sup> See <https://www.parl.ca/legisinfo/en/bill/44-1/c-5>.

## F. Treaties and self-government agreements

50. For Indigenous Peoples and Nations in Canada, implementation of the State's treaty obligations is an urgent and ongoing priority. They stress that negotiation processes must include their full and equal participation. Processes must respect the jurisdiction of Indigenous Peoples and nations, adhere to the full spirit and intent of the respective treaty, and ensure their fiscal capacity to exercise their rights and jurisdiction. Treaty implementation must also be fully aligned with the United Nations Declaration on the Rights of Indigenous Peoples.

51. The Special Rapporteur heard from many Indigenous nations that their inherent and treaty rights based on the Nation-to-Nation treaties concluded with the Crown in the 1800s had never been implemented. They are calling for a treaty-based bilateral relationship with the Crown to fully implement their right to self-determination, legal jurisdiction and equal decision-making in relation to their treaty lands and territories.

52. Since the Special Rapporteur's visit in 2013, Canada has adopted an incremental approach to "modern treaty" negotiations, which can be characterized as self-government agreements, sectoral agreements and other constructive arrangements. Currently, there are approximately 185 self-government negotiation tables across the country at various stages of negotiation. Since 2015, 35 self-government agreements have been signed across Canada, including the Anishinabek Nation Education Agreement (2017), the Anishinabek Nation Governance Agreement (2022) and the Métis Nation of Ontario Recognition of Core Governance Agreement (2019).<sup>42</sup> In British Columbia, where many ongoing "modern treaty" negotiations are under way, Canada worked with First Nations and the provincial government to develop the new Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia, endorsed in 2019, which states, in paragraph 8, that Canada and British Columbia endorse the United Nations Declaration on the Rights of Indigenous Peoples as the foundation for the British Columbia treaty negotiations framework.

53. While these discussion tables can provide flexibility for negotiations based on the recognition of rights, mutual respect, cooperation and partnership, First Nations have criticized them as unilaterally developed by the Government, focused on negotiation instead of recognition, lacking transparency as regards revisions to policies guiding negotiation; and creating asymmetries of information that place First Nations at a disadvantage during the negotiation process. First Nations are calling for an Indigenous-led process to develop new federal policies and legislation recognizing and implementing their inherent rights, title and jurisdiction, including their right to free, prior and informed consent.

54. Inuit peoples welcomed the establishment of the Inuit-Crown Partnership Committee, a forum that gathers Inuit leaders and federal ministers to work on shared priorities through structured workplans. However, Inuit leaders expressed concern over limitations on their participation in the decision-making process and uncertainty about the future of the initiative, which does not have a legislative base.

55. The relationship of Indigenous Peoples with their lands and territories has a central role in defining their identity as distinct peoples. True reconciliation can be achieved only if Canada respects existing treaties and provides restitution and compensation for the loss of lands, territories and resources. Protracted land disputes impose a heavy burden on aboriginal title litigants. Due to high costs and complex judicial and treaty negotiation processes, some Indigenous Peoples have to abandon their land claims.

56. Trust is broken when the federal and provincial governments continue exploiting lands and resources while modern treaties are in the process of being negotiated. Megaprojects are occurring on Indigenous territories, at times in the absence of meaningful consultation to ensure that Indigenous Peoples are able to exercise their right to free, prior and informed consent.

<sup>42</sup> See <https://www.rcaanc-cirnac.gc.ca/eng/1100100032275/1529354547314>.

## **G. Impact of business activities and climate change on Indigenous Peoples**

57. Secure and equitable access to, use of and control over land can have direct and indirect implications for the enjoyment of a range of rights enshrined in the Covenant on Economic, Social and Cultural Rights,<sup>43</sup> such as the right to food and the right to the highest attainable standard of physical and mental health. In this regard, the Special Rapporteur expresses concern about the devastating intergenerational consequences of decades of mercury contamination on the Grassy Narrows First Nation, in particular with regard to children who are experiencing seizures, speech impairments and learning disabilities. Historical mercury contamination from a pulp and paper mill, along with large-scale industrial clear-cut logging, which is occurring without good faith consultation or the consent of the First Nation, is threatening the community members' health, cultural practices, plant medicine and food security. Most Grassy Narrows members have received no compensation for harm caused by the ongoing mercury contamination. In an important step forward, the First Nation reached an agreement with Canada to provide Can\$ 19.5 million towards the construction of the Mercury Care Home, expected to open in 2023, and Can\$ 68.9 million towards its services and operations.

58. In 2019 Canada passed the Impact Assessment Act to assess positive and negative environmental, economic, health, and social effects of proposed projects, including the impact on Indigenous Peoples. Implementation of the Act is a priority for Indigenous Peoples, to avoid environmental and cultural impacts of development projects on their lands. Many Indigenous Peoples welcome the agreement by Canada to engage in a regional impact assessment under the Act, led jointly with Indigenous groups and the province of Ontario, in the Ring of Fire area. However, the regional assessment is not yet under way, and the First Nations warn that if mining and other development in the Ring of Fire proceeds without a comprehensive, jointly led regional assessment that considers the cumulative effects across the geographical region, it will pose serious risks to their lands. Indigenous Peoples' own environmental assessments must be also respected. For example, the Tsleil-Waututh First Nation conducted an independent review of the Trans Mountain pipeline and withheld their consent after finding that the project threatens their very identity as a people.

59. Indigenous Peoples, particularly in the north, are increasingly experiencing the negative effects of climate change, including deforestation, wildfires, flooding, drought and other extreme weather events that threaten community health and safety. Such effects have led to evacuations and additional risks to community members, especially where there is housing insecurity and deficiencies in emergency management.

60. The impacts of climate change, alongside hydroelectric power projects and clear-cutting of forests in the Innu territory of Passamit in Québec, have negatively reshaped subsistence lifestyles, leading to the loss of culturally significant species such as caribou. The Passamit Innu are fighting to maintain their cultural and Indigenous knowledge, and have asked the provincial government to engage in meaningful consultations to provide restitution of land and compensation for the loss of resources.

61. In his 2022 report to the Human Rights Council,<sup>44</sup> the Special Rapporteur highlighted the importance of recognizing Indigenous women's scientific and technical knowledge and its application in mitigating and adapting to the devastating consequences of climate change. Indigenous women are active change agents in society and champions of sustainability, their scientific knowledge has a key role to play in safeguarding ecosystems and ensuring environmental justice and equity.

62. The Kaska Dene are one of many First Nations in Canada who have established Indigenous Protected and Conserved Areas governed through Indigenous law and knowledge systems. Indigenous women lead two thirds of the 23 proposed Indigenous Protected and Conserved Areas of the Indigenous Leadership Initiative and nearly half the Indigenous Land Guardian programmes, which manage, restore and monitor protected areas.

<sup>43</sup> Committee on Economic, Social and Cultural Rights, general comment No. 26 (2022), para. 5.

<sup>44</sup> [A/HRC/51/28](#).

63. The extractive industry is not only responsible for half of global greenhouse gas emissions and 90 per cent of biodiversity loss,<sup>45</sup> but it is also at the root of conflicts created by the criminalization of Indigenous Peoples defending their lands and resources from companies and governments who support the projects of those companies.<sup>46</sup>

64. In Canada, Indigenous Peoples are taking up the fight for climate justice by opposing the construction of TC Energy's Coastal GasLink pipeline and the Federal Government-run Trans Mountain pipeline, projects approved without the consent of all affected Indigenous Peoples. TC Energy signed benefit agreements with band councils along the pipeline route but did not obtain the consent of hereditary chiefs who assert jurisdiction off reserve. The use of injunctions and exclusion zones around worksites have led to the criminalization of Indigenous opposition to the pipeline.<sup>47</sup> Despite letters from the Committee on the Elimination of Racial Discrimination, in which the Committee urged Canada to cease forced evictions of Wet'suwet'en people from their lands, the federal police (under contract with the government of British Columbia) conducted a series of raids using tactical officers, helicopters, assault rifles and police dogs to arrest 74 Wet'suwet'en land rights defenders. Nineteen Indigenous defenders were charged with criminal contempt for violating an injunction prohibiting entry to the pipeline construction site on the community's unceded, ancestral territory. Five pleaded guilty, the remaining land defenders will face trial later this year and could be sentenced to prison.

65. Land defenders have also been arrested and charged after blockading the Trans Mountain pipeline route. A Tsleil-Waututh member received a 28-day sentence of imprisonment despite recent Criminal Code amendments providing for consideration of alternatives to incarceration.

66. There is a concern that recent bills introduced to protect against "critical infrastructure sabotage" may suppress the growing movement against fossil fuels, in which Indigenous Peoples play a central role, by silencing dissent against planned or existing projects.

67. Conservation measures taken by Northwest Territories wildlife authorities to conserve caribou have had a negative effect on the Lutsel K'e Dene First Nation. Members of the First Nation reported being traumatized by a recent helicopter raid and warrantless search for evidence of illegal caribou hunting. The hunting prohibition was enacted by the Northwest Territories government without consulting the Indigenous Peoples.

## H. Canadian transnational corporations

68. On several occasions, the Special Rapporteur, along with other mandate holders, has expressed concern regarding human rights abuses against Indigenous Peoples committed by Canadian companies operating abroad.<sup>48</sup> United Nations treaty monitoring bodies have called on Canada to adopt a regulatory framework to hold these transnational corporations accountable for human rights violations and environmental abuses.<sup>49</sup> According to the information received, Canada is home to almost half of the world's publicly listed mining and mineral exploration companies, and 200 Canadian companies are present in 97 foreign countries

69. In 2022, Canada launched the Responsible Business Conduct Abroad strategy to promote good business practices in alignment with the Guiding Principles on Business and Human Rights through prevention, legislation and non-judicial dispute resolution mechanisms. Canada has two dispute resolution mechanisms competent to consider allegations of human rights abuses committed by Canadian corporations abroad: a national

<sup>45</sup> United Nations Environment Programme, *Global Resources Outlook 2019: Natural Resources for the Future We Want* (2019), p. 4.

<sup>46</sup> See [A/HRC/39/17](#) and [A/71/281](#).

<sup>47</sup> See communication CAN 2/2022, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27260>.

<sup>48</sup> See communications CAN 1/2022, CAN 7/2021 and CAN 5/2020. Available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>49</sup> [CRC/C/CAN/CO/3-4](#), para. 29; and [CERD/C/CAN/CO/19-20](#), para. 14.



contact point, established in alignment with the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct; and the office of the Canadian Ombudsperson for Responsible Enterprises, launched in 2019.

70. The Canadian Ombudsperson for Responsible Enterprises has a mandate to review alleged human rights abuses arising from the activities of Canadian companies operating abroad in the garment, mining or oil and gas sectors. Indigenous Peoples and others affected by a Canadian company's operations abroad can file a complaint alleging human rights abuses. However, the Special Rapporteur was informed of some shortcomings regarding this mechanism. It is not independent from the Government of Canada, as it is situated within Global Affairs Canada and reports to the Minister of International Trade, Export Promotion, Small Business, and Economic Development, and its reports are not released until they have been reviewed by the Minister. Additionally, it has been criticized for lacking the following safeguards: mechanisms to protect Indigenous Peoples who file complaints from reprisals; effective protocols to engage with Indigenous Peoples; policies to ensure gender-based analysis and cultural sensitivity procedures during investigations; powers to compel Canadian companies to produce documents or witnesses; and effective compensatory mechanisms. In this regard, the Ombudsperson can only make recommendations to the Government of Canada to impose consequences on businesses that do not respect human rights, including revocation of trade promotion and export credit financing. Furthermore, the Government does not comprehensively regulate the activities of Canadian companies operating transnationally, on the assumption that this is primarily the role of the host State.

71. For example, Canada continues to support the operation of the Line 5 pipeline, despite the opposition of directly affected Indigenous Peoples in Canada and the United States of America. The transportation of crude oil and liquid natural gas by Canadian-owned Enbridge is creating the risk of a catastrophic oil spill that could contaminate the lands and waters of Indigenous Peoples on both sides of the border. Canada is advocating for the pipeline to continue operations, following the decision of a Parliamentary Committee that did not hear testimony from the affected Indigenous Peoples. The Government invoked the 1977 transit pipeline treaty with the United States to prolong Line 5 operations, which is inconsistent with its international commitment to prevent and mitigate the effects of climate change by phasing out fossil fuels.

72. In 2020, the highest court in Canada set an important legal precedent allowing corporations to be sued in Canada for abuses committed abroad. Previously, under Canadian law, transnational corporations could only be held liable in foreign jurisdictions in which the alleged abuses occurred. In *Nevsun Resources Ltd. v. Araya et al.*, the Supreme Court of Canada ruled that a Canadian mining company operating in Eritrea could be sued in Canada for alleged slavery abuses. The company settled the lawsuit for an undisclosed amount. Despite this advancement, Indigenous Peoples affected by overseas operations of Canadian businesses still face great challenges in accessing juridical remedies before Canadian courts. Civil society organizations have thus proposed the adoption of legislation to require Canadian companies to prevent human rights and environmental harm throughout their global operations and supply chains.

73. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate,<sup>50</sup> and the State has extraterritorial obligations to take steps to prevent and redress infringements of these rights committed abroad by business entities over which it exercises control.<sup>51</sup> Home States must require companies to conduct human rights due diligence to ensure respect for Indigenous Peoples rights in their supply chains, and adopt and enforce regulations in relation to the human rights impacts overseas of companies domiciled in home States.<sup>52</sup>

<sup>50</sup> See Guiding Principles on Business and Human Rights and OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.

<sup>51</sup> Committee on Economic, Social and Cultural Rights, general recommendation No. 24 (2017).

<sup>52</sup> [A/71/291](#), para. 115.

## I. Economic, social and cultural rights

74. The housing crisis described in the Special Rapporteur's 2014 report on the visit to Canada is still an urgent issue. Addressing housing insecurity is paramount to overcoming the cycle of poverty and marginalization that Indigenous Peoples continue to experience. Additionally, it is a key component of the process of reconciliation, as the current housing crisis is a direct consequence of the loss of lands and territories. Indigenous Peoples are more likely to live in substandard, overcrowded and culturally inadequate housing than the rest of the Canadian population. This situation constitutes a barrier to securing stable employment, education and access to social services.

75. Indigenous Peoples in urban, rural and remote communities navigating the rental housing market often face explicit and implicit racism from property owners in a market with limited affordable housing options. These individual experiences of discrimination, combined with systemic and institutional racism, amplify distrust of public institutions. As a result, Indigenous Peoples are less likely to seek access to programmes and services offered by public institutions than are non-Indigenous people.

76. There is a disproportionately high rate of persons with disabilities among Indigenous people in Canada, and significant barriers to the full realization and equal enjoyment of all human rights remain for these individuals. Indigenous Peoples with disabilities experience multiple and intersecting forms of discrimination and continue to face unique barriers to accessing supports and services available to the broader population. There is a lack of accessible housing within First Nations on reserve and Inuit and Métis communities; options for persons with disabilities are limited because there is no federal accessibility requirement for housing. Many people experiencing physical and/or mental health disabilities and who require accessible housing and/or specialized care must leave their communities in order to have their housing needs met. This barrier can have a disproportionate impact, particularly on older persons who want, but are unable, to remain connected to their communities.

77. Canada created the National Housing Strategy and passed the National Housing Strategy Act, establishing the independent Federal Housing Advocate, mandated to look at systemic housing issues. The Advocate expressed concern over the disproportionate number of Indigenous Peoples living in housing precarity and stressed the urgent need to develop and deliver an adequately funded for-Indigenous, by-Indigenous urban, rural and northern Indigenous housing strategy that would equip Indigenous governments to respond to the housing crises in their communities.

78. In 2021, the First Nations and Inuit Health Branch, under Indigenous Services Canada, instituted a programme to combat racism against Indigenous people, dedicating Can\$ 126.7 million over three years to addressing racism against Indigenous people in the country's health systems. The reasons for this are clear: Indigenous Peoples face unique barriers in accessing health services, due to historical mistrust and structural racism.

79. The death of Joyce Echaquan in 2020 highlights the devastating reality of racial discrimination in the health-care system. Ms. Echaquan, a mother of seven, was admitted to Joliette hospital, nearly 300 kilometres from her community of Manawan. She recorded a video capturing the racist comments of nurses shortly before she died without receiving the medical care she required. Indigenous Peoples are calling for the adoption of "Joyce's Principle" to guarantee Indigenous Peoples the right of equitable access, without discrimination, to all social and health services, as well as the right to enjoy the highest attainable standard of physical, mental, emotional and spiritual health, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples.<sup>53</sup>

80. Forced and coerced sterilization has been identified as part of a continuum of violence against Indigenous women in the health-care systems by the Truth and Reconciliation Commission, the National Inquiry into Missing and Murdered Indigenous Women and Girls, in the context of Senate hearings held in 2021 and 2022 and in a 2022 report on the situation

<sup>53</sup> See <https://principedejoyce.com/en/index>.



in Québec,<sup>54</sup> among others. In many of the cases reported, women did not provide consent and the procedure was performed without the patient's knowledge, or consent was not informed owing to the absence of complete or correct information, and/or consent was obtained without the presence of an interpreter. As demonstrated by the case of Ms. Echaquan, Indigenous women and girls experience differential and discriminatory treatment in hospitals, including stereotypes that they are unable to care for children.<sup>55</sup>

81. The symptoms of the chronic underfunding of health services for Indigenous Peoples and the structural discrimination in the delivery of medical treatment is evidenced by disproportionately low physical and mental health outcomes. Indigenous Peoples experience the highest rates of tuberculosis, AIDS and other communicable diseases, mental health issues and other chronic health conditions. Suicide rates remain high among Indigenous Peoples across Canada, despite implementation of the National Aboriginal Youth Suicide Prevention Strategy. Suicide rates among Indigenous youth are higher than those among non-Indigenous youth. For example, among males aged 15 to 24 years, suicide rates are 7 times higher for First Nations and 30 times higher for Inuit than among non-Indigenous males of the same age.<sup>56</sup>

82. Indigenous languages are the repository of collective knowledge, history and memory. Languages encapsulate uniquely Indigenous ways of thinking and being. Indigenous children and youth were forbidden from speaking their language in residential schools and some were punished for it. The United Nations Educational, Scientific and Cultural Organization indicates that 75 per cent of Indigenous languages in Canada are in danger of disappearing.<sup>57</sup>

83. Among Inuit of Canada, the vast majority speak their Indigenous languages, yet those are not the official language in all of Inuit Nunangat, the Inuit homeland, and Inuit are not offered education in their languages. In 2021, the Special Rapporteur raised the issue in a communication to Canada detailing the persistent challenges faced by the Inuit of Nunavut in receiving essential public services in their language in the education, health-care and criminal justice systems.<sup>58</sup>

84. Indigenous Peoples in Québec expressed concern over recent legislative changes affecting language of instruction that could cause Indigenous children and youth to drop out of school. In May 2022, the Québec National Assembly adopted an Act on respecting French as the official and common language of Québec. One aim of the Act is to reinforce French instruction at all levels of education without any exemption for those whose first language is neither French nor English, such as Indigenous Peoples. It reinforces the province's Charter of the French Language, which does not apply to First Nations. Despite this, the Act requires Indigenous high school and college students to take courses in French. The imposition of French language requirements for graduation may affect efforts to increase educational success among Indigenous students in Québec.

85. The Government of Canada has taken some positive steps on the preservation of Indigenous languages through the implementation of the Indigenous Languages Act (2019) and the creation of the Office of the Commissioner of Indigenous Languages. Long-term and dedicated funding is required for operationalization and implementation of the Act, in order to increase the number of language learners and speakers, to support the preservation, revitalization, normalization and fluency of Indigenous languages, and to ensure that such actions are centred on the principle of Indigenous control.

<sup>54</sup> First Nations of Québec and Labrador Health and Social Services, *Free and Informed Consent and Imposed Sterilizations among First Nations and Inuit Women in Québec*.

<sup>55</sup> The practice of issuing birth alerts to notify the government when an Indigenous woman gave birth was only discontinued in the past few years. See also [A/HRC/41/42/Add.1](#), para. 60 – the Saskatoon Health Region apologized to Indigenous women who had been subjected to forced sterilization, and said that “racism exists within our health care system and we, as leaders, acknowledge this”.

<sup>56</sup> See <https://www150.statcan.gc.ca/n1/pub/99-011-x/99-011-x2019001-eng.htm>.

<sup>57</sup> See also [CCPR/C/CAN/CO/6](#), para. 19.

<sup>58</sup> See communication CAN 3/2021. Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26480>.

## V. Conclusions and recommendations

86. The Government of Canada has made significant progress over the 10 years since the previous visit of the Special Rapporteur, through the implementation of the United Nations Declaration on the Rights of Indigenous Peoples Act and other important measures. The Special Rapporteur commends the Government for its proactiveness on Indigenous issues in international forums, its constructive collaboration during the visit and its open acknowledgment of remaining challenges. Canada can serve as an example for other countries with regard to acknowledging the historical and ongoing harms against Indigenous Peoples and to advance reconciliation. It is laudable that Canada has taken many important steps to advance Indigenous Peoples' rights. Regrettably, the most significant achievements are often acquired through court decisions or case settlement rather than implementation of governmental policies, and these advances are ultimately the result of Indigenous Peoples' strong determination and unabated courage to defend their rights.

87. The Government must address, as a priority, the deep-set, systemic and structural racism affecting Indigenous Peoples and, without further delay, put into practice the calls issued by the Truth and Reconciliation Commission, the National Inquiry into Missing and Murdered Indigenous Women and Girls and other thematic commissions. Implementation of these recommendations is vital to gain the trust of Indigenous Peoples in Canada and to maintain constructive and collaborative dialogues. If political commitments are not followed by concrete actions with lasting impacts on Indigenous Peoples' lives, the country's perceived progressiveness at the international level will be questioned. Indigenous Peoples are asking Canada to respect their Nation-to-Nation relationships, treaties and self-government agreements and to ensure their full and equal participation in decisions that affect their rights, title and interests. Canada has embarked on an important journey towards reconciliation that must dismantle the foundation of structural racial discrimination against Indigenous Peoples.

88. The Special Rapporteur recommends that Canada take the following actions in respect of collaboration, cooperation and consultation with Indigenous Peoples, including representatives of non-status and off-reserve people.

### Legal and institutional framework

89. Canada should:

(a) Encourage all provinces and territories to incorporate the provisions of the United Nations Declaration on the Rights of Indigenous Peoples into binding legislation and establish a commemoration day of truth and reconciliation;

(b) Set up an independent Indigenous-led human rights mechanism in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), to monitor and enforce the implementation by Canada of the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Indigenous Peoples Act,

(c) Review and amend all relevant laws to ensure they align with the State's domestic and international obligations towards Indigenous Peoples and remove any existing legal barriers to the effective exercise of Indigenous self-government;

(d) Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization and the American Convention on Human Rights.

### Residential schools

90. Canada should:

(a) Take measures to ensure full access to information and support Indigenous data sovereignty for survivors and families of missing children who attended residential schools; the Catholic Church, health-care facilities and any other institutions holding relevant records are encouraged to disclose death certificates and other forms of documentation;

(b) Pass legislation and take other measures necessary to preserve residential school records set for destruction in 2027 by Supreme Court order;

(c) Fully support Indigenous Peoples' calls for survivor-centred, Indigenous-led investigations into residential school burial sites, including those located on private lands, to mitigate against further harm in accordance with Truth and Reconciliation Commission Call to Action 76, and respect Indigenous Peoples' laws and protocols related to grieving, death and burial practices in any investigation of residential school burial sites;

(d) Counter denialism and misinformation about residential schools with ongoing public education and awareness-raising campaigns;

(e) Fully resolve all residential school claims, including for all church-run institutions and residential schools established by provinces, as well as the claims of Métis survivors and their families, reopen the claims process for those excluded from the initial settlements, and fund culturally relevant supports to address intergenerational trauma that include support to Indigenous-led health initiatives and from health-care professionals specialized and trained in the needs of Indigenous Peoples, giving priority to qualified Indigenous professionals;

(f) Pass legislation to protect Indigenous Peoples' human remains, funerary objects, sacred objects and objects of cultural patrimony found on federal, provincial, territorial, municipal, church or private lands.

#### **Child welfare system**

##### **91. Canada should:**

(a) Adopt holistic legal and administrative reforms to address the root causes of Indigenous children's overrepresentation in the child welfare system, including racial discrimination, poverty, inadequate housing and the lack of culturally appropriate interpretations of the best interests of the Indigenous child;

(b) Implement the recommendations of the Committee on the Rights of the Child to ensure that Indigenous children in care are able to preserve their identity, by adopting legislative and administrative measures to protect their rights to identity, name, culture and language, and culturally appropriate education.<sup>59</sup>

#### **Missing and murdered Indigenous women and girls**

##### **92. Canada should:**

(a) Develop a joint action plan to advance implementation of the National Inquiry's 231 calls to justice, along with a comprehensive and coordinated national violence prevention strategy for Indigenous women and girls, and hold an inquiry into missing and murdered Indigenous boys and men;

(b) Implement the recommendation of Committee on the Elimination of Racial Discrimination to establish an independent review mechanism for unsolved cases of missing and murdered Indigenous women and girls where there is evidence of bias or error in the investigation,<sup>60</sup> including through the creation and funding of a national investigative taskforce to review or reopen unresolved investigations;

<sup>59</sup> CRC/C/CAN/CO/3-4, para. 43.

<sup>60</sup> CERD/C/CAN/CO/21-23, para. 24.

(c) Provide core sustainable funding for Indigenous women's centres, shelters, transitional housing, treatment facilities and other safe spaces, including culturally relevant, comprehensive health-care support;

(d) Increase funding and resources to develop culturally appropriate programmes and services for men and boys to address the intergenerational trauma and abuse suffered by Indigenous men that contributes to the many types of violence experienced by Indigenous women and girls.

#### **Gender-based discrimination in the Indian Act**

93. Canada should:

(a) Implement the recommendations of the Standing Senate Committee on Indigenous Peoples to repeal section 6 (2) of the Indian Act (the "second generation cut-off"), which reduces the number of individuals with status; to repeal non-liability clauses in the amendments to the Act, in order to allow First Nations women and their descendants who were denied status to be compensated; and to develop plain language materials in Indigenous languages and the country's official languages to explain the eligibility and the registration process;<sup>61</sup>

(b) Support registration by women and their descendants newly eligible for status through a streamlined, easily accessible process; and create an affordable, reliable, timely and accessible remedy to compensate those who have suffered the effects of discrimination.

#### **Overincarceration and access to justice**

94. Canada should:

(a) Address the concerns of human rights treaty monitoring bodies and special procedures with regard to providing human rights training to all legal, correctional and law enforcement professionals;<sup>62</sup>

(b) Provide Indigenous prisoners with access to culturally appropriate programming and services, including by strengthening the role of Elders in correctional plans, addressing the specific needs of gender-diverse prisoners, ensuring that independent grievance mechanisms are in place and not subjecting prisoners to reprisals for filing reports of abuse by staff at correction facilities;

(c) Ensure that any imposition of administrative segregation complies with the Nelson Mandela Rules;

(d) Resort, wherever possible, to alternatives to detention enabling Indigenous persons to serve sentences in their communities; encourage, appropriately fund, and raise awareness about the use of alternatives to incarceration as provided by the United Nations Declaration on the Rights of Indigenous Peoples Act and sections 81 and 84 of the Corrections and Conditional Release Act; and guarantee that Indigenous-operated healing lodges established under section 81 are independent in providing correctional services;

(e) Continue to expand the Aboriginal Justice Strategy and strengthen Indigenous legal systems, restorative justice programmes and healing lodges and culturally appropriate victim and offender treatment programmes.

#### **Treaties and self-government agreements**

95. Canada should:

<sup>61</sup> "Make it stop! Ending the remaining discrimination in Indian registration" (2022), pp. 6 and 7.

<sup>62</sup> See, for example, [CRC/C/CAN/CO/3-4](#).

(a) Support an Indigenous-led process to develop new federal policies and legislation addressing the recognition and implementation of treaty rights to land title, and legal jurisdiction;

(b) Honour the treaties entered into with Indigenous Peoples and establish effective, transparent bilateral processes with the full participation of Indigenous Peoples to resolve conflicts, ensure implementation, and settle disputes concerning land, water, food, health, consent and other rights affirmed in those treaties;

(c) Guarantee in law and in practice the right to free, prior and informed consent, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international standards, including the treaties concluded with Indigenous Peoples.

#### **Impact of business activities and climate change on Indigenous Peoples**

96. Canada should:

(a) Develop a national action plan on business and human rights;

(b) Recognize the extraterritorial human rights obligations of Canadian companies operating abroad and ensure that they are held accountable for human rights violations committed in other countries, including against Indigenous Peoples;

(c) Adopt human rights and environmental due diligence legislation to require companies to proactively prevent violations of human rights, including rights contained in the United Nations Declaration on the Rights of Indigenous Peoples;

(d) Establish mechanisms to ensure that government support to companies, including political and commercial support by embassies and financing through Export Development Canada, is conditional on respect for international human rights and environmental standards, including the Declaration;

(e) Reform the office of the Canadian Ombudsperson for Responsible Enterprise to ensure that it is fully independent, and strengthen its mandate by granting it full investigatory powers, establish effective safeguards to protect Indigenous petitioners from reprisals and create greater awareness of the mechanism;

(f) Adopt a rights-based approach to the establishment or expansion of existing protected areas and conduct meaningful consultations with Indigenous Peoples to obtain their free, prior and informed consent when their rights are affected;

(g) Provide support and adequate funding for Indigenous-led initiatives related to biodiversity conservation, climate resiliency and environmental disaster mitigation;

(h) Implement existing commitments to remediate mercury contamination in the Grassy Narrows First Nation and take immediate measures to address its ongoing impacts on the community's health and well-being, including compensation for the mercury contamination and other environmental harms;

(i) Suspend large-scale mining and other business activities in the Ring of Fire region and cease construction or operation of the Coastal GasLink, Trans Mountain and Line 5 pipelines, until the free, prior and informed consent of the Indigenous Peoples affected is secured;

(j) Implement the Impact Assessment Act in consultation and coordination with affected Indigenous Peoples and respect impact assessments conducted by Indigenous Peoples according to their own laws and protocols with regard to business activities and projects affecting them;

(k) Halt the criminalization of Indigenous human rights defenders peacefully defending their lands and resources from extractive industries and other business actors.

**Economic, social and cultural rights**

**97. Canada should:**

(a) **Provide support and adequate funding for targeted Indigenous health, education, housing and social services programmes so that Indigenous Peoples can implement their own culturally relevant programmes;**

(b) **Adopt, promulgate and monitor national accessibility standards for Indigenous persons with disabilities, and ensure the accessibility of housing and social services within Indigenous Peoples' communities;**

(c) **Take the steps necessary to promote language recovery, conservation and revitalization;**

(d) **Investigate the practice of forced sterilization and other forms of obstetric violence towards Indigenous women to establish policies and accountability mechanisms and provide victims with full remedy, including compensation;**

(e) **Adopt "Joyce's Principle" to guarantee all Indigenous Peoples the right of equitable access, without discrimination, to all social and health services, as well as the right to enjoy the highest attainable standard of physical, mental, emotional and spiritual health in accordance with the United Nations Declaration on the Rights of Indigenous Peoples.**

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