Annex 2 - “What We Heard”

Views on Canada’s Draft National Report Under the Fourth Universal Periodic Review

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In May 2023, Canada shared its draft national Universal Periodic Review (UPR) report with over 285 partners and stakeholders in Canada including National Indigenous Organizations, Indigenous organizations, civil society organizations, and human rights commissions. This annex provides an overview of input received.

While the views expressed in this annex do not necessarily reflect the views of federal, provincial and territorial governments in Canada, this effort was undertaken to demonstrate transparency and accountability in this important human rights review process, and in recognition of the expertise these organizations bring to the table.

As a result of this outreach, Canada's national report was updated to reflect some of the input received. While it was not possible to integrate all of the suggested changes from stakeholders and partners into the national report itself, for instance due to obligatory word count limits set by the United Nations (UN) for national reports, Canada has taken the additional step of including this input received on Canada's draft report in this annex. In addition, all of the input on Canada's draft report was shared with the federal departments and agencies responsible for the subject matter covered, as well as provincial and territorial governments.

The first part of this document provides the verbatim input received from four National Indigenous Organizations in Canada: the Assembly of First Nations, Inuit Tapiriit Kanatami, the Métis National Council and the Congress of Aboriginal Peoples.

The second part of this document provides a summary of input received from civil society organizations, human rights commissions, and other Indigenous organizations, representing fifteen additional submissions[1]. This input amounted to approximately 90 pages of content sent in various formats (e.g. tracked changes or standalone comments). To ensure greater accessibility to this content for readers, the input was summarized rather than included verbatim.

Input by National Indigenous Organizations

Assembly of First Nations Input

The Assembly of First Nations (AFN) reviewed Canada's draft report for the Fourth Universal Periodic Review and respectfully submits the following commentary and feedback for consideration.

[1] Civil Society and Indigenous Organizations who submitted comments, in alphabetical order: Amnesty International Canada, Amnistie Internationale Francophone, Barbra Schlifer Commemorative Clinic, British Columbia Coalition of Experiential Communities, Canadian Network on Corporate Accountability, Canadian Poverty Institute, Centre for Israel and Jewish Affairs, Centre for Law and Democracy, Femmes Autochtones du Québec Inc., Fondation Émergence, Lawyers Without Borders Canada, the Mosaic Institute, Ontario Human Rights Commission, Peacemakers Trust Canada, and Prisoners' Legal Services.

Introduction

In Canada, First Nations rights are often categorized and recognized as a distinct branch of rights separate from a broader human rights framework. While distinctions-based approaches are appropriate, First Nations rights must also be recognized and included in broader human rights discussions. Recognizing First Nations rights as human rights acknowledges that these rights are essential to the dignity and survival of First Nations Peoples whose perspectives must be included in all human rights-related discussions and initiatives.

While the AFN acknowledges Canada's progress, First Nations leaders from coast-to-coast-to-coast are still advocating for the full realization of First Nations Inherent, Treaty, Aboriginal, and human rights. Despite various levels of government across Canada committing to collaborating with First Nations, federal, provincial, and territorial (FPT) governments continue to make unilateral decisions that affect First Nations Peoples without their free, prior, and informed consent or permission. As a result, First Nations rights are frequently infringed and most often come second to the rights of other Canadians.

The AFN received a draft copy of Canada's UPR report to provide comments and feedback over a three-week period. The AFN's feedback is structured to respond to Canada's report based on First Nations perspectives, as well as to identify any gaps that exist in Canada's report.

Implementation: Developments, Achievements, and Challenges Since Canada's Third UPR

International Human Rights Instruments

Implementation Mechanisms and Follow Up to UN Recommendations

Recently, Canada created a new FPT Senior Officials Committee Responsible for Human Rights. Many similar FPT forums exist in Canada across a broad range of policy areas to address matters that overlap federal and provincial/territorial jurisdiction. For many years, the AFN has called on FPT governments to fully include the AFN in all FPT committees, forums, and meetings that will or may affect First Nations rights and jurisdiction.

FPT forums consistently approach First Nations and the AFN as an afterthought—FPT governments regularly develop agendas without input from the AFN or First Nations; information sharing is limited or non-existent; and government officials, particularly at the provincial and territorial level, often refuse to address First Nations priorities, like jurisdiction.

The AFN must be a full and equal partner in all FPT meetings that affect First Nations, including those on human rights. All discussions, plans, and frameworks related to human rights must include First Nations perspectives. First Nations are not stakeholders—they are established leaders and partners in the nation-to-nation relationship with all governments across Canada.

Engagement with International Human Rights Mechanisms and Bodies

While Canada's participation through international human rights mechanisms and bodies is welcome, First Nations still face significant barriers to participation in these fora. First Nations lack adequate funding to advance First Nations priorities through international advocacy, particularly with respect to Indigenous-specific mechanisms and bodies. First Nations require dedicated funding for a full First Nations delegation to attend international meetings and events to advance First Nations human rights.

Canada must also work with the AFN to develop an appropriate framework for Canada to engage with the AFN prior to international meetings and events. Canada boasted that it works closely with Indigenous partners for input on UN reports and resolutions; however, in many cases, Canada provides these documents to the AFN with such short deadlines that the AFN does not have time to fully develop a response.

Canada must also clarify its position regarding treaties and negotiations in international spaces. First Nations are firm in their belief that pre-confederation Treaties, numbered Treaties, and other First Nations-Crown Treaties are international human rights mechanisms that Canada is responsible to fully implement. A significant disparity exists between Canada's commitment to implement other international agreements and Canada's commitment to implement Treaties with First Nations.

Despite Canada's lead on the annual resolution on Violence Against Women and Girls (VAWG), Indigenous women, girls, and 2SLGBTQQIA+ Peoples in Canada still face disproportionate levels of violence. Further, regarding VAWG, Canada does not report progress on the Missing and Murdered Indigenous Women, Girls, and 2SLGBTQQIA+ People National Action Plan. Canada must report progress on which of the Action Plan Measures (APM) Canada has accomplished since the Action Plan's release in June 2021.

Ratification of international human rights instruments

Canada must inform First Nations when international human rights instruments pertaining to Indigenous Peoples are ratified. Moreover, Canada must provide First Nations adequate information about, and an analysis of, the legislative and regulatory domestication of the Arms Trade Treaty (ATT) in a way that reflects the section 5 standards of the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDA).

<u>Rights of Indigenous Peoples</u>

Reconciliation Initiatives

Truth and Reconciliation Calls to Action

First Nations are firm that Canada's reported progress on the Truth and Reconciliation Commission Calls to Action is inaccurate. Inaccurate reporting on the Calls to Action creates a false sense of progress that can negatively affect how governments allocate funding and

approach First Nations priorities. False progress may imply that fewer resources and attention are needed even though significant gaps remain. Accurate measurements and reporting are essential to closing critical socio-economic gaps between First Nations and non-Indigenous Canadians.

According to the Yellowhead Institute, only 13 of 94 Calls to Action were completed as of 2022. Yellowhead's calculations indicate that it will take Canada 42 years to complete the TRC Calls to Action. This differs substantially from Canada's reported progress.

Crown-Indigenous Relations and Northern Affairs (CIRNA) is the federal department responsible for Canada's reporting on TRC Calls to Action. Individual departments are responsible for monitoring progress and providing this information to CIRNA. CIRNA, however, lacks adequate authority to review and validate departments' reporting. As a result, no internal checks and balances exist for departments that exaggerate progress.

Canada has committed to working with the AFN to report and monitor the TRC Calls to Action. Specifically, the AFN requested that Canada work to co-develop mechanisms and measures to accurately monitor progress. The AFN looks forward to updating the United Nations on this progress in the future.

Missing and Murdered Indigenous Women, Girls, and 2SLGBTQQIA+ Peoples

A National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) was completed in 2019 and set out 231 Calls for Justice. Despite this, Indigenous women, girls, and 2SLGBTQQIA+ Peoples continue to face disproportionate risks of violence. Recently, several Indigenous organizations called out Canada for the lack of progress to implement the Calls to Justice. The AFN has repeatedly called on Canada to provide details on how dedicated MMIWG2S+ funding is distributed, particularly with respect to non-Indigenous organizations, and to demonstrate that this funding is being used appropriately.

In July 2023, the First Nations-in-Assembly passed AFN Resolution 66, *Denouncement of Manitoba Decision on Landfill Search for Remains of First Nations Women*, which denounced Canada's failures to adequately search for and/or recover the remains of Missing and Murdered Indigenous Women, Girls, and 2SLGBTQQIA+ Peoples. That resolution also denounced a recent decision by the Government of Manitoba not to conduct a search of a landfill that police believe contains the remains of murdered First Nations women.

United Nations Declaration on the Rights of Indigenous Peoples Act

In November 2019, British Columbia (BC), in consultation and cooperation with Indigenous Peoples, became the first jurisdiction in Canada to pass legislation implementing UNDRIP. This new legislation requires: (1) that new and existing laws be made consistent with UNDRIP; (2) that an Action plan be implemented to achieve, monitor, and report on the UNDRIP objective; and (3)

that decision-making powers be shared between the BC government and Indigenous Peoples in BC. First Nations insist that not all edits provided to the BC government were accepted. Embedded rights and minimum standards were effectively "negotiated" to better align with departmental priorities.

In 2021, the federal government passed UNDA to implement the UN Declaration domestically. Similar to BC, that Act required the federal government to develop a National Action Plan to implement the UN Declaration. The legislated Action Plan, released in June 2023, provides 181 measures that guide Canada to address existing gaps related to Indigenous Peoples.

Canada has described a "whole-of-government" approach to implementing the UNDA. It is important to note that the Action Plan Measures (APMs) are department-led. While some 20+ departments were engaged, a significant gap remains in the totality of ministries and departments engaged in the UNDA, which is reflective of the progress thus far. The AFN raised concerns that many of the APMs that departments put forward did not meet the minimum standards of the UN Declaration.

As part of the AFN's contribution to develop the Action Plan, the AFN provided a submission entitled *Implementing the UN Declaration: First Nations Essential Elements*. That submission outlines First Nations expectations for Canada's Action Plan. The AFN called on Canada to ensure that all departments use this document as a guide to interpret and measure progress to implement UNDRIP. Canada must also reference and measure against the APMs when reporting on human rights to the UN. By connecting its UNDA obligations and associated APMs to topics in the Universal Periodic Review, Canada would be able to demonstrate its efforts to achieve global human rights standards.

The AFN requests that when the United Nations seeks to assess Canada's progress towards compliance with its international Human Rights obligations, it interprets the implementation of Canada's UNDA Action Plan alongside the AFN's submission.

Missing Children and Unmarked Graves and Burial Sites associated with Indian Residential Schools

Canada must work harder to protect the remains of First Nations children at the sites of former Residential Schools. Canada must also resource First Nations to perform ceremonies and protect remains in ways that are distinct to their customs, beliefs, and traditions. First Nations must have sole discretion to determine how and when searches and other work will be carried out.

Canada must protect First Nations from academic and private sector researchers who seek to exploit the Nations that lack the resources to bring home their kin. Canada can support First Nations by resourcing them to attain mechanisms to hold researchers accountable. Such mechanisms are legal advice and guidance, data governance agreements, and resources required

to protect genetic materials and narratives, which are reflective of their distinct customs and cultural protocols.

Ratification of International Human Rights Instruments

As mentioned above, in June 2021, UNDA received Royal Assent and came into force. This was a crucial step towards protecting First Nations rights. Moving forward, a critical element required to measure the operative quality of UNDA implementation is operationalizing section6(2)(b), which obligates Canada to ensure that Indigenous Peoples are well involved in the development of monitoring measures and subsequent operations.

Addressing inequalities in the Indian Act

The *Indian Act* is a tool for the assimilation and elimination of First Nations. Since the enactment of the *Indian Act* in 1876, that Act has been used to undermine First Nations kinship systems and systems of governance, as well as to restrict and infringe upon First Nations cultures, traditions, practices, and rights. The *Indian Act* has enabled a variety of discriminatory and genocidal colonial policies, including the Indian Residential School system, the Sixties Scoop, the child welfare system, and the First Nations education system, which remains significantly under-resourced.

The *Indian Act* is fundamentally inconsistent with applicable legal standards and the inherent right of self-determination. Incremental reforms are insufficient to remedy this inconsistency. The lingering impacts of gender discrimination and enfranchisement remain. Further, the Government of Canada has not provided adequate resources to ensure that First Nations can consult and engage with their community members about the transition away from the *Indian Act*.

Social and Health Initiatives

Jordan's Principle

Canada's comments that it is implementing all the CHRT's orders is an overstatement. Several of these CHRT orders emerged because of Canada's continued failure to properly implement Jordan's Principle, and the AFN continues to hear of challenges associated with Canada's implementation of Jordan's Principle. While the increase in Jordan's Principle requests being funded in the period of 2017-18 to 2021-22 is substantial, this is reflective of systemic gaps and failures to meet the needs of First Nations children through existing programs and services intended to do so.

An Act Respecting First Nations, Inuit and Métis Children, Youth and Families.

While the co-development of the Act represents a significant collaboration between First Nations and Canada, the ongoing constitutional challenge of the Act by the Government of Quebec, which is supported by several provinces and territories, is a step back in this progress. Many provinces

have still not taken any steps to recognize First Nations jurisdiction over the well-being of their children and youth.

In 2022, Canada announced that Agreements-in-Principle had been reached to compensate those who experienced discrimination as a result of the underfunding of Child and Family Services and Jordan's Principle, and on long-term reforms of the Child and Family Services program and Jordan's Principle. This includes funding for post-majority support services, funding for First Nations representative services and increased prevention funding in all provinces and the Yukon.

The AFN, Canada, and other Parties reached A Final Settlement Agreement on compensation in April 2023, and subsequently approved by the First Nations-in-Assembly.

Safe Drinking Water and Wastewater

Canada has made advances to ensure First Nations have safe drinking water; however, Indigenous Services Canada (ISC) continues to report that as of July 2023, 29 long-term drinking water advisories are still in effect. Canada has failed to keep its commitment to end all long-term advisories by March 31, 2021. Further, Canada does not report on recurring short-term water advisories (which can also significantly impact the health and well-being of First Nations communities) or on the number of First Nations homes with compromised wells and failing septic systems.

In addition, significant problems remain with respect to the staffing of water and wastewater treatment plant operators. These operators face significant risks of burnout, exacerbated by a lack of back-up operators. First Nations also face staffing challenges due to poaching by non-Indigenous treatment plants, and because of low salaries due to the wage disparities between First Nations and non-Indigenous treatment plants.

Operations and maintenance funding for water and wastewater treatment plants has improved somewhat but the antiquated funding formula still does not cover the actual cost of operating and maintaining facilities. This results in premature failures and increased replacement needs.

The health costs from the failure to provide safe water are significant. A lack of water services and sanitation to support new serviced lots restricts the number of new homes that can be built. This exacerbates overcrowding and encourages migration of First Nations citizens away from their communities to urban centers due to a lack of shelter. This also inhibits repatriation for those who want to return home to access culture and language. A lack of adequate or sustained water supplies also inhibits economic development opportunities for First Nations.

First Nations are also at a significant disadvantage due to a lack of data. The Government of Canada holds most of the data that First Nations and the AFN require to determine accurate costs and make recommendations. Canada frequently refuses to provide this data, citing privacy

concerns but takes no steps to work with the AFN to anonymize data or mitigate privacy concerns.

Emergency Management Assistance Program

The Auditor General of Canada released a report in December 2022, that found that ISC did not provide adequate support to First Nations to manage emergencies, such as floods and wildfires. That report found that ISC's actions were more reactive than preventative and did not generate meaningful emergency management capacity for First Nations. For example, ISC had a backlog of 112 eligible infrastructure projects aimed at mitigating the impact of emergencies that the department had not funded.

The report further found that ISC spent significantly more money responding to emergencies than investing in preventative policies and programs that would bolster resilience and save billions of dollars. The accepted rule in emergency management is that for every $1 spent on prevention/mitigation, the government could save $7 in response. The Auditor General also noted that ISC failed to make necessary improvements to emergency management based on the Auditor Genera's recommendations provided in 2013.

Serious concerns remain with the reliance on proposal-based programming, such as the Emergency Management Assistance Program (EMAP). This program creates a process where First Nations are prevented from accessing funding if the First Nation does not fit federal criteria in the proposal process. For example, eligibility depends on the First Nation's local capacity. This is a fundamental human rights issue because funding to support local community capacity is gated by the government. This program and its processes are not equitable and need serious reconsideration. Serious flaws exist regarding the equity and accessibility in the current emergency management funding provision systems employed by Canada.

Education and Cultural Initiatives

Starting in 2019, the Government of Canada co-developed a new education funding and policy approach that was implemented to better meet the needs of First Nations students on reserve. To date, 10 Regional Education Agreements (REAs) covering 175 communities have been signed, covering to provide funding for First Nations education based on First Nations determined need.

First Nations Schools

The poor condition of First Nations schools is well documented. 202 First Nations schools are currently overcrowded, which is equal to half of the First Nations schools in Canada. In addition to overcrowded schools, 56 schools require immediate replacement based on reported poor conditions or facility age. Infrastructure conditions and shortages also force 54 per cent of First Nations students to leave their community to achieve a high school diploma. As most students seek diplomas outside of their community, they are faced with systemic racism in provincial

schools that are not equipped to provide any sort of cultural or language needs for First Nations learners.

Decades of underfunding for education infrastructure have resulted in First Nations education infrastructure assets being in disrepair and not being utilized to their intended lifespan. The AFN First Nations Education Infrastructure Research Collection estimates that $4.7 billion is required over the next five years for renovations, new construction, and planning.

REAs do not allow First Nations to include education infrastructure, which creates a gap in programming and learning environments. There are a small but successful number of First Nations education agreements in Canada that contain capital and education infrastructure service delivery components. The inclusion of education infrastructure into REAs should be implemented to ensure all First Nations can build and maintain their community education assets.

Employment and Economic Development Initiatives

In February 2020, the Evaluation Directorate Strategic and Service Policy Branch released its report "Evaluation of the Aboriginal Skills and Employment Training Strategy and the Skills and Partnership Fund" that covered the period of April 2010 to March 2018. Overall, the evaluation found that the Strategy resulted in positive improvements in skills development, labour market attachment, sustained partnerships, and positive social return on investment. However, some Indigenous Agreement Holders found the administrative reporting relationship with Employment and Social Development Canada (ESDC) problematic. Based on the report's two recommendations, Canada did agree to better leverage data to collaborate with partners to improve the program and to seek improvements in the administration of agreements with participating Indigenous organizations.

The Auditor General of Canada (AG) reported in 2018 on the Employment Training for Indigenous People, as administered through ESDC. The AG criticized ESDC's handling of two of its programs, the Aboriginal Skills and Employment Training Strategy (ASETS), which is the predecessor to Indigenous Skills and Employment Training (ISET) Program, and the Skills and Partnerships Fund (SPF).

As a result, Canada launched the new ISET Program in 2019 to replace ASETS following a co-development engagement with the AFN and First Nations. There were key accomplishments resulting from the engagement with the AFN and First Nations, such as longer-term sustained and incremental funding from 5 years to 10 years, more flexible reporting, and the ability to carry over funding year to year, and the new strategy is ever-green. Areas that still need to be addressed are funding shortfalls, inflationary impacts, additional funding to support new First Nations agreements, ESDC maintaining control of the program, devolution of the program to First Nations not being a priority and overlap with non-Indigenous organizations.

Post-Secondary Education

The Government of Canada continues to approach First Nations post-secondary education (PSE) as a matter of social policy instead of an Inherent, Treaty, and human right. First Nations face ongoing challenges in administering and supporting post-secondary students and First Nations institutes of higher learning. In 2019, First Nations began a three-year engagement process to develop PSE models and approaches that would provide adequate, predictable, sustainable, and equitable funding for their PSE students. After concluding this process, the Government of Canada provided no additional funding or recognition of that national engagement in the 2022 Budget. These PSE models would provide tailored support for First Nations students to succeed in PSE and address the unique needs of communities across the country.

Despite inflation, population growth, and increased secondary school graduation rates, funding for First Nations post-secondary students has not caught up to the needs. Only 25,000 students are supported by the federal government every year since 1996. Bolstering government investments to close the education gap for First Nations in PSE would provide enormous benefits to Canada, including the GDP rising by $30 billion and First Nations employment increasing by over 100,000 additional jobs.

Employment and Labour Initiatives

Pay Equity and Wage Parity

The *Pay Equity Act* came into force in 2021. Canada has failed to indicate that that Act does not currently apply to Territories or Indigenous governing bodies, including First Nations Governments. Pay equity in these workplaces is still protected under section 11 of the *Canadian Human Rights Act* or territorial legislation. Canada does not offer any data on the wage disparity for First Nations. Statistics Canada data from the 2016 Census shows that Indigenous women working full-time, full-year earn an average of 35% less than non-Indigenous men, or 65 cents to the dollar.

In addition to gender pay equity, there remains a vast wage gap for staff working for First Nations Governments. Due to insufficient funding, First Nations are often forced to pay personnel at much lower rates than non-Indigenous organizations. As a result, First Nations face difficulties in attracting and retaining personnel. For example, teachers and counsellors working for First Nations schools are paid significantly less than teachers and counsellors in the provincial school system. This often leads teachers and counsellors to leave First Nations for provincial schools.

Poverty, Homelessness & Food Security

While the *National Housing Strategy Act* acknowledges housing as a fundamental human right, it's crucial that the implementation of this Act effectively improves conditions within First Nations

communities. To ensure truly inclusive policy development, the National Housing Council must consistently incorporate First Nations voices, in line with UNDRIP Article 23.

Significant gaps exist in how the Reaching Home initiative addresses the needs of First Nations, who are significantly overrepresented in the homeless population in Canada. Reaching Home includes dedicated funding for distinctions-based funding streams aimed at recognizing the distinct needs and priorities of First Nations, Métis, Inuit, and Modern Treaty Holders. To-date, the funding committed for the First Nations Distinctions-Based stream is minimal relative to the significant and urgent needs of First Nations.

The process to allocate this funding has been mired in bureaucracy, meaning that First Nations have not yet accessed this funding. While First Nations and First Nations organizations can apply for funding under the Indigenous funding stream—one of the four regional streams referenced in Canada's report—this funding cannot be used for activities on-reserve and First Nations applicants are forced to compete for funding with other Indigenous organizations, including large not-for-profits with greater resources and capacity.

While the steps taken by the Government of Canada are appreciated, there is a need for Canada to address persistent gaps to fully realize housing rights for all, including First Nations. The Government of Canada must consistently collaborate and respect First Nations' autonomy in determining housing and homelessness policies/strategies. The federal government made a commitment to reducing chronic homelessness by 50 per cent by 2027–28. Homelessness has increased since COVID. No statistics are included in the paragraphs provided by Canada indicating how Reaching Home has positively impacted First Nations.

The National Housing Strategy Act is pan-Canadian and does not specifically address the measures required to ensure First Nations have safe and adequate housing, as well as the governance and capacity required to exercise jurisdiction over their own housing systems. Distinctions-based strategies must be developed as they are essential to ensuring that First Nations perspectives and views are reflected, and that policies and programs are co-developed/led by First Nations. First Nations are self-governing and have the right to self-determination. Their Inherent rights, title, and jurisdiction must be respected and fully implemented.

Violence Against Women & Children

Missing and Murdered Indigenous Women, Girls, and 2SLGBTQQIA+ Peoples

The AFN continues to call for the voices of the families of missing and murdered First Nations women and girls to be heard and respected. This important work will ensure that all governments, private sectors, and service providers implement the National Inquiry's *Calls for Justice*. Implementing the National Inquiry's *Calls for Justice* and the MMIWG2S+ NAP is crucial

to recognizing and upholding the human rights of First Nations women, girls, and 2SLGBTQQIA+ Peoples.

In 2021, the AFN released the First Nations Chapter of the National Action Plan called, *Breathing Life into the Calls for Justice*, which calls for immediate support for three national frameworks: wrap around supports for survivors and families, prevention services to address the root causes of violence, and healing supports for individuals and First Nation communities. Long-term and sustainable funding to support each of these initiatives is needed to end violence against First Nations women, girls and 2SLGBTQQIA+ people.

Children & Youth

Early Learning and Child Care

While Canada's investments are a positive step forward, the investments are not sufficient to address the gaps created by decades of underfunding of First Nations Early Learning and Child Care, namely in governance, capital, and the workforce. The number of childcare spaces identified by Canada is not specific to those for First Nations or Indigenous children and does not necessarily reflect the benefit of such investments for First Nations. Bill C-35, *An Act respecting early learning and child care in Canada,* was tabled in the House of Commons in December 2022, without the proper consultation or engagement with First Nations rights holders, as is required to obtain First Nations' free, prior and informed consent.

Persons with Disabilities

Disability Rights

The AFN is working with Employment Social Development Canada (ESDC) to support the developments of core elements of the Disability Inclusion Action Plan (DIAP) and the National Autism Strategy (NAS). The AFN has positioned the DIAP and NAS lens as core to the development of a draft framework for advancing accessibility and disability inclusion in First Nations and to determine the state of accessibility in First Nations. Both DIAP and NAS will also be core in the process for considering options for the development of A Distinct First Nations Accessibility Law, by First Nations and for First Nations.

Currently, First Nations persons with disabilities (FNPWD) and their families often leave their respective First Nation(s) to access care in municipalities, cities, and institutions that are often adversarial to First Nations. For example, Joyce Echaquan was a First Nations woman with a disability seeking care outside of her First Nation. Given the emerging legislative developments in provinces and territories, First Nations and FNPWD require opportunities to work together to address jurisdictional issues and barriers to support First Nations residing away from their respective First Nations so they can access culturally safe services and programs and work together to bring services back home to First Nations.

Accessibility

The AFN works with ESDC to advocate for sustained resources to advance distinct First Nations accessibility legislation developed by First Nations, for First Nations. While the *Accessibility Canada Act* (ACA) provides a good start towards removing barriers to accessibility for all Canadians, the AFN submits that there are several problems associated with the ACA for First Nations Peoples. For example, the ACA must recognize that human rights apply collectively to First Nations and appropriate engagements and financial resources must be provided by Canada. Further, the legislation does not contain a non-derogation clause stating that nothing in the legislation affects Aboriginal or Treaty rights. The ACA infringes on First Nations ability to self- determine and self-govern in relation to accessibility issues and FNPWD. The ACA contains no funding for First Nations to become fully accessible. Without the provision of a means for First Nations to become accessible, the ACA is setting up First Nations to fail.

The AFN recommends that First Nations are accorded the resources to establish processes similar to the Accessibility Standards Canada to ensure standards and regulations are distinct and serve First Nations unique culturally supportive approaches.

Legislation gives broad administration and enforcement powers to the Accessibility Commissioner, including the power to inspect First Nations at any time and the ability to levy significant fines. Thus, the AFN recommends a non-derogation clause to ensure that First Nations rights are not reduced or removed because of the ACA.

Convention on the Rights of Persons with Disabilities (CRPD)

AFN Resolution 25/2021, *Strengthen Distinctions-Based Accessibility and Disability*, addresses the concerns with ESDC's preference to fund pan-Indigenous approaches to accessibility legislation and disability. For example, Indigenous Disability Canada leads the work on the UN-CRPD and is carrying out similar work to AFN's work on accessibility legislation and is funded to carry out accessibility research projects with First Nations. First Nations leaders and FNPWD advocates continue to express concerns that the organization is not accountable to First Nations nor is it representative of First Nations. More information on these topics is provided in the AFN report to the CRPD submission for summer 2023.

Additional Supports for Persons with Disabilities

Some provinces launched additional Supports for Persons with Disabilities. Any new developments must include First Nations and FNPWD equal voices and opportunities to be engaged from the onset of initiatives. Provinces and territories must work together with First Nations to address jurisdictional issues and barriers to support First Nations residing away from their respective First Nations to access culturally safe services and programs and work together to bring services back home to First Nations.

Countering Anti-Indigenous Racism

According to the 2019 General Social Survey (GSS) on Canadians' Safety, 44 per cent of First Nations Peoples experienced discrimination in the five years preceding the survey. 21 per cent of those who were discriminated against indicated that this discrimination occurred when dealing with police. Further, the GSS indicated that reported experiences of discrimination increased by 10 per cent since 2014.

First Nations face systemic racism across many institutions in Canada, including police services, health care, the child welfare system, and education. Systemic racism not only has significant detrimental impacts on First Nations health and well-being, but it also puts First Nations lives at risk. In many cases, First Nations are forced to litigate against the Crown in order to enforce First Nations rights, which takes a significant amount of time and resources.

At the root of this issue is the need for governments across Canada to recognize that systemic racism exists in Canadian institutions. On September 28, 2020, Joyce Echaquan, an Atikamekw woman, died in a Quebec hospital after she recorded a video of health-care staff making racist remarks to her. A coroner tasked with investigating her death concluded that racism and prejudice faced by Echaquan while in hospital contributed to her death.

Despite this finding, the Premier of Quebec has repeatedly denied that systemic racism exists in the province. All FPT governments must recognize the existence of systemic racism and take concrete steps to prevent, combat, and eradicate systemic racism, racial discrimination, and intolerance in Canada.

All FPT governments must also end discriminatory underfunding of First Nations services. On January 26, 2016, the Canadian Human Rights Tribunal released a decision that found that the Government of Canada discriminated against First Nations through the First Nations Child and Family Services (FNCFS) Program. That decision states:

> "The evidence in this case not only indicates various adverse effects on First Nations children and families by the application of [Aboriginal Affairs and Northern Development Canada (Now Indigenous Services Canada)] FNCFS Program, corresponding funding formulas and other related provincial/territorial agreements, but also that these adverse effects perpetuate historical disadvantages suffered by Aboriginal peoples, mainly as a result of the Residential Schools system."

The Canadian Human Rights Tribunal ordered Canada to cease the discriminatory underfunding of First Nations child welfare services and to take steps to prevent future discrimination. The Tribunal also ordered Canada to compensate First Nations children who were discriminated against under the FNCFS program. This discrimination resulted in vastly disproportionate

numbers of First Nations children and youth in Canada's child welfare system and continues to contribute to the loss of First Nations languages, cultures, and traditions.

Much like child welfare, many other First Nations services continue to be underfunded in a manner that constitutes discrimination. For example, decades of underfunding for First Nations education has resulted in lower high school graduation and post-secondary attainment rates for First Nations students and insufficient infrastructure funding has resulted in ongoing First Nations housing and safe drinking water crises. These discriminatory funding practices continue to contribute to the significant gap that remains between First Nations standards of living and those of non-Indigenous Canadians.

Discrimination in the criminal justice system is also a significant concern. Resolution 07/2022, *Call for Reform to Address Institutional Racism in the Justice System*, states that countless independent reports outlining the nature of systemic racism in institutions at all scales across Canada have demonstrated the devastating and sometimes fatal use of force exercised disproportionately against Indigenous Peoples in Canada by colonial police authorities, including the Royal Canadian Mounted Police (RCMP).

The RCMP are a critical colonial tool used to assimilate, displace, and enforce racist, anti-Indigenous genocidal policies and legislation. In 2020, numerous documented instances of police-involved fatalities of, and excessive use of force against, racialized Peoples in Canada, including many Indigenous Peoples, have sparked national discourse regarding legislation on policing and demands from Indigenous Peoples for policing reform.

The recent policing shootings of First Nations Peoples like Rodney Levi and Chantel Moore, as well as the inaction of the RCMP to maintain the rule of law during the dispute between Mi'kmaq and Nova Scotia fishermen and the RCMP's failure to adequately investigate and recover missing and murdered Indigenous women, girls, and 2SLGBTQQIA+ Peoples, have shown a significant discrepancy in the way First Nations are treated by law enforcement agencies compared to non-Indigenous Canadians.

Public Safety & Law Enforcement

Policing

Since 1992, First Nations Police Services have been funded through the federal government's First Nations Policing Policy (FNPP). While the FNPP was intended to contribute to the improvement of social order, public security, and personal safety in First Nations, the FNPP treats policing as a program rather than an essential service. As a result, policing for First Nations has been chronically underfunded. This chronic underfunding is a key factor in the inequities existing in First Nations policing compared to non-First Nations police systems.

In December 2020, the Minister of Public Safety and Emergency Preparedness announced that Public Safety Canada (PSC) would create new First Nations policing legislation. The federal government committed to working with First Nations to create a federal framework that recognizes First Nations policing as an essential service. Since the announcement, the AFN has worked closely with First Nations leaders and Chiefs of Police to develop policy options for a legislative framework. This framework would replace the current FNPP, that for the last 30 years, led to inequitable standards and resources for First Nations police services.

Further, on June 30, 2023, Justice Denis Gascon ruled for the Federal Court that Public Safety Canada must immediately flow funds to three First Nations police services—Treaty #3 Police Service, UCCM Anishinaabe Police Service, and the Anishinabek Police Service—for a 12-month period to ensure adequate services would be provided to First Nations served by those police services. Justice Gascon was ruling on a motion filed by the Indigenous Police Chiefs of Ontario (IPCO) seeking emergency relief and an order requiring Public Safety Canada to suspend application of the discriminatory funding Terms and Conditions under the First Nations and Inuit Policing Program.

Justice Gascon also found that the case was an exceptional situation where it is just and equitable for the Court to intervene and to exercise its discretion in IPCO's favour to prevent the harm that will be caused to the public security and personal safety of Indigenous Peoples residing in the communities served by the three police services. Justice Gascon stated that the case raises concerns about the conduct of Public Safety Canada in its dealing with the three police services and its failure to be guided by the overarching principles of reconciliation and the honour of the crown. These principles required more diligence and attention from Public Safety Canada for funding agreements with the three police services. Public Safety Canada did not consistently follow its duty to act honourably and in the spirit of reconciliation as it kept insisting on the impossibility to negotiate the Terms and Conditions and the prohibitions they contain.

Canada must commit to the full implementation of a First Nations policing legislative framework that both secures the proper funding and resources for First Nations police services and supports non-colonial, community-based models, as required by each community wishing to participate in the framework.

Over-Representation of Indigenous Peoples in the Criminal Justice System

First Nations Peoples in Canada continue to be negatively affected by the colonial attitudes, systemic racism, and discrimination that is pervasive in the Canadian criminal justice system. This results in the vast overrepresentation of Indigenous Peoples in the criminal justice system. In 2016/2017, for example, Indigenous adults accounted for almost one-third of the custody admissions and in-custody populations in Canada, despite representing only 4.1 per cent of the adult Canadian population.

The AFN has long advocated for changes to the criminal justice system and for increased recognition of, and support for, First Nations to reclaim their legal traditions and justice systems. Traditionally, restorative justice encompasses programs that are used to address overrepresentation in a piecemeal way, often only coming into play once a First Nations person has already been involved in the criminal justice system. By redirecting the conversation away from conventional notions of restorative justice, the AFN is looking to focus instead on the reclamation of First Nations legal traditions and laws as a holistic way of addressing overrepresentation.

Climate Change

Canada has taken steps to include the rights, knowledge systems, and perspectives of First Nations in federal climate change policy and programs, including the ongoing work at the Joint Committee on Climate Action and the commitment to the First Nations Climate Leadership Agenda. Despite these steps, First Nations continue to be disproportionately impacted by climate change and struggle to receive the stable, adequate, and long-term funding required to develop First Nations climate solutions, as well as minimize the most significant impacts of the climate crisis.

Furthermore, the absence of meaningful recognition of First Nations jurisdiction and authority in federal climate policy and programs limits the ability for the federal government to make progress on both decarbonization and decolonization. In light of these inadequacies, First Nations have been resolute in their position: the full inclusion of First Nations in all decision-making processes related to climate change, energy transition, and decarbonization is essential to address the crisis affecting Mother Earth. This was clear in the First Nations-in-Assembly's Declaration of a First Nations Climate Emergency (Resolution 05/2019) and the recent adoption of the Assembly of First Nations National Climate Strategy (Resolution 36/2023), highlighting the unique role that First Nations play in addressing the intersecting crises caused by climate change.

Climate action, under this knowledge system, is an acknowledgement of our spiritual laws, practices, experiences and relationships with the Land and Water. Canada’s commitments to reduce greenhouse gases in line with the Intergovernmental Panel on Climate Change must create space for these systems of knowledge, advance the full and effective partnership of First Nations, and ensure meaningful support for First Nations-led solutions.

Given this reality, it is unfortunate that recommendations on climate change are positioned in the *Other Recommendations* section. First Nations, through the First Nations Climate Lens, have been articulating a multi-dimensional, interconnected, and interdependent approach to climate change that acknowledges the root causes of the climate crisis. This approach requires changing where climate change is positioned in the overall UPR.

Finally, the AFN developed a position paper on the appropriate use and application of the term co-development. The AFN reiterated the suggestion from the First Nations involved in the first national First Nations Climate Leadership meeting to remove this word from framing of the Indigenous Climate Leadership Agenda process.

Gaps in Canada's Report: The following topics were not identified in Canada's UPR

Restitution and Redress: Specific Claims Tribunal

In November 2022, the Government of Canada and the AFN launched the specific claims co-development process to create a fully independent specific claims process. Currently, Canada's specific claims policy fails to meet the minimum standards of redress and restitution guaranteed under the UN Declaration. Specific claims are a form of redress, strictly in compensation up to a legislated maximum of $150 million, to address Government of Canada breaches of fiduciary duties owed to First Nations, such as negligent land management, mismanagement of assets, and the failure to fulfill terms of Treaties and other agreements. Currently, specific claims settlement agreements between First Nations and the Crown typically only provide redress in the form of cash, but rarely include land, making it ineffective as a tool for restitution. The Specific Claims Policy falls well short of the minimum standards for redress and restitution contained in the UN Declaration.

Restitution and Redress: Additions-to-Reserve Policy

The Government of Canada is in preliminary stages to review and redesign of the federal Additions to Reserve policy (ATR). The primary mechanism in Canada for achieving restitution through the legal recognition of First Nations lands is by creating a Reserve. The preferred approach for the Government of Canada is the ATR Policy and process, which uses non-statutory authorities to create a Reserve under both Section 91(24) of the *Constitution Act*, 1867 and the *Indian Act*. The ATR process is deeply bureaucratic, involving several hundreds of steps, has no clearly expressed service standards or guidelines, is constrained by regular delay (including a massive backlog), and does not guarantee the creation of a Reserve as an outcome. The systematic delays and policy structure of the ATR process, and the Government of Canada's unwillingness to use legislative means to create Reserves leaves unanswered the question of whether Canada is in fact willing to create Reserves as a means of restitution.

Restitution and Redress: Standards

Canadian courts are not a viable alternative to the existing policy framework for restitution. First Nations seeking restitution through the courts face significant challenges, including the unjust application of technical defenses, such as provincial statutes of limitation and doctrine of laches, which make suing the Government of Canada and the provinces exceedingly difficult.

To prove Aboriginal title in court, First Nations must rebut the presumption that Canada owns the land by virtue of the assertion of Crown sovereignty. Ultimately, no fair and effective ways exist for First Nations to achieve restitution of land through law or policy in Canada. The Government of Canada must take immediate steps to overhaul its policy framework to recognize and return First Nations lands and to ensure judicial processes are a viable alternative for First Nations. The Government of Canada is bound by international law and domestic law to provide adequate and effective restitution to First Nations who have been dispossessed of their lands, resources, and territories. By failing to provide effective mechanisms capable of providing restitution to First Nations, the Government of Canada is currently in a position of noncompliance with the UN Declaration and fundamental norms of customary international law.

Fiscal Relations

The AFN and Canada continue to develop pathways forward for a new Fiscal Relationship between First Nations governments and Canada. The goal of this work is to ensure that First Nations governments are adequately supported to provide essential services to their citizens and have the necessary capacity to design, deliver and control any programs and services over which they have, or would like to take up, jurisdiction. Establishing a new fiscal relationship between First Nations and Canada will address longstanding challenges that affect socio-economic outcomes and innovation. It will also strengthen financial management, human resources, IT systems, and other essential structures required for good governance and services that reflect each First Nation's priorities. Although this work has been slow, closing the socioeconomic gap between First Nations and other Canadians has led to joint work between AFN, ISC, and other Indigenous partners through technical working groups. AFN continues to advance governance and institutional supports to ensure transparency, accountability, and funding sufficiency for First Nations through new fiscal mechanisms like a statutory transfer delivered to First Nations governments.

Treaty-Protected Harvesting Rights

First Nations have an Inherent right to harvest for subsistence in accordance with their traditional pursuits and practices. This right, among many others, is recognized and affirmed by s.35 of the *Constitution Act*, 1982. Moreover, through established treaties—both historical and modern-day comprehensive—the Government of Canada has agreed to preserve and enhance the culture, identity, and values of First Nations. The Government of Canada, as well as provincial and territorial governments, have also guaranteed First Nations the right to harvest traditional country foods for subsistence and for social and ceremonial purposes. Harvesting as an activity includes hunting, trapping, fishing, and gathering.

With the growing threat of climate change and the general decline in the health and abundance of fish and wildlife populations, First Nations are harvesting less and consuming less country

foods. This results in a decline in both the health of First Nations Peoples (of which there is much documentation, such as diabetes) and their traditional pursuits and practices. It points to food insecurity and increasing reliance on store-bought, imported foods. Traditional pursuits, such as harvesting for subsistence, must form part of the Universal Periodic Review as such practices are directly connected to the health and well-being of First Nations citizens.

Water

Clean water is a basic human right under the *Constitution Act, 1982* and under the UN Declaration. The Government of Canada has a responsibility and fiduciary duty to ensure that marine and freshwater ecosystems are protected, remediated, and maintained in a manner that allows First Nations to thrive and be self-sustaining within their lands and territories. There are various water-related issues that adversely impact First Nations that reach far beyond safe drinking water and wastewater. A critical requirement to ensure safe drinking water is a clean, healthy and protected water source. First Nations also depend on a protected water source to ensure that their rivers, lakes, and oceans are capable of sustaining aquatic organisms, such as fish, which First Nations rely on for sustenance and livelihood. First Nations have perpetually had a reciprocal relationship with water where it is characterized as a "more-than-human person," that must be nurtured, protected, and respected.

To date, the Government of Canada has been unable to adequately address the impacts of climate change, industrial pollution, and environmental racism and by direct correlation, the health and wellbeing of First Nations. First Nations experience the most extreme burdens of climate change, industrial pollution and environmental racism, all of which threaten their economic, cultural, and spiritual practices. The degradation of marine and freshwaters has fundamentally changed the way First Nations interact with the environment. Without the appropriate engagement, inclusion and investments from the Canadian government, First Nations face challenges in stewarding the lands and water throughout their territories.

For First Nations women, the reciprocal connection to water deepens through their roles as child bearers, with the recognition that all aspects of creation are interrelated. From this perspective, it is critical to ensure that Canada utilizes a gender-based analysis (GBA) lens when decisions are made that pertain to water. GBA lacks when Canada utilizes a pan-Indigenous approach that considers First Nations, Metis, and Inuit as a homogeneous group, rather than identifying them as distinct from one another. Applying a GBA lens further considers a more equitable and inclusive approach between genders where women are viewed in relation to men in society rather than in isolation. Having such a process in place would align with the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act*. The Government of Canada committed to including GBA into all government policy and programs across all federal

departments and agencies in 1995 but has failed to incorporate this in a consistent and meaningful way.

Data Sovereignty

Data is the fundamental tool used by successful states to evaluate, plan, measure progress, and report back to their citizens on results. Globally, the collection and analysis of information about the public is necessary to perform good governance. First Nations in Canada have the right to self-determination and self-government in matters relating to their internal and local affairs, yet they do not have the privilege of collecting and analyzing quality information about their citizens, which limits First Nations ability to perform good governance and report back to their citizens.

Currently in Canada, First Nations rights to participate in decision-making matters that affect their rights is impeded by the lack of available data about First Nations Peoples. Information influences policy and public attitude. Misinformation and other types of propaganda about First Nations and their rights are key causal factors that influence the discrimination First Nations Peoples experience in Canadian public policy and in the public at large.

Due to a lack of investment by Canada, First Nations are unable to collect census-level social and administration data. This has raised concern for First Nations leaders. Without appropriate and accurate sources of First Nations data, it is impossible to accurately measure inequality and inequity of the First Nations experience in Canada. This further contributes to misunderstanding the well-being gap between Canadians and First Nations. It also becomes impossible to predict whether First Nations governments are enabled to provide adequate and accessible services to their citizens. Identifying this gap is essential to measuring progress on the implementation of the Declaration and its intended impacts.

With respect to adequate, sustainable, and predictable funding for First Nations governance, Canada must acknowledge that its methods of counting First Nations citizens does not consider First Nations rights to determine their own citizenship. First Nations governments are responsible to provide programs and services to their constituency regardless of their ancestry. Canada must not continue to quantify First Nations funding amounts by the number of eligible citizens under the *Indian Act*. For First Nations, the Indian registry maintained by Canada is not an accurate tool to calculate the cost of delivering the Canadian standard of living promised to Canadians. Canada's existing funding model does not consider that First Nations are also required to uphold Canada's human rights standards and provide access to programs and services at the standard that all other Canadians have access to.

Canadian institutions, and its associate academic and scientific researchers, utilize First Nations data that are collected, with or without consent, to draw conclusions, inform policy, and shape public perceptions of First Nations. Derivatives of such studies and analyses cause further harm to First Nations and led the First Nations-in-Assembly to mandate the First Nations Information

Governance Centre to lead independent and apolitical social studies on First Nations in Canada. While Canada invests in census level data collection for its benefit, equal investment to First Nations is not afforded, despite First Nations assertive efforts to have Canada recognize this inequality.

Data sovereignty in an Indigenous context means reclaiming stories and history and narrating them from a place of knowing and being that reflects First Nation customs, traditions, practices, and identity—ensuring that negative stereotypes about First Nations Peoples are not further propagated and continue to impede their progress. To date, Canada has not invested in the resources required to undo past harms it created by segregating First Nations narratives about their Inherent, Aboriginal and Treaty rights.

In the UNDA Action Plan, Canada claims it will co-develop accountability mechanisms such as evaluation tools, and frameworks, that are formed from an Indigenous lens. It recognizes that First Nations indicators, logic models, and relevant interpretive frameworks must be reflected in the methodology used to measure progress on the implementation of its Action Plan Measures. First Nations firmly believe in their rights as Indigenous Peoples and assert that it is their right to develop and maintain their sciences, in a manner that reflects their ways of knowing and being, and therefore requires First Nations to take the lead on the development of these tools. First Nations capacity in statistics is growing, and its talent pool exists. Canada must provide the appropriate investment for First Nations to lead the development of these tools independent of Canada's government.

Inuit Tapiriit Kanatami Input

Inuit Tapiriit Kanatami (ITK) proposed the following addition to the section on reconciliation initiatives in Canada's draft report:

The Government of Canada has established permanent bilateral mechanisms with First Nations, Inuit, and Métis Nation leaders to identify joint priorities, co-develop policy and monitor progress.

In June 2017, the Prime Minister and the National Chief of the Assembly of First Nations signed a Memorandum of Understanding on shared priorities and discussed next steps in the permanent bilateral mechanism. Five years after the creation of the Inuit-Crown Partnership Committee (ICPC), members jointly commissioned an internal evaluation to gather insights that could be used to improve ICPC's progress. Inuit Tapiriit Kanatami (ITK) and Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) formed a joint evaluation team that conducted 66 interviews with Inuit and federal leaders and officials, surveyed 247 ICPC working group members, reviewed 231 documents, and conducted a literature search for the evaluation.

For a relatively new mechanism, ICPC is working remarkably well, although there is considerable room for improvement. It has provided a powerful mechanism that is redefining the Inuit-Crown relationship. Through ICPC, Inuit and the federal government have established ground rules for working in partnership to advance action, including Inuit-specific, distinctions-based budgeting, on major issues. The partnership process has created new interpersonal relationships at the leadership and technical levels that have benefitted partners' work within and beyond ICPC.

ITK proposed the following addition to the section on social and health initiatives in Canada's draft report:

Advancing measures identified in the TRC's CTAs, National Inquiry on MMIWG's Calls for Justice, and in alignment with the United Nations Declaration on the Rights of Indigenous Peoples, the GC co-developed *An Act Respecting First Nations, Inuit and Métis Children, Youth and Families.* The Act implements and affirms the inherent right of First Nations, Inuit, and Métis to exercise jurisdiction over child and family services. Through this legislation, the GC supports Indigenous Peoples to design and deliver child and family services models that best suit their needs. Additionally, the legislation establishes national principles such as the best interests of the child, cultural continuity and substantive equality supports, and is dedicated to reducing the number of Indigenous children and youth in care.

ITK proposed the following addition to the section on education & employment in Canada's draft report:

The GC implemented three distinctions-based strategies to support Indigenous post-secondary education (PSE). These respective First Nations, Inuit and Métis Nation PSE strategies provide recipients with the flexibility to fund students, institutions, as well as programs and services, which can include the development of education curricula, as well as other priority initiatives to support their unique needs (e.g., increasing the number of graduates in specific areas to fill local labour market gaps).

ITK proposed the following addition to the section on countering anti-Indigenous Racism in Canada's draft report:

Paragraph 116 of the report reads as follows:

To continue supporting engagement and the development of measures to help eliminate anti-Indigenous racism, four National Dialogues have been held including the most recent National Dialogue on Data in 2023. This dialogue brought NIOs, Indigenous health professional organizations, health system partners, PT representatives and experts to discuss how data can support the elimination of anti-Indigenous racism in health systems.

ITK proposed the addition of this further clarification:

The dialogues have resulted in federal initiatives focused on improving access to culturally safe services, adapting health systems, improving supports and accountability, and providing federal leadership through continued dialogue and evaluation.

Métis National Council Input

The Métis National Council (MNC) proposed the following addition to Canada's draft report in the section on International Human Rights Instruments:

Canada tabled the *United Nations Declaration on the Rights of Indigenous Peoples Action Plan* in Parliament in June 2023. The Action Plan includes a commitment to develop distinction-based mechanisms to formalize participation of Indigenous peoples' representative institutions throughout the Government of Canada's processes for: ongoing implementation of Canada's obligations under international human rights treaties; monitoring and reporting on Canada's obligations under those treaties; follow-up on recommendations by international human rights bodies; and consideration of adherence to international human rights treaties to which Canada is not yet party.

MNC proposed the following addition to Canada's draft report in the section on reconciliation initiatives:

In 2016, the Government of Canada announced new permanent bilateral mechanisms with First Nations, Inuit, and Métis Nation leaders to identify joint priorities, co-develop policy and monitor progress. In February 2017, the Prime Minister and the President of Inuit Tapiriit Kanatami met and signed a declaration announcing the Inuit-Crown Partnership Committee.

In April 2017, the Prime Minister and the President of the Métis National Council and its governing members signed the Canada-Métis Nation Accord during the first Métis Nation-Crown Summit.

In June 2017, the Prime Minister and the National Chief of the Assembly of First Nations signed a Memorandum of Understanding on shared priorities and discussed next steps in the permanent bilateral mechanism.

Five years after the creation of the Inuit-Crown Partnership Committee (ICPC), members jointly commissioned an internal evaluation to gather insights that could be used to improve ICPC's progress. Inuit Tapiriit Kanatami (ITK) and Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) formed a joint evaluation team that conducted 66 interviews with Inuit and federal leaders and officials, surveyed 247 ICPC working group members, reviewed 231 documents, and conducted a literature search for the evaluation.

For a relatively new mechanism, ICPC is working remarkably well, although there is considerable room for improvement. It has provided a powerful vehicle is a powerful mechanism that is redefining the Inuit-Crown relationship. Through ICPC, Inuit and the federal government have

established ground rules for working in partnership to advance action, including Inuit-specific, distinctions-based budgeting, on major issues. The partnership process has created new interpersonal relationships at the leadership and technical levels that have benefitted partners' work within and beyond ICPC. Since 2017, the Canada-Métis Nation Permanent Bilateral Mechanism process, a series of meetings between Canada and Métis Nation officials, has allowed both the Canadian and Métis governments to make progress on areas, including housing, post-secondary education, and economic development. This distinctions-based, nation-to-nation and government-to-government process allows both parties to reach common understandings and find solutions to solving challenging policy problems.

Congress of Aboriginal Peoples Input

The Congress of Aboriginal Peoples ("CAP" or the "Congress") is a national organization in Canada, with a mandate to be the **national voice for off-reserve Status and Non-Status Indians, Métis, and Southern Inuit peoples**.

CAP is **one of five national Indigenous representative organizations** recognized by the Canadian Federal Government. CAP is Canada's second-oldest national Indigenous representative organization, **formed in 1971** (as the Native Council of Canada) to represent the interests of Canada's off-reserve Indigenous peoples. CAP also holds consultative status with the United Nations Economic and Social Council ("ECOSOC").

CAP primarily **represents non-status Indian (First Nations) peoples, Metis and Southern Inuit peoples** who are not represented by the other National Indigenous organizations.

Canada's Fourth Universal Periodic Review

CAP has not been adequately engaged with respect to Canada's UPR. Canada's submission was submitted and approved before they reached out to our community. Their admitted oversight that they have not engaged CAP in this review demonstrates our concern in respect to Canada's approach to our Human Rights and the rights of the communities we represent. Canada approach to CAP's people is one of exclusion and assimilation. Their direction to work with some Indigenous peoples has left our communities outside of critical laws and processes such as UNDRIP. The issues identified in this report highlight our many concerns and outlines problems that have become critical for the Indigenous Urban, Remote, Rural, and Off-reserve communities.

MMIWG

CAP has developed its own National Action Plan to support and address the many Calls for Justice called by the final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls and 2SLGBTQQIA+. We are disappointed at the lengthy and tedious progress undertaken by Canada to implement 231 Calls. MMIWG and 2SLGBTQQIA+ people are in crisis and these recommendations should be implemented today. ***While Canada has taken some***

actions their delay in implementing most the calls is causing undue hardship for victims, families and survivors who already find themselves in vulnerable positions.

Indigenous Languages

Indigenous languages are key for CAPs peoples to be able to revitalize, use, develop and transmit culture to future generations. Language sustains our histories, traditions, beliefs, and systems and is paramount to the protection of our identities.

Even though the majority of Indigenous people live in Urban centers and Indigenous languages in these centers are multi-distinctive, ***funding for diverse language initiatives is limited and unequally distributed. It does not equal that offered to distinction-based groups***. There is a need to make greater investments in multi-distinctions-based language programing.

Distinctions-Based Policy Approach

Canada's off-reserve Indigenous people have long been **the subject of discrimination and disadvantage on the basis of their indigeneity**, and the inaccurate and stereotypical assumption that they are less Indigenous than their reserve-based counterparts.

For decades prior to the Supreme Court of Canada's 2016 decision in *Daniels v. Canada (Indian Affairs and Northern Development)*, Canada took the position that it had no jurisdiction over off-reserve Indigenous people, and in particular Non- Status Indians, Métis and Southern Inuit. Rather, Canada's position was that these Indigenous people were a provincial responsibility.

When the Supreme Court ruled against Canada's position in *Daniels*, Canada pivoted to a new position, whereby it accepts its responsibility for Status Indians (at least on reserve), some Métis, and Inuit who are registered beneficiaries of land claims agreements but ***draws arbitrary distinctions between and among Indigenous people and communities***.

Canadas **"distinctions-based approach"** towards Indigenous policy-making, has been in place since approximately 2016. As part of this policy, Canada has chosen only to engage in consultation and negotiation with three "recognized" political groups, none of whom represent the interests or voices of all off-reserve Indigenous peoples. **In particular, Canada has failed to engage with or meet the needs of its urban Indigenous people.**

Canada recognizes that it has international and domestic constitutional obligations to facilitate Indigenous self-determination and also that direct negotiation with Indigenous communities is necessary to the achievement of this goal. Despite these explicit acknowledgements, **Canada denies this right to CAP and its constituents by failing to involve them adequately or at all in consultation or negotiations about self-government, land claims, healthcare, education, infrastructure, or natural resources** – the foundation upon which off-reserve peoples may advance towards self-government and the security of which enables Indigenous peoples to exercise and express their culture.

Indian Act Inequalities

Canada's policy-making is largely focused upon reserve-based "Indian" bands legally established under the Indian Act, beneficiaries of land claims agreements with Inuit organizations in Canada's Far North, and Métis organizations currently or formerly affiliated with the MNC, in the "Métis Nation Homeland" of West Central North America. As a practical matter ***this excludes vast numbers of off-reserve Indigenous people, including many off-reserve Indians, Métis who are not members of the MNC's affiliates (both within and outside of West Central North America), and Southern Inuit.*** Canada's policy-making in particular often ignores urban Indigenous people who are represented by CAP and its PTOs.

While Canada has removed many of the inequities that existed within the legislation it has not addressed the issue of "2nd generation cut-off." Entitlement to registration under the *Indian Act* is lost after two successive generations of parenting with a person not entitled to registration. This was introduced in the 1985 Bill C-31 amendments. When status is lost those Indigenous people become non- Indian and Canada does not allow them access to programs and or processes offered to their status counterparts. Essentially, they lose all their rights as recognized Indigenous peoples and protections afforded by those rights.

Indian Act status in Canada is frequently required to access vital servicers such as health and education benefits. Those considered non-status are often left out and unable to access critical supports. ***Removal of discriminatory processes like 2nd generation cut-off are essential to protecting the rights of unregistered Indigenous peoples. Canada must end its practice of determining who is an Indigenous person is in this country. Only the communities themselves can decide this.***

CAP-Canada Political Accord

On December 5, 2018, Canada and the Congress of Aboriginal Peoples signed the Canada-Congress of Aboriginal Peoples Political Accord. This accord represents an agreement to work collaboratively with CAP and focus on priority areas affecting CAP's constituents. The Accord affirms that CAP represents rights- holding Indigenous people in Canada and is recognized as one of five National Indigenous Organizations.

Despite being five years into this process, there have been little movement on the part of Canada to target funds, programs or policy to support CAP's constituency, or the priority areas and there has been no access granted to existing programing to support our community.

Canada made numerous commitments through this Political Accord to meetings with Canada's Cabinet, to provide long-term sustainable resourcing, and to make policies directed at our community in an effort to implement the *CAP-Daniels Decision.* Regardless of these commitments, our community has not seen any progress to date any of these areas.

UNDRIP in Canada

The abandonment of the politically driven distinctions-based approach is essential to achieving UNDRIP's unequivocal guarantee of **equality for *all* Indigenous peoples** and the complete and effective implementation of UNDRIP in Canada.

The distinctions-based approach is a federal government policy that **unequally distributes access, resources, and consultation depending on group membership**. The policy recognizes only the federal government's preferred groups, which does not include national representation of Canada's off-reserve status and non-status Indigenous people. As a result, the distinctions-based policy and has the **effect of segregating, devaluing, and/or ignoring off-reserve status and non-status Indigenous peoples**. It also **imposes the government's choice of representatives** on Indigenous peoples, rather than recognizing their own freely chosen representatives.

The distinctions-based approach remains the largest hurdle to achieving equality for the off-reserve status and non-status Indian, Métis, and Southern Inuit peoples that comprise CAP's membership.

This policy approach results in laws, programs, and funding initiatives that shortchange or **ignore the largest population of Indigenous people in Canada, contrary to UNDRIP's** guarantee of equality among and between all Indigenous peoples, regardless of their origin or identity. The current approach does not reflect the lived reality of many off-reserve Indigenous people, who, through the colonial forces of assimilation and displacement, are no longer connected with the reserve- based communities to which they have been nominally assigned under the *Indian Act.*

A policy approach that reflects a broader understanding of the Indigenous peoples of Canada, as found in the Constitution (including non-status and general list Indians, Southern Inuit, and Métis not represented by the MNC), and of Canada's colonial history, **must** be adopted in the implementation of the Declaration. **All active and future laws and programs should be inclusive of representative Indigenous bodies that speak for their membership**, not only those Indigenous organizations that the government itself has imposed on Indigenous people under its "distinctions-based" approach.

Likewise, the federal government's treatment of Indigenous peoples increasingly reflects the "distinctions-based" categories of "Indigenous governing body" ("IGB") and "Indigenous organization". For example, both the *Department of Crown- Indigenous Relations and Northern Affairs Act* and the *Department of Indigenous Services Act* are organized around these categories, and other federal legislation uses the definition of "Indigenous governing bodies."

While many Indigenous organizations may in fact meet the definition of IGBs under this legislation, the federal government has largely defined **and imposed these categories through its own legislative and administrative practices**. For example, the government treats *Indian Act*

bands, former or present governing members of the MNC, and land claims organizations belonging to ITK as IGBs, despite the fact that this **status reflects and arises from the government's own choices and imposes the government's chosen representative structures on Indigenous people**. Thus, the classification of Indigenous groups as IGBs or Indigenous organizations is an extension of and perpetuates the distinctions- based approach.

Also, the undue focus on what the government has (mis)classified as "rights-bearing" communities (in many cases, ignoring their lack of true representativeness and/or **ignoring the claims of other equally or more representative organizations**) has prevented the government from addressing the real needs of many thousands of Indigenous people. The Declaration includes the right to development (Article 23), which is particularly important to off-reserve and Urban Indigenous people, who are often not represented or poorly served by those that the government recognizes as IGBs.

As **Indigenous people living off-reserve comprise the largest population** of Indigenous peoples in Canada, CAP recommends that their needs are considered in **all aspects of the UNDRIP Action Plan**, no matter its structure.

An independent UNDRIP Act Monitoring and Oversight Committee (the "Committee") should be struck to monitor the implementation of the Action Plan and the Declaration more broadly. The Committee should include members from, at a minimum, each of the five NIOs recognized by the government of Canada.

An **independent commission or tribunal should be created** where Indigenous persons and groups can access recourse and remedies for the breach of their UNDRIP rights by the federal government. This tribunal should be headed by an Indigenous Chief Commissioner with expertise on the Declaration and an understanding of colonialism's various impacts on Indigenous identity in Canada. Further, the tribunal should provide timely, cost-effective remedies to Indigenous peoples and have the jurisdiction to make declarations on the validity/applicability of federal laws. To the extent that the tribunal can be a collaborative, non- adversarial forum for Indigenous peoples and the federal government to come to solutions on Declaration related issues, that should be provided for in the tribunal's enabling legislation.

Non-status and off-reserve Indigenous peoples have been largely excluded from Canada's programs and policies. Despite legal rulings and being the federally-recognized representative of Canada's off-reserve Indigenous peoples, CAP, continues to be left out of important programs and policies intended to make conditions better for Indigenous peoples. Today, most Indigenous people live off- reserve and in Urban centers, Canada's rarely acknowledges this fact and does not work directly with their representative organizations.

Canada refusal to work with the Urban communities honestly and intently has resulted in the further assimilation of Indigenous peoples by not supporting their rights or cultural expressions

in that space. This **forced assimilation entrenches old colonial approaches and Indigenous peoples struggle to retain their identity and to be fully Indigenous**.

Native Council of Prince Edward Island Input (affiliated with CAP)

The Native Council of Prince Edward Island is a provincial/territorial organization (PTO) affiliated with the Congress of Aboriginal Peoples (CAP). CAP has requested this input be included as part of their overall submission.

Bullet Point #15 (Truth and Reconciliation)

The wording of the UPR Report is very misleading, stating that 85% of the TRC Calls to Action have been "completed or are well under way." An article from the Alberta Worker in April 2023 stated that only 2 additional goals were completed in all of 2022, bringing the total up to 13 completed calls (or 14%). Canada is still far from achieving satisfactory progress on the TRC Calls to Action despite the eight years since its release.

Bullet Point #16 (MMIWG National Inquiry)

Similar to TRC, Native Council of Prince Edward Island (NCPEI) is disappointed at the slow progress done by Canada on the 231 Calls for Justice included in the MMIWG National Inquiry Final Report. According to a CBC project, only 2 of the 231 Calls for Justice were completed by June 2023 and over half had yet to start.

It should be added to the report (perhaps in a new bullet point) that PEI has developed a MMIWG Indigenous Working Group comprised of five Indigenous organizations on PEI. Annual funding to address MMIWG (in the amount of $50,000 per organization) has been provided since 2021. The province has recently committed to four years of this funding to be provided to each of the five members of the Indigenous Working Group to allow for sustainable program planning.

The federal government has yet to commit a similar multi-year funding agreement to NCPEI.

Bullet Point #17 (*Indigenous Languages Act*)

The *Indigenous Languages Act* uses a distinctions-based approach that excludes many of the off-reserve Indigenous community represented by NCPEI. The Act also states that the Minister of Canadian Heritage must consult with a variety of Indigenous organizations and governing bodies to meet the goals of the Act, but the Minister has yet to confirm a meeting with any of the Congress of Aboriginal People's PTOs despite our involvement in the CAP-Canada Political Accord Language priority area working group.

Bullet Point #20 (UNDA Action Plan)

Of the 181 specific measures included in the Action Plan, only four reference urban or off-reserve Indigenous peoples and one refers to Indigenous peoples "regardless of where they reside." At best, only 3% of the UNDA Action Plan speaks specifically to off-reserve Indigenous peoples.

The introduction of the Action Plan emphasize that the Shared Priorities measures are inclusive of "urban and off-reserve organizations" (p.18). The Action Plan also states that the work of implementing the UN Declaration must intentionally and meaningfully include Indigenous peoples "residing in urban/off-reserve areas" (p. 21). Despite these well-intentioned introductory words, they are undercut by terminology and chapters that emphasize a distinctions-based approach to Indigenous relations. NCPEI and CAP have expressed major grievances in the consultation stages leading up to the release of the final Action Plan, and still contest that this Action Plan is not truly reflective of our community's rights and needs.

Bullet Point #22 (*Indian Act*)

The statement from the report is accurate that "all known sex-based inequities have been removed from the registration provision of the Act." However, Canada is still seeking to address harms previously done by the sex-based inequities through Bill C-38: An Act to amend the Indian Act (new registration entitlements). This includes sex-based inequities arising from the enfranchisement of Indian women due to marriage and developing a process for Indian women to join their prenatal band after marriage to an Indian man. NCPEI supports Bill C-38 but cautions that the statement in the report misleads that the intergenerational repercussions are still an ongoing effort in Canada.

Bullet Point #24 (Indigenous Health)

Jordan's Principle continues to be fundamentally discriminatory, despite the government's assertion that it would attempt to address discrimination identified by the Canadian Human Rights Tribunal. While Jordan's principle is meant to eliminate inequities created by jurisdictional quibbles over responsibilities to pay, measuring the achievement of this goal will prove difficult. As noted in the First Nations Health Consortium's Implementation of Jordan's Principle across Canada Final Project Report: "the current Jordan's Principle processes do not specify the way in which the guiding questions will be used clearly enough to ensure the consistent application and assessment of substantive equality across cases and jurisdictions. This, in turn, makes it difficult to assess whether the goal of equal outcomes is being achieved."

As with Jordan's Principle, the Inuit Child First Initiative is also implemented through a distinction-based lens and faces similar difficulties in the achievement of its goals. As reported last month

by APTN, there are severe delays for Inuit communities attempting to access aid under Inuit CFI. Between Jordan's Principle and the Inuit CFI, there is also an identifiable gap in services for Métis children and other Indigenous children not recognized under the distinctions-based approach.

The Distinctions-Based Indigenous Health Legislation, as its name implies, uses a distinctions-based lens that continues to exclude NCPEI's off-reserve Indigenous community. More egregious yet, the Indigenous Health Legislation is attempting to redefine and implement a distorted version of Joyce's Principle. The original Joyce's Principle was rooted in UNDRIP (specifically Article 24) and used the inclusive terminology for all "Indigenous peoples." Joyce's Principle was never meant to be distinctions-based, which the new Indigenous Health Legislation tries to attempt in its implementation.

Bullet Point #25 (An *Act Respecting First Nations, Inuit and Métis Children, Youth and Families*)

An Act Respecting First Nations, Inuit and Métis Children, Youth and Families uses a distinctions-based approach that excludes many of the off-reserve Indigenous community represented by NCPEI. NCPEI also faces challenges in determining the benefits of the Act in PEI, as there is no coordination agreement held by any Indigenous Governing Body in PEI and PEI does not release the number of Indigenous children in care (despite TRC Call to Action #2).

Bullet Point #27 (Distinctions-based Housing Strategies)

As with many points above, these housing strategies, because they are distinctions based, discriminate against off-reserve and non-status Indigenous peoples, as well as some Inuit and Métis peoples. The UPR Report correctly reports that the housing strategies were co-developed with "First Nations, Inuit, and Métis national organizations," and notably did not include the Congress of Aboriginal Peoples within this funding. As a result, off-reserve Indigenous peoples' needs will not be served in these three strategies.

Bullet Point #31 (Post-Secondary Education)

The three distinctions-based strategies for PSE exclude a large number of constituents represented by the Congress of Aboriginal Peoples. So much so, that the Congress of Aboriginal Peoples has filed a current lawsuit against Canada under this exact premise. NCPEI stands in solidarity and support of this lawsuit on behalf of our membership. Further comments will be limited for legal reasons.

IT IS OF UTMOST IMPORTANCE that this active lawsuit be referenced within the UPR report, either in the main report or Annex 2, as the highest expression of our position on Canada's human rights treatment of Indigenous peoples.

Bullet Point #32 (First Nations Adult Education)

This programming addresses the needs of only on-reserve First Nations peoples; Métis, Inuit, and off-reserve Indigenous peoples are unable to access this adult education support. While the Indigenous Skills and Education Training Program (ISETP) provides valuable job-search and other skills to Indigenous peoples regardless of their distinction or residence, off-reserve Indigenous peoples must also have access to programs that allow them to complete their GED in a culturally appropriate way that is tailored to their needs. Therefore, funding should be extended for GED-type programs for off-reserve Indigenous peoples, in both urban and rural areas. Such programs should also be available to Inuit peoples living outside of any Inuit land claim areas, and to Métis peoples regardless of where they reside.

Bullet Point #38 (ISETP)

ISETP is fully supported by NCPEI in its goals and inclusivity; however, it should be noted that the majority of funding is dedicated to the First Nations funding stream despite the larger Indigenous population belonging to the Urban / Non-affiliated funding stream. This is another instance of favouring a distinctions-based approach at the cost of the larger off-reserve Indigenous population.

Bullet Point #46 (National Housing Strategy)

Both the Federal Housing Advocate and the National Housing Council have requested feedback from people impacted by gaps and barriers in the NHSA, including from Indigenous peoples and people with lived experience of homelessness. However, it remains to be seen whether any advice that equity-seeking groups have offered, including NCPEI, will be actioned or included in policy changes.

In particular, the federal government needs to recognize that several actions it has taken within the scope of the National Housing Strategy are contributing to the housing crisis and the financialization of housing, and in particular, the financialization of purpose-built affordable rental housing. The inadequate supply of this type of housing has contributed to an increase in the number of Canadians, including off-reserve Indigenous peoples, who are experiencing core housing need (i.e., their housing is not affordable, adequate, or suitable) and to an increase in the number who are experiencing homelessness due to lack of affordability.

National standards should be created to provide bare-minimum requirements for provincial rental tenancies acts. Such protective measures should include prevention for “renovictions,” to name but one issue. The federal government also needs to recommit providing non-market rental housing, including funding to off-reserve urban and rural Indigenous communities, in order

to meet the current demand for affordable and rent-geared-to-income housing. This funding should not be in the form of low-interest loans, which present a barrier to many off-reserve Indigenous communities and organizations.

Further, federal programs need to ensure that communities most at risk of being in core housing need or losing their housing have ongoing long-term funding to support rent-geared-to-income programs. Rental rates must be kept in line with the actual market rent, maintenance costs, and inflation in their areas, rather than a calculation that uses outdated figures.

Bullet Point #49 (National Action Plan on Women, Peace and Security)

In June 2021, CMHC and ISC partnered to announce $85.6 million to build and support the operations of 12 new emergency shelters across Canada in Indigenous communities. However, these shelters are located within distinctions-based communities and will not be easily accessed by Indigenous peoples living off-reserve. Additionally, none of the 12 shelters will be located on PEI despite NCPEI opening a men's shelter this year and with plans to open a women's shelter and men's rooming house in the coming year. NCPEI is closely watching the Urban, Rural, and Northern Indigenous Housing Strategy and allocated funding to ensure that off-reserve Indigenous communities can get equitable access to housing resources.

ISC established an advisory committee on Indigenous Women's Wellbeing to provide "distinctions-based advice, guidance and direction" on issues impacting the health and wellness of First Nations, Inuit, and Metis women. NCPEI strongly opposes the continued use of distinctions-based approaches to legislation and policy, as it does not reflect the mixed Indigenous demographics of off-reserve and urban communities.

Bullet Point #54 (PEI Community Legal Information)

NCPEI supports the Rise Program and its trauma-informed approach. NCPEI would also like to highlight the more recent Justice Avenues program that increases accessibility to free legal supports for racialized peoples, including Indigenous peoples.

Bullet Point #62 (PEI's Creating a Culture of Care)

NCPEI supports PEI's Creating a Culture of Care plan, but notes that many of the commitments included in the report are vague and difficult to envision an actionable plan for materialization. NCPEI also has worries about the makeup of the community advisory body, which has yet to be announced.

Bullet Point #65 (National Housing Co-Investment Fund)

The 4,000 shelter spaces will undoubtedly go some way to addressing the need of survivors of GBV; however, the Co-Investment Fund requires that Indigenous community organizations/housing providers partner with a developer, which is not always possible. Furthermore, the bulk of the program is provided via low-interest loans, which present a barrier to many off-reserve Indigenous communities and organizations.

Bullet Point #66 (Indigenous Shelter and Transitional Housing Initiative)

While the need is great for these downstream initiatives in response to the issue of GBV, the government must also provide funding for upstream programming (i.e., programming aimed at preventing violence, not simply responding to the crisis of violence once it has occurred). Upstream initiatives may include but are not limited to programs with traditional teachings for Indigenous men and boys aimed at spreading awareness of GBV and helping to prevent GBV in Indigenous communities, as well as programs for non-Indigenous men and boys that address anti-Indigenous racism, misogyny, and sexism.

Bullet Point #72 (Indigenous ELCC Framework)

The preamble to this Framework asserts a fundamental contradiction: the distinctions-based wording found in the preamble of the framework, including use of "First Nations" that usually refers to Status Indians, is contrary to its stated goal to benefit all "Indigenous peoples." The Framework also does not include the word "off-reserve" at all but does use the word "urban" 11 times, with the majority of those instances occurring in the section titled "Serving families where they live." NCPEI has concerns that this distinctions-based framework would be implemented in a way that excludes many off-reserve Indigenous peoples, including those living in rural or remote areas.

NCPEI also has concerns over the long-term funding and commitments to be made to support locally-led Indigenous ELCC. Funding through ESDC's Indigenous Early Learning and Child Care Quality Improvement program was offered to projects with a duration of no more than 36 months, and only to those Indigenous communities that already offered ELCC programs. Even in these communities, the funding was often limited to only support a small number of Indigenous children.

Bullet Point #77 (Youth Employment and Skills Strategy)

The 2019 YESS redesign was a step in the right direction but fell short of addressing all barriers and gaps in needed programming. A search of all programs filtered by "services and supports for indigenous youth" on the ESDC website for YESS shows only four results, of which three are limited to only First Nations on-reserve and some Inuit youth. These programs exclude off-

reserve Indigenous youth, non-status Indigenous youth, and Métis. Either these programs should be made more inclusive, or separate programs for youth not serviced by these programs should also be created and funded sustainably.

Bullet Point #105 (Anti-Indigenous Racism)

Nothing within the UPR bullet point indicates whether off-reserve Indigenous peoples were consulted. In order to get the full picture of how racism against Indigenous peoples impacts their access to health systems, any data collection efforts must also take into consideration the needs and rights of off-reserve Indigenous peoples. Further, OCAP principles (ownership, control, access, and possession) must be extended to all Indigenous peoples and communities, regardless of whether they live on or off reserve or within their traditional land claims areas (i.e., Inuit). Funding must also be provided to assist in gathering disaggregated data that measures the effectiveness of efforts to address anti-Indigenous racism.

Bullet Point #107 (PEI's Provincial Action Plan for Seniors and Caregivers)

The plan is beneficial for all seniors in general but does not identify or recognize culturally appropriate care for Indigenous Elders or their care-givers specifically. For example, many nursing homes and other care facilities on PEI continue to implement a no smoking / tobacco policy that prohibits Indigenous Elders from performing smudging ceremonies or carrying their sacred medicines.

Bullet Point #113 (Client Practice Guidelines)

The UPR Report mentions a Client Practice Guidelines which NCPEI is unable to locate or retrieve any copies online despite our team's research. We suspect, though cannot prove, that this document likely does not contain terminology that would reflect a Two-Spirit (2S) inclusivity. Any "ongoing work to update" the Guidelines should be done through engaging with members of the Two-Spirit Indigenous community, as well as other Indigenous peoples with diverse gender- and sexuality-related intersectionalities.

Missing Items / Additions

The UPR report has sections dedicated to the over-representation of Indigenous peoples in criminal justice system and for policing (bullet points #125 - #131). However, no bullet point in this category mentions PEI specifically. PEI continues to face issues with Indigenous justice supports, including our own self-funded Indigenous Court worker program. NCPEI is participating in Canada's Indigenous Justice Strategy and PEI's Policing Standards developments, with NCPEI

taking a position on both consultations to avoid distinctions-based terminology and be inclusive of off-reserve Indigenous peoples.

Civil Society, Indigenous Organizations and Ontario Human Rights Commission Input Summary

This section provides a summary of input from civil society, Indigenous organizations, and human rights commissions that Canada received in relation to its draft national report. The summary does not purport to be comprehensive, but rather provides examples of some of the key human rights priorities of organizations that provided comments. Note that this summary does not include comments raised by organizations directly to the United Nations through the parallel report process as these were not yet made available at the time of drafting this annex. For ease of reference, this annex is organized in the thematic headings as they appear in Canada's fourth national UPR report.

Organizations appreciated the opportunity to provide comments on the draft of Canada's national report to the fourth cycle of the Universal Periodic Review, though many noted the limited opportunity allotted to provide feedback throughout the report's elaboration and recommended the establishment of more robust consultation process. Many welcomed Canada's commitment to undertake broad consultations with partners and stakeholders throughout the UPR process.

Implementation—Developments, Achievements, and Challenges Since Canada's Third UPR

1) International Human Rights Instruments

Canada was encouraged to fully engage in the international human rights system, particularly through treaty ratification. Some organizations noted the absence of a substantive update regarding the status of Canada's possible ratification of international human rights treaties that it has not yet ratified, namely the Optional Protocol to the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT), the *International Convention for the Protection of All Persons from Enforced Disappearance* (CED), as well as the *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Belém do Pará).*

There was also a call for Canada to accede to the *American Convention on Human Rights*, to ratify the Optional Protocol to the *Convention on the Rights of the Child* (individual complaints procedure), and for governments to consider the ratification of the *International Convention on the Protection of Rights of All Migrants and Members of their Families*.

Echoing calls following the Special Rapporteur on Violence Against Women's visit to Canada in 2018, who noted that "provisions are not fully incorporated into the national legal system,"

organizations recommended that Canada fully implement the United Nations *Convention on the Elimination of All Forms of Discrimination Against Women.*

Organizations noted the missed opportunity in the draft report to explicitly link the issue of potential accession to the CED with initiatives mentioned in the draft report to address other forms of violence against women and girls, or discrimination against Indigenous Peoples.

Organizations called on Canada to create a timeline towards accession to the CED, including expedited consultations with FPT and municipal governments, Indigenous Peoples, and civil society.

2) Rights of Indigenous Peoples

Organizations recommended that Canada's report deepen its portrayal of the reality of the state of human rights in connection to reconciliation with Indigenous Peoples, criminal justice, the COVID-19 pandemic, poverty, education, hate-motivated acts, and accessibility for persons with disabilities.

Further, they recommended that information be included on initiatives that governments across Canada have undertaken to address problems and progressively realize rights according to both international and domestic human rights obligations.

Organizations called upon provincial and territorial governments to mandate the adoption of the principles outlined in the *United Nations Declaration on the Rights of Indigenous Peoples* in their respective jurisdictions.

Organizations welcomed the *UN Declaration on the Rights of Indigenous Peoples Act (UN Declaration Act)* coming into law, but noted the deadlines imposed by government were not lengthy enough to allow for meaningful consultation.

Organizations called upon governments to provide detailed information about concrete steps it has taken to provide Indigenous communities impacted by mercury poisoning with healthcare, effective remedies and concrete measures to safeguard cultural rights to safely practice fishing in contaminated rivers.

Organizations further criticized the lack of information on forced and coerced sterilization experienced by Indigenous women in the report and called on FPT governments to implement the recommendations of the Special Rapporteur on Violence Against Women on forced and coerced sterilization.

Though organizations welcomed the changes made to the *Indian Act* to remove gender-based inequities, it was noted Bill C-38 does not go far enough to effect meaningful change surrounding the entitlement to registration, as was noted during consultations on the Bill.

Organizations recommended that Canada's national report mention that federal, provincial and territorial governments recognize that Indigenous governments and organizations have the authority to determine what services they will provide to Indigenous Peoples serving sentences, pursuant to section 81 of the federal government's UN Declaration Act.

3) Education & Employment

Organizations noted the inadequacy of current minimum wage provisions across Canada. They further noted that the removal of a number of social supports by provincial and territorial (PT) governments significantly impacted the right to social protection. Organizations claim that this represents a violation of the principle of non-regression.

Organizations flagged that the report omitted mention of the federal government's ongoing review of the *Canada Labour Code,* which defines the rights and responsibilities of workers and employers in federally regulated workplaces, in accordance with federal labour laws, in efforts to address issues of precarious employment that compromise the right to work and fair wages.

4) Poverty, Homelessness & Food Security

Organizations also highlighted the lack of improvement at the PT level in terms of social assistance programs. They specified that in all PTs, there continue to be many individuals living below the respective poverty lines. It was noted that progress on enforcing compliance with human rights standards through transfer payments, as per Recommendation 142.38 in Canada's third Universal Periodic Review, were not included in the report.

Organizations noted an increase in homelessness across Canada, including the emergence of homeless encampments in urban areas. All levels of governments were criticized for allowing what they perceived as the forcible removal of individuals experiencing homelessness and their personal items from camps, consequently violating their right to safety. Organizations noted that they consider Canadian governments engaged in the forcible removal of unhoused persons to be in violation of rights protected by the *Canadian Charter of Rights and Freedoms*, namely Section 7 (right to life, liberty and security of the person).

Organizations further noted the federal homelessness strategy does not provide distinction-based funding for Indigenous populations, who are most impacted by the housing crisis.

Organizations commented on the lack of information regarding ongoing efforts to implement the right to health, given current strains on the healthcare system as a result of the COVID-19 pandemic. Organizations also raised that some jurisdictions appear to be moving to privatization of the healthcare system in their jurisdiction, which they argue will ultimately undermine the public healthcare system in Canada.

Organizations further noted additional challenges regarding access to pharmaceuticals for low-income Canadians, and the continued absence of a national Pharmacare program.

Organizations believed that rapidly escalating food prices and the rise in food insecurity in Canada was a thematic gap in the report. They called for an update to be provided on Canada's food policy and other measures undertaken to further ensure the right to food.

Organizations welcomed the advancements towards poverty reduction achieved by income support mechanisms such as the Canada Workers Benefit and the temporary COVID-19 Emergency Response Benefit (CERB), though it was noted that the report contains no reference to "Opportunity for All," Canada's First Official Poverty Reduction Strategy, despite this policy being an important development that responds directly to previous recommendations made by the United Nations.

5) Women & Girls

Organizations called for stronger measures to address barriers on access to care, specifically the timely use of personal health services to achieve the best health outcomes, on the grounds that they are currently unequal and are magnified for marginalized Canadians. They saw efforts to address unequal access as being inadequate and demonstrating an incomplete fulfillment of previous UPR recommendations and noncompliance with international human rights law.

Organizations noted that sex workers continue to face marginalization and financial exclusion, including in the housing and health care sectors, and are additionally unable to participate in decision making on issues which directly impact their lives and asked for governments to provide detailed information on concrete steps taken to repeal laws that criminalize the exchange of sexual services between consenting adults. Echoing calls from the United Nations to decriminalize sex work, organizations commented on the lack of action from the federal government to recognize the widespread and broad-based impacts of the continued criminalization of sex work on the human rights of sex workers.

Organizations further called upon FPT governments to acknowledge at least one of three internationally recognized days of remembrance and grieving for murdered sex workers.

6) Violence Against Women & Children

Organizations recognized that Canada's National Action Plan to End Gender-Based Violence will provide support to numerous communities, including through offering legal services, representation, trauma-informed counselling, and multilingual interpretation to marginalized and racialized women and gender diverse people who have experienced violence.

Organizations asked that Canada address issues related to the experiences of gender-based violence of racialized Canadians, Indigenous women in Canada, and the rights of refugees, migrants and precarious and/or temporary status people.

Organizations further noted the negative impacts of COVID-19 lockdown measures on gender-based violence and the loss of social supports dedicated to survivors. It was recommended that Canada commit to fully investigating, assessing, and correcting the ways in which governments responses during the pandemic may have directly or indirectly contributed to an increase in gender-based violence.

The federal government's ratification of the *Violence and Harassment Convention* (Convention 190) of the International Labour Organization was welcomed by organizations, who further called on Canada to recognize the prevalence of sexual assault and coercion of those with precarious immigration status or employment, for whom speaking out on workplace experiences of sexualized violence or economic coercion is difficult, if not impossible.

7) Children & Youth

Some organizations recommended the report include a reference to the new federal child dental benefit, as it represented an important advancement in the right to health for children and youth.

8) Persons with Disabilities

Organizations recommended that Canada's report deepen its portrayal of the state of human rights in connection to the need to ensure accessibility for persons with disabilities. Organizations expressed concerns that harms experience by persons with disabilities in prisons, such as the use of force and isolation against someone in emotional distress, the failure to acknowledge the psychological effects of solitary confinement, and the use of mental health symptoms to justify higher levels of security, are not included in the report.

9) Migrants and Refugees

Organizations recommended that Canada provide options and channels for regular migration, while also providing protections that ensure conditions for decent work, ensure access to basic services, provide proof of legal identity and adequate documentation, and prevent, combat, and eliminate human trafficking.

Organizations further noted that details pertaining to measures aiming to end immigration detention and to expand alternatives to detention, in relation to recommendations made to Canada by UN Treaty Bodies and Special Procedures, were missing from the draft.

10) Diversity, Equity & Inclusion

Organizations stated that Jewish Canadians are one of the most targeted religious minorities in Canada. There has been a noted increase in online and in person incidents of hate in Canada including a rise in anti-Semitism, transphobic hate and anti-immigrant sentiments. Organizations commented that the report presented a heavy focus on equality issues and recommended the inclusion of a more diverse set of human rights in the narrative.

Organizations commended the Government of Canada for signing the *Declaration on the North American Partnership for Equity and Racial Justice* and recommended this be included in the report.

11) Older persons

No comments were received on this theme.

12) 2SLGBTQQIA+

Organizations noted that 2SLGBTQQIA+ people continued to experience homelessness at higher rates due to discrimination experienced both in the rental market, and when accessing services in the shelter system. Organizations also noted gaps in support between federal and provincial benefits within Canada's poverty reduction strategy,

Organizations also addressed the need to allocate funds towards targeted housing services for vulnerable populations, including 2SLGBTQQIA+ youth and seniors.

Organizations suggested the Government of Canada continue to develop its national housing strategy, which should include specific resources for 2SLGBTQQIA+ Canadians, as well as ensure that services for those experiencing homelessness or housing insecurity are both inclusive and affirming to 2SLGBTQQIA+ people.

Organizations expressed concern that the report does not mention how governments plan to enact protective measures to keep trans and Two-Spirit women from being housed in institutions designated for men, where they experience physical and sexual assaults, transphobic harassment and name-calling, dehumanizing searches by male officers, dead-naming, violations of their privacy and disclosure of their gender identity to other incarcerated people, a lack of gender-appropriate clothing, and denial of gender-appropriate programming.

Organizations noted that the 2018 policy direction on sex and gender information practices for the Government of Canada, highlighted in the Federal 2SLGBTQI+ Action Plan, has not been implemented by the Correctional Service of Canada, which still prohibits individuals from changing their sex marker in the Offender Management System unless they undergo genital surgery, in violation of the policy direction.

13) Public Safety & Law Enforcement

Organizations called for systemic change within law enforcement, especially the Royal Canadian Mounted Police (RCMP), to combat patterns of gender prejudice and misogyny when dealing with communities across the country.

Organizations noted the omission of the human rights of sex workers from the draft report, something they noted is a recurring issue within Canada's international human rights reports. Reiterating the challenges faced by sex workers, organizations encouraged the government to repeal the *Protection of Communities and Exploited Persons Act* (Bill C-36), which prohibits the purchase of sexual services.

Organizations recommended Canada create a time-bound national action plan in consultation with federal, provincial, territorial, municipal governments, Indigenous Peoples, and civil society, to ensure that police and other officials implement the Minnesota Protocol for investigation of serious crimes, without discrimination, including all unlawful deaths or disappearances.

The subsection of the report focusing on the ongoing work to address the mass incarceration of Indigenous Peoples was welcomed by organizations, though some called the measures described (e.g., the appointment of a Deputy Commissioner for Indigenous Corrections, the implementation of a National Elders Working Group and the creation of Indigenous Intervention Centres) as "largely performative."

Organizations called on the federal government to recognize Indigenous self-determination and redirect funding and authority to Indigenous governments and organizations to provide alternatives, based on Indigenous law, which would be more effective in achieving decarceration of Indigenous Peoples in a manner consistent with the *United Nations Declaration on the Rights of Indigenous Peoples*. There were also calls for the removal of the Correctional Service of Canada (CSC) from these efforts, as its operations are inconsistent with the human rights of Indigenous, trans, Two-Spirit and disabled individuals.

Organizations expressed concern that the report did not indicate whether governments plan to eliminate, or have eliminated, solitary confinement in prisons and penitentiaries.

14) Business & Human Rights

Organizations expressed concern that Canadian companies operating abroad failed to deliver on their responsibilities to respect human rights and protect the environment. They cited continued widespread reports of serious human rights abuses and environmental damage linked to the overseas activities of Canadian companies and supply chains. Organizations called on the Government of Canada to uphold its commitment to create an independent and effective ombudsperson with strong investigative powers, in alignment with the concerns of human rights defenders and Canadian civil society.

Organizations also noted that communities and workers who suffer harm are often unable to access justice and remedies. Human rights and environmental defenders who stand up to corporations frequently face violence, intimidation, or criminalization. They further mentioned that the risks and vulnerabilities they face have worsened with the global COVID-19 health crisis.

15) Other recommendations

Climate Change

While organizations welcomed federal climate change initiatives, including efforts to address the insurance protection gap, as well as those aimed at addressing energy poverty, they noted these initiatives do not specifically address the impact of climate change on low-income or vulnerable households and communities.

Organizations further called on governments to consider how environmental issues including climate change and resource extraction directly intersect with sexual and gender-based violence experienced by Indigenous women, girls, Two Spirit and gender diverse people. They raised the lack of detailed information on how FPT governments are implementing the Calls for Extractive and Development Industries and related Calls for Justice outlined by the National Inquiry into Missing and Murdered Indigenous Women (MMIWG) to address violence against women, Two Spirit and gender diverse persons who defend water and land.

Though organizations welcomed Canada's commitment to support Indigenous Peoples self-determined climate action, it was noted that FPT governments struggle to obtain the free, prior and informed consent of Indigenous Peoples for development projects and resource extraction in their territories consistently.

Access to information

Organizations noted the omission of issues related to the right to access information in the report. Though organizations welcomed the ongoing review of the *Access to Information Act* by Parliament, it was argued that the draft report did not fully reflect the problems identified within the Act and its implementation.

Freedom of Expression

Canada was further encouraged to address issues surrounding freedom of expression, especially in terms of exercising the freedom of expression through peaceful protest.

Organizations flagged heightened concerns in relation to the criminalization of Indigenous land and water defenders who voice their opposition to the construction of the Coastal GasLink (CGL) pipeline, which is causing damage to the salmon spawning rivers of the Wet'suwet'en Nation. Echoing calls by UN human rights mechanisms, including the

Committee on the Elimination of Racial Discrimination, organizations have called upon Canada to withdraw policing and security forces from Wet'suwet'en territory to protect the rights of land and water defenders and to provide detailed information on the concrete steps it has taken to implement the recommendations of the Committee on the Elimination of Racial Discrimination speaking to this issue.

Canada on the International Human Rights Scene

Canada was encouraged to implement a development assistance policy based on a long-term vision to strengthen the protection of human rights in fragile and conflict-affected states, particularly women's rights.