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CANADA

SUBMISSION TO THE UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

66TH PRE-SESSIONAL WORKING GROUP, 9-13 MARCH 2020
LIST OF ISSUES PRIOR TO REPORTING

Amnesty International provides the below information to the United Nations Committee on Economic, Social and Cultural Rights (the Committee) ahead of the adoption of the List of Issues Prior to Reporting for the seventh periodic report of Canada at its 66th pre-sessional working group.

The bibliography set-out in Annex 1 lists recent publications of Amnesty International, covering its key concerns about violations of the International Covenant on Economic, Social and Cultural Rights, and in particular with regard to:

- **Free, prior and informed consent of Indigenous peoples (article 2)**

This Committee's 2016 Concluding Observations called on Canada to "full recognize the right to free, prior and informed consent of Indigenous peoples in its laws and policies and apply it in practice." No such legal reform has occurred. Legislation brought forward by an opposition Member of Parliament to establish a legal framework for the implementation of the UN Declaration on the Rights of Indigenous Peoples was nonetheless supported by the government but was obstructed by a handful of Senators and was not passed into law in June 2019 before the country's most recent federal election. The government has committed to bring similar legislation forward as a priority in the current Parliament but that has not yet occurred.

- **Violence against Indigenous women, girls and two-spirit persons (articles 11 and 12)**

The true extent of the violence against Indigenous women and girls is not sufficiently understood because of poor data collection on the Indigenous identity of victims of violent crime; however, testimony gathered by the National Inquiry into Missing and Murdered Indigenous Women and Girls, demonstrated that they are more likely to experience violence than non-Indigenous women and girls in Canada, and that the scale and scope of violence against First Nations, Inuit and Métis women, girls and two-spirit persons – and Canada's failure to prevent, address and redress this violence – remains one of the most egregious and urgent human rights concerns in Canada. With the release of the National Inquiry's final report on 3 June 2019 the Canadian government can no longer deny the scale and scope of this violence and must take urgent, concrete action in keeping with the severity of this human rights crisis. It is crucial that all levels of government act promptly on the National Inquiry's 231 Calls for Justice as part of a comprehensive, coordinated national response.

- **Forced sterilization of Indigenous women and girls (article 12)**

In July 2017, the regional health authority for the city of Saskatoon released the report of an external review commissioned after at least four Indigenous women reported that they had been coercively sterilized, primarily between 2008 and 2012. It is unknown how many Indigenous people have been sterilized without their consent, but there is compelling evidence that the practice has not ceased. As of February 2019, a lawyer leading a class action lawsuit in the province of Saskatchewan had received over 100 disclosures from women that they had been sterilized without providing free, full and informed consent. All but one of these women were Indigenous. In December 2018, the UN Committee against Torture affirmed that forced sterilization of women in Canada is a form of torture and called on Canada to take steps to investigate the issue, halt the practice, ensure justice for survivors and report back to the Committee on progress made within a year. As this Submission was being finalized, that report had not yet been submitted to the Committee and was six weeks overdue.

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- **Mercury contamination, Grassy Narrows First Nation (articles 11 and 12)**

The federal and Ontario provincial governments' continued failure to acknowledge and address the impacts of mercury poisoning in Asubpeeschoseewagong Anishinabek First Nation (Grassy Narrows First Nation) is prolonging an extremely serious health crisis. Two community health studies led by renowned mercury expert Dr. Donna Mergler, released in May 2018 and December 2018, confirm that mercury contamination of fish central to the cultural traditions, livelihood and subsistence of the people of Grassy Narrows has had a devastating impact on generations of community members. The evidence shows that the persistence of this deadly neurotoxin has had direct impacts on the health of community members, including on the lives of children born decades after the government of Ontario first allowed an upstream pulp mill to discharge mercury into the river system. For example, according to the study, children whose mothers ate this contaminated fish at least once a week while pregnant are four times more likely to have a learning disability or nervous system disorder. Critically, avoiding fish also has tragic consequences. Dr. Megler's reports document how the erosion of cultural traditions of living on the land has been profoundly harmful, as loss of livelihoods, culture, and identity contribute to social strain in the community and in the lives of young people.

The profound harms experienced by the community have been greatly compounded by an ongoing government refusal to acknowledge obvious health impacts and provide appropriate remedy or even accurate information about the nature of the mercury contamination. While the federal government drags its feet on the provision of much needed health services, the government of Ontario has yet to follow through on the promised clean-up of the river system. As a result, the community continues to be exposed to the contamination, and their health remains at risk. The community health studies have made several recommendations, including the need for food security programs, increased support in the First Nations' school and for mothers, emergency and long-term programs for children and youth, and provision of specialized care for elders suffering from mercury poisoning.

- **Mount Polley Mine Disaster (articles 11 and 12)**

More than five years since the August 2014 breach of the tailings dam at the Mount Polley mine in the interior of the province of British Columbia, the federal and provincial governments have failed to take meaningful action to ensure redress, justice and accountability for the catastrophic consequences of what is widely considered one of the worst such disasters in Canadian mining history. The situation has been taken up by the UN Committee on the Elimination of Racial Discrimination and the UN Working Group on Business and Human Rights. There has been no government effort to study and report on the health impacts of the disaster on Indigenous peoples.

There were serious concerns about the health and environmental impact of mining effluent that has been discharged into Quesnel Lake by the mine pursuant to a discharge permit granted in 2017 following the 2014 disaster, but without the free, prior and informed consent of affected Indigenous communities and opposition from non-Indigenous residents. The company concerned, Imperial Metals, has been found to be regularly out of compliance with its discharge permit. The operations of the mining are currently suspended by the company, citing low copper prices. Despite provincial, federal and RCMP investigators' recommendation to Crown to lay criminal charges, Canada allowed the 5 year statute of limitations under the Federal Fisheries Act to pass in April, 2019, without laying charges against those responsible. Residents are seeking an review of the company's discharge permit from the BC Environmental Appeal Board.

- **Site C dam (articles 11 and 12)**

In November 2014, the federal and British Columbia provincial governments approved construction of a major hydroelectric dam on the Peace River. The Site C dam, now under construction just west of the city of Fort St. John, would flood more than 100km of the Peace River Valley and its tributaries once completed. Although there are no First Nations or Métis communities within the lands that will be flooded, Indigenous individuals and families rely on the valley for vital cultural and subsistence activities such as moose hunting and gathering plant medicines and berries. The potentially severe health impacts for Indigenous communities were ignored in the decision to approve the project.

In addition, the larger pattern of intensive resource development in Northeast BC, of which Site C is part and which the project will further accelerate, has resulted in a dangerously strained health and social services infrastructure in host communities for a number of reasons, including the influx of transient workers. These strains disproportionately impact marginalized individuals, including Indigenous women escaping violence because of insufficient resourcing of social services,

insufficient availability of housing, policing and other critical functions. The impacts on the right to health, food and housing, among other concerns is considerable.

In December 2019 the UN Committee on the Elimination of Racial Discrimination called for a halt in construction of the dam unless the free, prior and informed consent of the West Moberly and Prophet River First Nations is obtained.

- **Failure to resolve Ghotelnene K'odtineh Dene land-claim (articles 11 and 12)**

The right to sovereignty over traditional territory is central to the Ghotelnene K'odtineh Dene's 20 year unresolved land-claim with the federal and provincial governments. Negotiations to settle the claim are currently stalled. Dene relationships to ancestral lands are the source of cultural, spiritual and social identity, and form the basis of their traditional knowledge, governance and legal systems. That relationship is crucial to the realization of a wide range of rights. There is an urgent need to advance these rights by resolving the land claim. This will improve the well-being of the Ghotelnene K'odtineh Dene and their ability to harvest medicines; their access to food through traditional production; use of their lands and waters as economic and material capital; and their ability to educate children, practice ceremony and other cultural practices on sites located on traditional territory.

- **First Nations children (articles 11 and 12)**

New legislation adopted in June 2019, an Act respecting First Nations, Inuit and Métis children, youth and families, represents long-overdue and potentially ground-breaking reforms to Indigenous child and family services in Canada. At the same time, the federal government continues to defend a narrow interpretation of Jordan's Principle which is intended to avoid situations in which First Nations children may be denied timely access to the health care and other services they need because of uncertainty or disputes over jurisdiction between the federal, provincial and territorial governments. Jordan's Principle prioritizes the obligation to provide the assistance needed, with the debate about government jurisdiction to be resolve later.

Meanwhile, the federal government has appealed a September 2019 Canadian Human Rights Tribunal ruling which had concluded a lengthy human rights complaint first lodged with the Canadian Human Rights Commission in 2007, alleging discrimination in the provision of child protection services to First Nations children living on reserves. The Tribunal had found the federal government responsible for "willful and reckless" discrimination and awarded $40,000 to children taken into care since 2006.

- **Violence against women (articles 11 and 12)**

In its 2016 Concluding Observations this Committee expressed concern about the "persistence of violence against women" and called for it to be addressed in a "holistic manner". The Minister for Women and Gender Equality has been mandated to "move forward to develop a National Action Plan on Gender-Based Violence". There is not yet an indication of the timeline or process for developing such a Plan and what steps will be taken to ensure it is done so on the basis of broad consultation, including with Indigenous women's organizations.

- **Health care for refugees and migrants (article 12)**

This Committee's 2016 Concluding Observations expressed concern about the fact that irregular migrants are denied access to health care in the public health system and called on the Interim Federal Health Program to be made accessible to all persons without discrimination based on immigration status. That has not happened.

- **Rights of intersex persons (article 12)**

Children in Canada who are born with visible variation to the sex characteristics still undergo non-emergency, invasive and irreversible surgeries and hormonal treatments that can cause both short and long-term harm. Section 268(3) of the Criminal Code of Canada allows for parents and medical practitioners to undertake non-consensual, cosmetic surgeries on intersex infants that have proven to normalize surgical interventions based on assumptions about medically "correct" bodies.

- **Canadian Ombudsperson for Responsible Enterprise (article 2)**

This Committee's 2016 Concluding Observations called on Canada to "introduce effective mechanisms to investigate complaints" of alleged human rights abuse made against Canadian corporations in connection with their activities abroad. In January 2018 the federal government announced establishment of the Canadian Ombudsperson for Responsible Enterprise, to be empowered to carry out such investigations, including by being granted such powers as subpoenaing witnesses and compelling disclosure of documents. The first CORE was named in April 2019. To date her office has only been empowered to "review" rather than "investigate" such complaints and has not been granted investigatory powers such as subpoenas and document disclosure.

ANNEX 1: ADDITIONAL AMNESTY INTERNATIONAL DOCUMENTATION

- Building hope, Addressing injustice: Amnesty International's 2019 Human Rights Report Card and Agenda for Canada, 8 April 2019, https://www.amnesty.ca/sites/default/files/Amnesty_HRA_2018-19_final_ENG.pdf.

- Final Written Submission, National Inquiry on Missing and Murdered Indigenous Women and Girls, 30 November 2018, https://www.amnesty.ca/sites/amnesty/files/Amnesty%20International%20Canada%20National%20Inquiry%20MMIWG%20Final%20Written%20Submission.pdf.

- Submission to Standing Senate Committee on Human Rights Study on Sterilization without Consent, 1 April 2019, https://www.amnesty.ca/sites/amnesty/files/Amnesty%20Sterilization%20Briefing%20Senate%20HR%20Committee%20March%202019_0.pdf.

- Canada: Submission to United Nations Committee on the Elimination of Discrimination against Women, 76th Pre-Sessional Working Group, 11-15 November 2019, List of Issues Prior to Reporting, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fICS%2fCAN%2f37339&Lang=en.

- Canada: Submission to the United Nations Committee against Torture, 65th Session, 12 November – 7 December 2018, https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/CAN/INT_CAT_CSS_CAN_32805_E.pdf.

- Canada: Submission to the United Nations Committee on the Elimination of Racial Discrimination, 93rd Session, 31 July 10 25 August 2017, https://www.amnesty.org/en/documents/AMR20/6620/2017/en/.

- A breach of human rights: The human rights impacts of the Mount Polley Mine Disaster, British Columbia, Canada, May 2017, https://www.amnesty.ca/sites/default/files/FINAL_May%2024_Mount%20Polley%20briefing.pdf

- Out of sight, Out of mind: Gender, Indigenous rights, and energy development in Northeast British Columbia, Canada, November 2016, https://www.amnesty.ca/sites/default/files/Out%20of%20Sight%20Out%20of%20Mind%20EN%20FINAL%20web.pdf

- The point of no return: The human rights of Indigenous Peoples in Canada threatened by the Site C dam, August 2016, https://www.amnesty.ca/sites/amnesty/files/Canada%20Site%20C%20Report.pdf.

- Canada: Submission to the United Nations Committee on the Elimination of Racial Discrimination, 98th Session, 23 April – 10 May 2019, Follow-Up, https://www.amnesty.org/en/documents/amr20/0110/2019/en/

- Submission to the UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, 15 February 2019. Attached.

- Submission to the UN Special Rapporteur on the Right to Health, Country visit to Canada, 5 to 16 November 2018. Attached.