

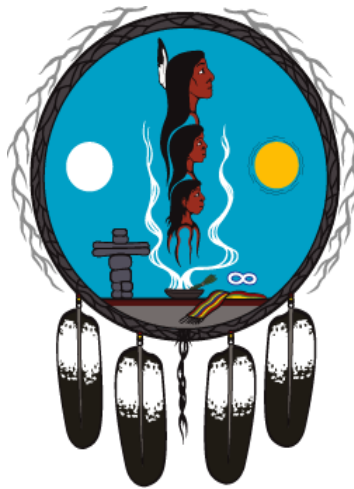
Submission to the Universal Periodic Review (UPR)

Canada

30th Session of the UPR

Working Group of the Human Rights Council

April to May 2018



National Aboriginal Circle Against Family Violence (NACAFV)

Website: www.nacafv.ca

E-mail: info@nacafv.ca

Address: 2 River Road, PO 2169
Kahnawake, Quebec, J0L 1B0 Canada

Telephone: 450-638-2968

The National Aboriginal Circle Against Family Violence (NACAFV) founded in 1999 and incorporated in 2002, is a non-governmental organization (NGO) with special consultative status with UN's ECOSOC since July 2015. The NACAFV is a national advocacy organization in support of shelters and advocates providing frontline services to Indigenous women and children who are victims of violence throughout Canada. The NACAFV has denounced the systemic discrimination to Indigenous peoples' victims of violence in Canada and advocates for Shelters and equitable services for Indigenous peoples survivors of violence.

INDIGENOUS PEOPLES

Reconciliation and the UN Declaration on the Rights of Indigenous Peoples

<i>Recommendation</i>
Canada should "take measures, in conjunction with Indigenous peoples, to ensure that Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination." # 22.2 UN Declaration on the Rights of Indigenous Peoples

II. GENDER VIOLENCE

National Inquiry into Missing and Murdered Indigenous Women and Girls and Federal-Provincial/Territorial Strategies and Initiatives on Gender-Based Violence and Family Violence

Discriminatory Underfunding of Emergency Shelters and Related Programmes and Services to Indigenous Women in Canada

In most communities in Canada, social services are funded through the provincial or territorial governments. However, the Constitutional division of powers in Canada means that in First Nations reserves, these services are typically funded instead through the federal government. In many areas, the federal government provides significantly less money per person for programmes and services in First Nations communities when compared to what the provincial and territorial governments provide in other communities. This is despite the fact that the lasting harms caused by colonialism, the residential school system and discriminatory government policies and racism may mean that the needs of First Nations communities are significantly greater and access to social services in small communities are often limited, particularly if these communities are relatively isolated.

The federal government is the only source of funding for emergency shelters for First Nations women living on reserves. By the federal government's own

calculation, federally-funded shelters provide services accessible to women and girls in only 55% of the 617 First Nations communities across Canada, leaving women and girls in 45% of First Nations communities without access to dedicated shelter spaces.¹ In fact, the gap is likely much greater than acknowledged by the government. While the federal government has reported that it currently funds 41 shelters to serve women and girls in First Nations communities, 3 of these currently cannot be accessed.² This means that 617+ communities are in fact, being served by only 38 operational shelters.

Not only are there not enough shelters, under-funding of existing shelters has a negative impact on the quality and accessibility of the services they offer. For example, when comparing two nearby shelters in Labrador, the wage disparity between an on-reserve and an off-reserve shelter is more than 50%. In Sheshatshiu, Labrador, support workers at the on-reserve Nukum Munik Shelter receive \$12.74 per hour. Nearby, in Happy Valley, Labrador, support workers at the off-reserve Libra House Emergency Shelter and Support for Women, receive \$28.00 per hour. This represents a huge disparity in funding that impacts Indigenous shelters in hiring and retaining qualified staff. It also negatively impacts Indigenous workers' standard of living.

Other systemic inequalities in funding and provision of services to First Nations have a direct impact on the accessibility and quality of care provided by shelters. For example, in Sheshatshiu, Labrador, the on reserve population is approximately 3000 people. The Nukum Munik Shelter and the Group Home for Children report that the water is unsafe to drink. The colour of the water is brown and it does not taste clean. The water must be boiled or other water must be purchased or accessed off reserve from an adjacent community by filling plastic bottles. In addition, the roads to reach the shelter are unpaved, affecting ambulance transportation of patients to the hospital and general access to the shelter. Due to overcrowding and shortage of housing on reserve, the shelter in Sheshatshiu often houses homeless pregnant women, who otherwise would have no place to live.

The federal government currently provides no dedicated funding for Inuit and Métis communities who experience similar situations of discrimination. There are approximately 15 shelters and transition houses serving 53 Inuit communities across the Arctic. Some of these shelters are extremely small and most communities are only accessible by air. Physical distance and the cost of flights in northern communities mean that women in many communities have no access to shelters.

¹ Indigenous and Northern Affairs Canada. "Family Violence Prevention Programme." Online posting updated 10 June 2016. <https://www.aadnc-aandc.gc.ca/eng/1100100035253/1100100035254>.

² One of the 3 is closed for long-standing renovations and upgrades and two others are no longer operational. See: Dr. Anita Olson Harper, *Needs Assessment for Indigenous and Northern Affairs*. National Aboriginal Circle on Family Violence, 30 April 2017.

The absence of dedicated shelters and limited access to transportation, in most Indigenous communities means that Indigenous women seeking to escape an abusive relationship may have to travel great distances, providing a disincentive to leave abusive relations and compounding the dangers when they do. While Indigenous women technically have equal access to shelters and other services compared to the general population in any nearby towns and cities, these shelters often do not have access to services in their Indigenous languages and tailored to the specific needs of Indigenous women and children. The Canadian Shelters with a high residency rate of Indigenous women and children are not hiring Indigenous staff resulting in the lack of culturally appropriate services— and in some instances, lack of understanding on the part of the staff and other residents, can create significant barriers to Indigenous women and children accessing these shelters and their services.

First Nations, Inuit and Métis women and children have greater access to shelters if they live in urban centers, but these shelters may not provide services and programs in their language and tailored to their specific needs. The gap in safety and support to achieve equality for Indigenous women and girls in need of shelter to escape violence remains despite the Prime Minister's promise in 2015 for a renewed Nation-to-Nation relationship.

In 2016, the Canadian Human Rights Tribunal concluded that the federal government had discriminated against First Nations children by systematically under-funding child and family services on First Nations reserves, both in comparison to the funding available in predominantly non-Indigenous communities and relative to the real needs of First Nations families.³ In particular, the Tribunal concluded that protections against discrimination in Canadian law mean that the government has an obligation to ensure “substantive equality” in the delivery of services to Indigenous and non-Indigenous people, regardless of what level of government funds those services. Substantive equality does not mean identical services. It means providing services that meet the particular needs of the communities being served.

The systematic underfunding of emergency shelters and other services for First Nations women and children is directly comparable to the case decided the Canadian Human Rights Tribunal and similarly reflects a form of racial discrimination.

<i>Recommendation</i>
We recommend that the federal government act immediately to eliminate all discrimination in funding for emergency shelters and related services for First Nations, Métis and Inuit women and children, including by significantly increasing the numbers of emergency shelters serving First Nations, Métis and Inuit communities.

³ Canadian Human Rights Tribunal. First Nations Child and Family Caring Society et al. 2016 CHRT 2. 26 January 2016.

Matrimonial Real Property Laws

While laws pertaining to marriage and division of property upon separation are generally covered by provincial and territorial laws, for First Nations people living on reserves, there is a separate family law regime. Under the 2013 *Family Homes on Reserves Matrimonial Interests or Rights Act*, each province is required to designate judges able to hear requests for Emergency Protection Orders to prohibit an alleged abuser from the family home.

As of early 2017 only three Atlantic Provinces had done so, meaning that women living on reserves in other provinces would be denied this critical legal protection.

Recommendation
We urge all provinces to train and designate judges to be able to grant Emergency Protection Orders on behalf of women living on reserves.

A Comprehensive, Coordinated, National Action Plan

There is a need for a comprehensive, coordinated national action plan commensurate with the scale and severity of violence against Indigenous women and girls. The extreme shortage of emergency shelters for Indigenous women is one consequence of Canada's failure to take a comprehensive, coordinated approach to ensuring the safety of Indigenous women and girls. The UN Committee on the Elimination of Discrimination Against Women investigation into violence against Indigenous women and girls in Canada noted with concern the absence of a "strategic and integrated plan of action" and the fact that the various initiatives carried out by government remain "fragmentary" and "piecemeal."⁴

A national Inquiry on Missing and Murdered Indigenous Women and Girls is ongoing and as of October 2017 was scheduled to bring forward its recommendations for action in 2018. The federal, provincial and territorial governments have very poor track records when it comes to acting on the well-known and well-established needs of Indigenous women and girls. The NACAFV endorses the findings of a group called the Legal Strategies Coalition which, in a review of past inquiries, studies and reports, that found little or no implementation of the overwhelming majority of more than 700 recommendations to stop violence against Indigenous women and girls.⁵ CEDAW similarly found that although

⁴ Committee on the Elimination of Discrimination against Women, *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, 30 March 2015, CEDAW/C/OP.8/CAN/1, paras 110 and 172.

⁵ Legal Strategies Coalition, *Review of Reports and Recommendations on Violence against Indigenous women in Canada*, February 2015.

“myriad evidence-based solutions” have been highlighted in past studies and reports, government response can be characterized as one of “inertia.”

Federal government officials have repeatedly stated that they will act on known needs of Indigenous women and girls without waiting for the results of the National Inquiry. However, there is no framework or clear plan of action to do so.

The NACAFV notes that the federal government has not made the domestic commitments that correspond to the UN General Assembly resolutions on violence against women actively championed by Canada on the international stage. In 2007, Canada played a lead role in the adoption of a General Assembly Resolution that called on all states to eliminate all forms of violence against women “by means of a more systematic, comprehensive, multi-sectoral and sustained approach, adequately supported and facilitated by strong institutional mechanisms and financing, through national action plans...”⁶ The call for comprehensive, sustained National Action Plans has been reaffirmed in subsequent resolutions. Furthermore, the first recommendation of Indigenous Women’s Shelter Network at the Third World Conference of Women’s Shelters held in The Hague in November 2015 is a call for an International Strategy to Prevent Murdered and Missing Indigenous Women and Children Worldwide.

In June 2017, the federal government announced what it called a “National Strategy to Prevent and Address Gender-Based Violence.” The federal government has characterized this “national strategy” as building on current federal initiatives and coordinating existing federal programmes.⁷ As such, the strategy does not address critical gaps in supports and services, including the underfunding of Indigenous women’s shelters described earlier in this submission. The major new initiative launched as part of this strategy is the creation of a new center where government is charged with coordinating future initiatives. This could provide a foundation for the development of a true national action plan, but as it stands, the current strategy continues to fall far short of the standard established by the United Nations.

In its recent review of Canada, the Committee on the Elimination of Racial Discrimination issued the following recommendation in its Concluding Observations:

24. Recalling its general recommendation No.25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party:

(a) Take immediate action to end violence against Indigenous women and girls. Provide support and access to equal services for survivors. Enact a

⁶ UN General Assembly, *Intensification of efforts to eliminate all forms of violence against women: resolution adopted by the General Assembly*, 30 January 2007, A/RES/61/143.

⁷ Status of Women Canada, <http://www.swc-cfc.gc.ca/violence/strategy-strategie/index-en.html>.

National Action Plan on Violence Against Women, inclusive of the federal, provincial and territorial jurisdictions, with special provisions to end the high rates of violence against Indigenous women and girls.

(b) Apply a human rights-based approach to the Inquiry by examining the issues holistically to identify barriers to equality and their root causes and recommend lasting solutions. Monitor progress to achieve these recommendations, with the participation of affected survivors, families and stakeholders.

(c) Establish an independent review mechanism of unsolved cases of missing and murdered Indigenous women and girls where there is evidence of bias or error in the investigation.

(d) Publicly report on violence against Indigenous women and girls including data on reported cases of violence, murders, and missing Indigenous women and girls, and numbers of investigations, prosecutions and convictions.

(e) Improve communication from the Inquiry and build transparent and accountable relationships with survivors, families and stakeholders.⁸

Recommendations

We recommend that the federal government commit to working with First Nations, Inuit and Métis women, their representative organizations and their Nations to develop a comprehensive and coordinated violence prevention strategy, beginning with implementation of the recommendations of CEDAW and other widely endorsed solutions currently before government.

We recommend that the federal government immediately implements the Committee on the Elimination of Racial Discrimination's recommendations referenced above.

III. PUBLIC SECURITY: DETENTION AND POLICING

Detention (Mental Health and Suicide Prevention Initiatives) and Policing (Racial Profiling)

Incarceration of Indigenous Youth

Although First Nations, Metis, and Inuit youth make up only 7% of Canada's overall population, they comprise almost half of those entering the justice system,

⁸ *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982.

according to a 2016 report by the Canadian Department of Justice.⁹ This alarming pattern of incarceration has not served to reduce crime in Indigenous communities, or to restoratively rehabilitate youth. Rather, it has served to sow further division in communities, and separate young men and women from their cultural heritage and context, a matter of crucial concern given the ongoing, largely unaddressed impacts of the forced removal of previous generations of children under the residential school system. Canada's high rates of Indigenous youth incarceration contribute to lower education outcomes and higher suicide rates among Indigenous peoples.

Notably, Indigenous youth who have interacted with the child welfare system make up the overwhelming majority of incarcerated youth. Additionally, those with family members who attended residential school are much more likely than their peers to end up in prison.¹⁰ Effective measures to address Indigenous youth incarceration require holistic responses to historical and ongoing social problems facing Indigenous communities.

Recommendation

Canada should address poverty and the housing shortage in Indigenous communities; and reduce overcrowding. Canada must address the symptoms of colonization; suicide, diseases; including alcohol and substance abuse and fetal alcohol syndrome. Shelters should be housed in a safe, physical structure, and be accessible to women and children with disabilities. This is consistent with the Truth and Reconciliation Commission of Canada's Calls to Action 21-23 regarding the establishment of Healing processes.

We echo the TRC's Recommendation that the Canadian government commit to the recognition and implementation of Indigenous justice systems in a manner consistent with the Treaty and Aboriginal rights of Indigenous peoples, the Constitution Act, 1982 and United Nations Declaration on the Rights of Indigenous Peoples.

"Canada must significantly and immediately reduce the high rate of separation of Indigenous Peoples from their families and communities, caused by the removal of babies and children and the incarceration of youth. Canada is called upon to address the over-representation of Indigenous peoples and in particular Indigenous youth in prison and other government policies that are primarily directed towards Indigenous peoples." Similar to the Indigenous peoples in Australia are calling for.

⁹ Quoted by Kristy Kirkup, *Aboriginal youth overrepresented in Canadian justice system, data shows*, The Star, <https://www.thestar.com/news/canada/2016/04/26/aboriginal-youth-overrepresented-in-canadian-justice-system-data-shows.html>.

¹⁰ Standing Committee on Aboriginal Affairs and Northern Development, House of Commons, April 19, 2016, <http://www.ourcommons.ca/DocumentViewer/en/42-1/INAN/meeting-9/evidence>.



IV. Social Development Initiatives

Services for Children in Shelters

Fundamental flaws in Canada's child welfare system result in vulnerable Indigenous youth turning to Indigenous women's shelters to seek emergency reprieve. Every night, thousands of children sleep in shelters, and hundreds are turned away by shelters that are unable to accommodate them.¹¹

Most women and children 78% in Canada seek shelter for reasons of abuse (physical 50% and/or sexual assault 21%) 22 % of shelter residents are there for other reasons for example, homelessness or 2% human trafficking (as per Statistics Canada April 2014 "Shelters for Abused women in Canada".) Indigenous children without access to shelters are vulnerable. Shelters are not a solution to violence however, shelters may prevent domestic homicides and when Shelters are accessible to Indigenous women and children they provide safety and security to a vulnerable peoples.

<i>Recommendation</i>
The government of Canada should ensure provision and access to services to all children who are survivors of violence in Shelters. The Jordon's Principle should be applied to children in Shelters and all services in Canada.

¹¹ Jefferys, Jen, *Indigenous communities across Canada need women's shelters now*, Chatelaine <http://www.chatelaine.com/news/womens-shelters-indigenous-communities/>.